



**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 19 July 2011**

held at Murwillumbah Cultural and Civic Centre  
commencing at 3.30pm

## COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

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**Items for Consideration of Council:**

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## CONFIRMATION OF MINUTES

- 1 [CONMIN] Minutes of the Ordinary and Confidential Meetings held Tuesday 21 June 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Minutes of the Ordinary Council Meeting held Tuesday 21 June 2011 (ECM 3491632)
  2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 21 June 2011 (ECM 34919651)
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**SCHEDULE OF OUTSTANDING RESOLUTIONS**

**2 [SOR] Schedule of Outstanding Resolutions**

**FOR COUNCILLOR'S INFORMATION:**

**FOR COUNCILLOR'S INFORMATION:**

16 February 2010

**ORDERS OF THE DAY**

**57 [NOM-Cr K Milne] Tree Removal Approval**

**NOTICE OF MOTION:**

**114**

**Cr K Milne  
Cr K Skinner**

**RESOLVED** that a report be brought forward on an appropriate system that requires authorisation for tree removal on private lands such as implemented in other councils.

**Current Status:** A report will be submitted to a future Council meeting dependent on outcomes of discussions with the Department of Planning on draft LEP 2010. This item has been initially addressed through the officer's report and Council resolution at 15 February 2011 Council meeting for a new Tweed Tree Preservation Order 2011, and interim protection measure for koala habitat.

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21 September 2010

**ORDERS OF THE DAY**

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:** To be rescheduled as a result of the postponement of the workshop of 7 June 2011.

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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**

**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.

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**18 January 2011**

**ORDERS OF THE DAY**

**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:** Report to be prepared.

---

17 May 2011

**ORDER OF THE DAY**

**39 [NOM-Cr D Holdom] Water Supply Demand Management Strategy  
Implementation Plan**

**317**

**Cr D Holdom**

**Cr J van Lieshout**

**RESOLVED** that:

....

5. The General Manager investigates and reports back to Council on the BASIX Five Year Outcomes Summary Report (as attached) and/or any of the other reports on the BASIX web site, with particular regard to the report's relevance to the Tweed Shire.

<http://www.basix.nsw.gov.au/information/index.jsp>

**Current Status:** Report to be prepared.

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**42 [NOM-Cr K Milne] Whole of Shire Cultural and Community Facilities Plan and  
Open Space Requirements - Review**

**320**

**Cr K Milne**

**Cr B Longland**

**RESOLVED** that the General Manager investigates and reports back to Council on a possible review of the Whole of Shire Cultural and Community Facilities Plan and Open Space requirements in light of the greater recognition of these issues to Healthy Cities and mental health, and as a timely review for these 2002 and 2007 plans.

**Current Status:** Report to be prepared.

---

21 June 2011

**REPORTS FROM THE GENERAL MANAGER**

**4 [GM-CM] Building Better Regional Cities Program**

**1**

**Cr D Holdom**

**Cr P Youngblutt**

**RESOLVED** that:

1. Council seeks expressions of interest from private companies and incorporated not for profit bodies to enter into a consortium arrangement with Council to develop an eligible project and make application to the Australian Government for program funding.
2. A workshop to be held on the Building Better Regional Cities Program.

**Current Status:** A workshop is scheduled for Tuesday 9 August 2011.

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## ORDERS OF THE DAY

### 48 [NOM-Cr K Milne] Environment Significance of the Tweed

#### NOTICE OF MOTION:

2

Cr K Milne

Cr B Longland

**RESOLVED** that Council defers the following motion for consideration at a future Council meeting:

1. Produces an educational DVD and brochure on the outstanding significance of the environmental values of the Tweed, incorporating advice provided by Mr John Hunter at Council's workshop of Tuesday 7 June 2011, and the Green Cauldron concept.
2. Considers developing an appropriate motto to be included in Council's branding, such as the header for the Tweed Link, to reflect this outstanding environmental significance.

**Current Status:** Item deferred.

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**57 [NOM-Cr K Milne] Cobaki Road Infrastructure**

**NOTICE OF MOTION:**

**Cr K Milne**  
**Cr B Longland**

**RESOLVED** that Council brings forward a report on the road and bridge infrastructure required to service the Cobaki development, including the staging and responsibilities for funding of these works, and whether the widening of Kennedy Drive or extension of Kirkwood Road will be funded from this development.

**Current Status:** Report to be prepared.

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## MAYORAL MINUTE

### 3 [MM] Mayoral Minute for the Period 02 June to 04 July 2011

Councillors,

## COMMITTEE MEETINGS

### Attended by the Mayor

- 02 June 2011 - Tweed River Art Gallery (TRAG) Foundation Meeting - TRAG, 2 Mistral Road, Murwillumbah
- 

## INVITATIONS:

### Attended by the Mayor

- 02 June 2011 - Black Douglas Ladies Singles for Masters - South Tweed Sports, 4 Minjungbal Drive, Tweed Heads South
- 05 June 2011 - Prize giving of First Winter Swim, Tweed Heads/Coolangatta Dolphins - Jack Evans Boat Harbour
- 05 June 2011 - Big Trev's World Environment Day Clean up - Jack Evans Boat Harbour (also attended by Cr Holdom)
- 09 June 2011 - Destination Tweed Networking Night - Twin Towns Services Club, Stars Room, Tweed Heads
- 11&12 June - Cooly Rocks on - Marine Parade and Chris Cunningham Park (Cr van Lieshout also advised her attendance)
- 15 June 2011 - 4CRB Talkback Radio - 4CRB, 8 Stevenson Court, Burleigh Heads
- 26 June 2011 - Chinderah River Bank Clean Up, Working Bee
- 27 June 2011 - Community Safety Precinct Meeting - Pottsville Community Hall, Tweed Coast Road, Pottsville (just North of the football oval)
- 28 June 2011 - Education and Industry Forum - Kingscliff TAFE
- 28 June 2011 - Murwillumbah Lions Changeover Dinner - Murwillumbah Services Club, Wollumbin St, Murwillumbah

- 01 July 2011 - Official Opening of extensions and refurbishment of St Anthony's Primary School, Kingscliff - School grounds of St Anthony's School, Boomerang Street, Kingscliff (also attended by Cr Longland)
- 03 July 2011 - Tweed NAIDOC Committee, Opening and Flag Raising Ceremony - Minjungbal Cultural Museum, South Tweed Heads (also attended by Crs Longland and Holdom)
- 03 July 2011 - National Servicemen's of Australia Association, Reserve Forces Day and presentation of "Medallions of Recognition" - Murwillumbah Services Memorial Club, Wollumbin Street

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

- 04 June 2011 - Launch of the Tweed Elderly and Disabled FloodSafe Guide - Tweed Heads Bowls Club, Cnr Wharf & Florence Street, Tweed Heads (Cr van Lieshout advised her attendance)
- 05 June 2011 - World Environment Day event - Knox Park, Murwillumbah (Crs Holdom, Longland, van Lieshout, Milne advised their attendance)
- 05 June 2011 - The Three Choirs Festival Concert - Murwillumbah All Saints Anglican Church, 32 Byangum Rd (Cr van Lieshout advised her attendance)
- 08 June 2011 - Tweed Shire Bushland Restoration & Reconstruction National Green Jobs Corps Project - Masterson Park Broadway, Burringbar Village (Crs Longland, Youngblutt & van Lieshout advised their attendance)
- 18 June 2011 - Koala Connections Project Launch & Workshop - Pottsville Environment Centre (Cr Holdom advised her attendance)
- 18 June 2011 - "Caravans and Communes: stories of settling in the Tweed 1970s & 1980s" hosted by the Tweed River Regional Museum - Tumbulgum Hall (Cr Longland attended)
- 23 June 2011 - Lions Club of Kingscliff Changeover Dinner - Cudgen Leagues Club, Bradshaw Drive (attended by Cr Polglase)

**Inability to Attend by or on behalf of the Mayor**

- 04 June 2011 - Seagulls vs Northern Pride game - Seagulls Rugby League Club, Tweed Heads
- 10 June 2011 - Murwillumbah Business Chamber Breakfast - Murwillumbah Services Club
- 11 June 2011 - Opening of the Lock the Gate Alliance AGM in protest of Coal Seam Gas Mining - Murwillumbah Civic Centre, Tumbulgum Road
- 17 June 2011 - NSW Training Awards North Coast Region Presentation Dinner - Coffs Harbour



- 22 June 2011 - Lions Club of Cabarita Beach and Pottsville Changeover Dinner - Cabarita Beach Surf Club, Pandanus Parade
- 23 June 2011 - Gold Coast Institute of TAFE's Politician's Lunch - Ashmore TAFE, Visions Restaurant, 5th Floor, D Block, Cnr Heeb St & Benowa Rd
- 26 June 2011 - Murwillumbah Rowing Club "Head of the Tweed" rowing marathon - Murwillumbah Rowing Club, 33 Tumbulgum Rd, Murwillumbah
- 26 June 2011 - Tweed Unlimited Arts Inc. (TUA) Open Weekend - TUA, Pioneer Parade, Banora Point
- 28 June 2011 - Cabarita Beach Surf Life Saving Club Annual Presentation Night, Cabarita Beach SLSC
- 01 July 2011 - Murwillumbah Business Chamber Breakfast - Murwillumbah Services Club

**REQUESTS FOR WORKSHOPS:**

Date of Request	Requested by Councillor	Topic	Councillors For	Councillors Against	Proposed Workshop Date
29 June	Cr Milne	Wilson's Park Tennis Court - workshop with BPUA and Community Representatives	Milne Longland Van Lieshout	Remaining Councillors	-

**CONFERENCES:**

**Conferences attended by the Mayor and/or Councillors**

- 02 Jun 2011 NSW Local Government in Emergency Management Conference - Sofitel Wentworth Sydney, 61-101 Phillip Street, Sydney (attended by Cr van Lieshout)
- 19-22 Jun 2011 National General Assembly of Local Government (NGA) – National Convention Centre, Canberra (attended by Crs Skinner and Polglase)

**Information on Conferences to be held**

- 17-18 Oct 2011 Tourism Symposium, Northern Rivers Tourism, "2020 Tourism Industry Potential" - Southern Cross University, Military Road, East Lismore - *With environmental, social and economic challenges dominating public debate and regionalism high on the political agenda, now more than ever is the time for regional industry to be sharing ideas and innovating for the future. Keynote speaker is Andrew McEvoy, Managing Director of Tourism Australia* - Registration \$330pp earlybird rate before 14 September, plus \$150 for 1 night's accommodation, if required. Refer to website [http://www.northernriverstourism.com.au/?page=tourism\\_symposium](http://www.northernriverstourism.com.au/?page=tourism_symposium)
- 

**Nomination for National Sea Change Taskforce Committee**

Nominations from financial member councils are being invited for two representatives of each State to serve on the National Sea Change Taskforce for 2011/2013. Committee meetings are held in conjunction with the Annual General Meeting, which is usually conducted in a Capital city during August and the Annual Conference which will be held in Hobart in March 2012. Monthly teleconferences are also conducted.

Councillors are invited to give consideration to nominating for the Taskforce and it is noted that travel costs and most accommodation costs of attending the two committee meetings are covered by the Taskforce. The nominations close on Friday 12 August 2011.

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**SIGNING OF DOCUMENTS BY THE MAYOR:**

- 09 June 2011 - Licence Agreement - Riverside Drive Tumbulgum
  - 09 June 2011 - Lease - Tweed Byron Community Transport - Banora Point Community Centre
  - 27 June 2011 - Funding Variation Agreement - Human Services, Ageing Disability and Home Care
  - 27 June 2011 - Transfer - Cudgen Road Duranbah - Roads Act 1993
  - 27 June 2011 - Land Acquisition Request - Marshall Street and Kyogle Road Uki
  - 27 June 2011 - Lease Agreement - Men's Shed Bray Park Water Treatment Plant
  - 27 June 2011 - Lease Police and Community Youth Club - Florence Street Tweed Heads
  - 27 June 2011 - Road Closure Request - Kellehers Road, Black Rocks Estate, Pottsville
-

- 30 June 2011 - Transfer - Wollumbin Street Murwillumbah
  - 30 June 2011 - Transfer - Champagne Drive - Tweed Heads South
- 

**RECOMMENDATION:**

**That:-**

- 1. The Mayoral Minute for the period 02 June to 04 July 2011 be received and noted.**
  - 2. The attendance of Councillors at nominated Conferences be authorised.**
  - 3. That Cr \_\_\_\_\_ be nominated for election as a representative to the National Sea Change Taskforce Committee.**
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## **ORDINARY ITEMS FOR CONSIDERATION**

### **REPORTS THROUGH THE GENERAL MANAGER**

#### **REPORTS FROM THE GENERAL MANAGER**

#### **4 [GM-CM] Regional Relocation Bill 2011**

##### **ORIGIN:**

**General Manager**

**FILE NO: Population Statistics; Government Grant - General; ECM35344505**

##### **SUMMARY OF REPORT:**

With the passing of the Regional Relocation Bill 2011, a grant of \$7,000 will be made available from 1 July 2011 to individuals or families who relocate from the metropolitan area of NSW to Regional NSW. The grant will be administered by the Office of State Revenue and will be dependent on an eligible applicant selling a house in the metropolitan area (as their principal place of residence) and buying a house in regional NSW (where the value of the property does not exceed \$600,000).

##### **RECOMMENDATION:**

###### **That Council:**

- 1. Participates in the relocation scheme offered by the NSW Government.**
- 2. Requests the NSW Government consider providing a funding incentive of up to \$15,000 to:**
  - (a) encourage NSW businesses to expand into regional areas; and**
  - (b) encourage businesses from other States to expand or relocate to regional NSW**

**in order to ensure employment for the relocated households.**

**REPORT:**

Council has received advice from the NSW Government of the passing of the Regional Relocation Bill 2011. The details are outlined in the letter below and are self explanatory.



**Trade & Investment,  
Regional Infrastructure  
& Services**

Mr Michael Rayner  
Tweed Shire Council  
PO Box 816  
Murwillumbah NSW 2484  
[tsc@tweed.nsw.gov.au](mailto:tsc@tweed.nsw.gov.au)

Dear Mr Rayner

With the passing of the Regional Relocation Bill 2011, a grant of \$7,000 will be made available from July 1, 2011 to individuals or families who relocate from the metropolitan area of NSW to Regional NSW. The grant will be administered by the Office of State Revenue and will be dependent on an eligible applicant selling a house in the metropolitan area (as their principal place of residence) and buying a house in regional NSW (where the value of the property does not exceed \$600,000).

For the purposes of the Relocation Grant the "metropolitan area" of NSW is defined as including Sydney and the surrounding local government areas of Wollondilly, Blue Mountains, Hawkesbury, Gosford and Wyong, and the Wollongong and Newcastle Council areas.

Local Councils in regional NSW have the choice of opting out of this scheme if concerned about local population pressures. The Department of Trade and Investment, Regional Infrastructure and Services is seeking your advice on whether you wish to opt out of the scheme. We have also written to relevant Regional Organisations of Councils alerting them to the availability of the scheme.

The Department will also be interested in discussing with each Regional Organisation of Councils and individual councils any plans they are considering to promote their locations as places to live and work. The Department would be keen to pursue opportunities to co-ordinate those marketing efforts in line with the availability of the Relocation Grant

Your advice on whether you wish to opt out of the scheme is sought as soon as possible. Should a reply not be received by July 15, 2011 we will work on the basis that your Council wishes to be included in the coverage of the Scheme. Should Council change its position at a later date this can of course be accommodated.

Please do not hesitate to contact me if you have any questions (telephone number 02 9338 6710) or Monica Stadtmiller (telephone number 02 9338 6721).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Michael Cullen'.

Michael Cullen  
Executive Director  
Enterprise, Small Business & Regional Development

NSW Department of Trade and Investment, Regional Infrastructure and Services  
GPO Box 5477, Sydney NSW 2011 Australia  
Tel: 02 9338 6719 Fax: 02 9338 6726  
[www.industry.nsw.gov.au](http://www.industry.nsw.gov.au)

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You will note that the Bill provides Council with the option to opt out of the scheme. The Government has requested formal advice from Councils if they elect to opt out.

It should also be noted that the Government is keen to work co-jointly with Councils in marketing regions for relocation. Destination Tweed has a role in this regard and initial discussions have been held with the Chief Executive Officer.

At the same time, the Australian Government has announced its Building Better Regional Cities Program. Up to \$15 million is available to nominated centres to facilitate an affordable housing project. Tweed Heads (not Tweed Shire) is one of the nominated 47 regional cities. This program requires the identification of jobs as a prerequisite for funding. Staff are working through the guidelines, have participated in a state wide teleconference and engaged a specialist to provide advice and a briefing to staff and Councillors for Tuesday 2 August 2011.

As with the Australian Government Building Better Regional Cities Program, it is felt that the State Government housing relocation program would be more effective if there was a linkage to employment and job creation. For example, matching funding to businesses which wish to expand (not necessarily relocate) to regional areas and who commit to a signed lease or property purchase (industrial or commercial) of at least twelve months would offer a more sustainable package of incentives. It is considered that the business grants would need to be in the order of \$15,000 to be effective.

Council is aware that one computer company, who has offices in Sydney, Melbourne and Newcastle who are considering opening an office in Brisbane. Initial discussions have been held to encourage them to consider the Tweed. A grant to assist them establish an office might mean that they would open an office in Tweed rather than over the border.

This report therefore recommends that Council will participate in the relocation project but also encourages the Government to provide funding for businesses to establish themselves in regional areas to generate matching employment and jobs for the relocated households.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**5 [GM-CM] Population Projections - Variations and Methodologies**

**ORIGIN:**

**General Manager**

**SUMMARY OF REPORT:**

A draft document titled *Population Projections – Variations and Methodologies* has been prepared to outline the differences between the NSW State Government's approach to population forecast modelling and the approach used by Id Forecasting.

It is recommended that the following briefing paper and the disclaimer paragraph be placed on Council's website containing the Forecast Id links.

**RECOMMENDATION:**

**That the briefing paper titled "Populations Forecast – Variations and Methodologies" and associated disclaimer paragraph be placed on Council's web site which links to Forecast Id.**

## **REPORT:**

### **Current Tweed Population**

Recently the Australian Bureau of Statistics released the latest Estimated Residential Population figures for June 2010. In these estimates Tweed's population has reached 90,000 persons. This represents 5,000 new residents to the Tweed over the last five years or a 10.4% increase in the total population. However, over the last 12 months Tweed's population has only risen by 1.3%, which is down 0.6% from 2009.

These figures are estimated every 12 months based on the number of people moving to and from the Tweed along with births and deaths within the Tweed. Every five (5) years these figures are verified through the national census. The 2011 Census is scheduled for 9 August 2011.

### **Tweed Demographic Webpage - Progress**

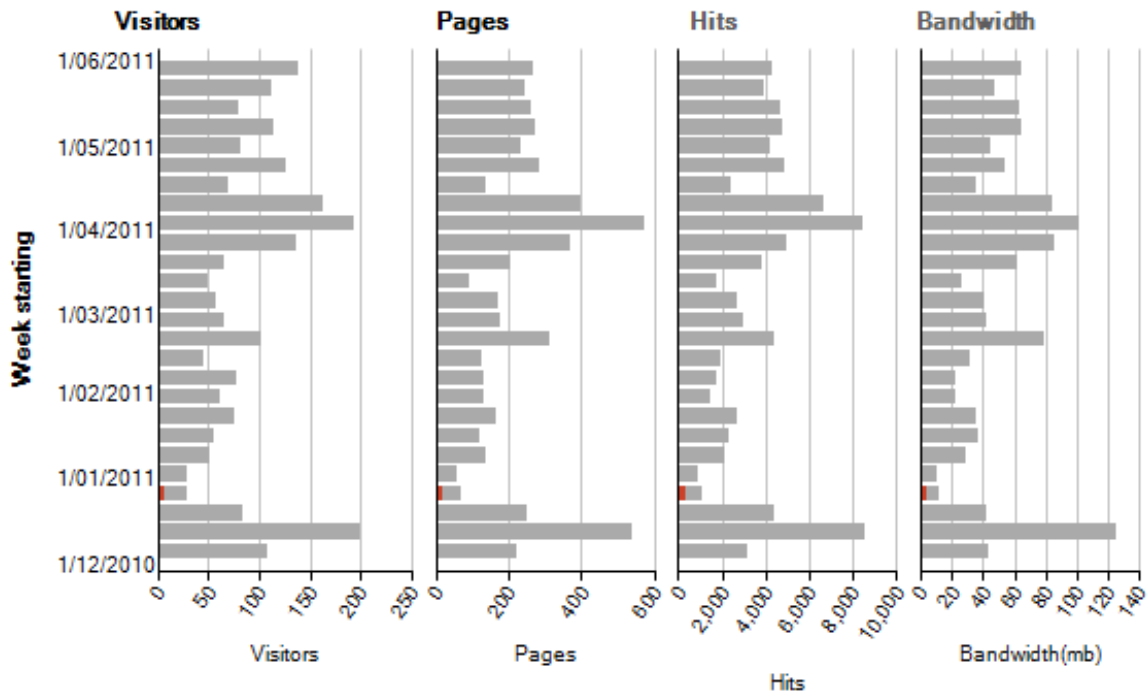
On 1 October 2010 Council entered into a contract with Id Consulting to provide Council with a web based service to provide accurate, detailed and up to date demographic, economic and population forecasting information for the Tweed Shire.

The main advantage of the Id philosophy is that it is presented in a manner that anyone who has contact with the internet can access the information. This is a complete change of focus which reflects current trends of making such information accessible.

After several months of development Council's first demographic profile web pages were placed online in early December 2010. These pages included Profile Id, Economy Id and Atlas Id. Since these pages were released to the public they have been an overwhelming success.

A fourth component Forecast Id required a little more research to determine small area population forecasts for the Tweed. This component came online in April 2011 which further boosted online interest from the Tweed community.

During the full six (6) months Council's demographic website has been operational it has had 107,436 hits, this represents an average of 517 hits per day. The graph below represents the weekly totals for several categories of Council's demographic website.



There are two clear spikes in usage, one in the second week of December and the other in the first week of April. Both of these significant increases in usage correspond to two Tweed Link articles that were run on the demographic site.

### Population Projections - Variations and Methodologies

A draft document titled Population Projections – Variations and Methodologies has been prepared to outline the differences between the NSW State Government’s approach to population forecast modelling and the approach used by Id Forecasting. This draft has been prepared in consultation with the Planning and Regulation Division, the Water Unit and Id Consulting.

This paper has identified that the variations in the projections developed by NSW Department of Planning and Id Forecast relate back to the methodologies that have been employed.

### Disclaimer

*"Please be advised that the following population projections are estimations only and do not concede to be a precise prediction. These projections are based on the most relevant and current information that is available at the time of preparation. The purpose of these projections is to provide Council with a tool to assist in the preparation of policy development. Its release to the community is subject to the acknowledgement that its accuracy is subject to numerous external factors such as macroeconomic influences, market fluctuations, State policy changes, infrastructure development and changes in demographic trends. These projections are subject to periodic reviews and do not represent Council policy targets".*



**Tweed Population Forecasts**  
**Variations and Methodologies**

**Strategic Land Use Policy**

*Far North Coast Regional Strategy (FNCRS)*

The FNCRS does not present any detailed population targets or reproduce any published population projection figures. It simply states an estimated target of 289,000 persons to be living in the Far North Coast region by 2031. The Strategy does not specify any targets for the Tweed.

*Tweed Urban and Employment Land Release Strategy 2009 (TUELRS)*

The TUELRS was prepared in 2009 and adopted by Council. The objective of the Strategy is to guide urban development within the Tweed to 2031. It's primary focus is to comply with the FNCRS requirement that Councils prepare a Growth Management Strategy prior to zoning further land for urban, commercial and industrial uses.

The TUELRS does not give any specific targets other than stating that one of the purposes of the document is to "make provision for up to 2,000 new residents in Tweed Shire per annum over the life of the strategy".

To achieve some more detail the TUELRS has reflected the 2005 release population projections forecasts prepared by the NSW Department of Planning. Below is an extract of these projects which is presented in the TUELRS.

Table 3-2: Population Projections (TUELRS, P.20)

Year	Projection	Total Growth	Annual Growth
2006	83,023		
2011	90,871	46.6%	1.5%
2016	98,095	36.7%	1.3%
2021	105,183	43.0%	1.4%
2026	112,176	26.8%	1.0%
2031	118,754	20.7%	0.8%

Source: Department of Planning (2005)

**Population Projections**

*Department of Planning – Population Projection Series*

The New South Wales Department of Planning have been preparing population forecasts for the state, regions and statistical local areas for the last 30 years. These projections are prone to significant swings which are usually as a result of more recent census figures.

Dpt of Planning Population Projection Series	Tweed LGA Projected Population 2031 (persons)	% Change	Richmond Tweed SSD Projected Population 2031 (persons)	% Change
2005	118,750		290,769	
2010	124,800	<b>5.1%</b>	302,900	<b>4.2%</b>



## Tweed Population Forecasts Variations and Methodologies



The population projection model used by the NSW Department of Planning projects births, deaths and migration by single year of age, separately for males and females, for each non-metropolitan statistical local area (SLA) of the State. This method does incorporate information about future land availability and development into the projections. However this information does not go into detail of smaller infill development areas (smaller existing undeveloped residential zones) and smaller potential redevelopment areas. Their focus is to capture major urban release areas.

The major factors which influence significant variations to the projection data are changes to fertility rate and migration rate. A review of these factors is facilitated by the most recent census figures.

The Department uses a double-constrained cohort component method to derive the projected age and sex distributions for all SLAs of New South Wales. A technical paper (TR 2006/01) detailing the methods used to derive these projections is available from the Transport and Population Data Centre webpage at <http://www.planning.nsw.gov.au/tpdc/publications.asp>

The State Government forecasts are based on a 'top down' methodology', where state-wide assumptions on overseas and interstate migration (as well as fertility and mortality) result in state and regional forecasts which are then allocated to LGAs. This method results in control totals being used.

All Department of Planning population projection data carry a warning to the use of the information. A copy of the 2010 warning is reproduced below.

### **USER WARNING: LIMITATIONS OF POPULATION PROJECTIONS**

*Users are advised that population projections are not precise predictions of the demographic future. They are the populations which result from certain assumptions being made about future trends in fertility, mortality and migration. Whilst the assumptions reflect the current outlook regarding these trends, it is quite possible that they will not eventuate. Fertility and migration (and to a lesser extent, mortality) are influenced by a wide variety of social, economic and political factors, many of which cannot be foreseen with any degree of precision.*

*In addition, trends in fertility, mortality and migration are characterised by year-to-year fluctuations. Because the fluctuations are impossible to predict, projection assumptions for fertility, mortality and migration have to be formulated as long-term averages. These long-run averages therefore take the form of straight lines or smooth curves. Actual trends in fertility, mortality and migration will fluctuate either side of the smooth path of the long-run assumptions.*

### *ID Forecasting*

Council engaged Id Consulting to provide population forecasting for the Tweed Shire and its sub regions. The projection series produced by Id established a higher projection than the Dept of Planning's 2010 series by 3,335 persons. This represents a total variation of 2.6% or approximately 166 persons per annum or 80 dwellings per annum. In forecasting terms this represents a minor difference which is caused by the different modelling techniques used by the two organisations. This variance does not represent any immediate presumption that the fundamental basis of Council's urban release policy is flawed. It simply demonstrates that population forecasting does not represent an exact science. It is a forecast and will vary with time.



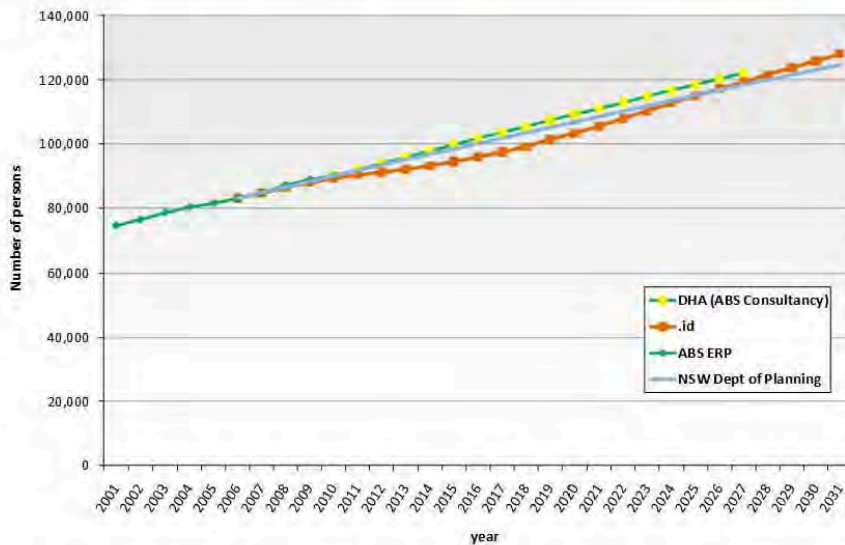
## Tweed Population Forecasts Variations and Methodologies



Dpt of Planning Population Projection Series	Projected Population 2031 (persons)
2005 Series	118,750
2010 Series	124,800
Forecast ID	128,135
2010 Series / Forecast ID Variation	3,335 (2.6%)

The id forecasts are based on a 'bottom-up' methodology, where assumptions on residential development are made at the small area level, rather than constrained by a notional Shire wide target.

### Population growth comparison, Tweed Shire, Dept of Planning, ABS, DHA and .id



Source: .id, DoP Demography Unit 2010, Commonwealth Department of Health and Ageing (ABS consultancy), ABS



### Comparison - Urban Release Policies Vs Population Projections

As previously mentioned population projections are produced by models which utilise sophisticated data manipulation and several key inputs. These include assumed residential development rates, migration rate by age, fertility rate and mortality rate and future urban land supply.

## **Tweed Population Forecasts Variations and Methodologies**



Land release policy documents such as the TUELRs and the FNCRS establish targets which the policy endeavours to establish strategies to meet. Population projection forecasting should not be seen as a measure to encourage growth in particular areas. The interrelationship between the forecasts and policy targets should be seen interdependently.

NSW Government and Council Forecast projections will more than likely change when they are reviewed. This reflects the changing trends within a region.

NSW Government and Council Policy forecast targets will eventually change to reflect the anticipated changes in population growth.

These two issues will continually chase each other in a forecast / policy cycle.



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**6 [GM-CM] Tweed Shire Council - Events Strategy and Sponsorship Policy**

**ORIGIN:**

**General Manager**

**SUMMARY OF REPORT:**

At its April meeting Council resolved that the Draft Events Strategy, Draft Corporate Sponsorship Policy and the Draft Festivals, Donations and Grants Policy be placed on public exhibition in accordance with Section 160 of the Local Government Act 1993, following which a report be brought forward for Council's consideration for adoption.

All three items were on exhibition from 04/05/2011 - 01/06/2011. Advertising for the exhibition dates appeared in the Tweed Link on 3 May (Issue 709).

During the exhibition period a roundtable was held on Thursday 26 May 2011 to discuss and consult with local event organisers. The roundtable had representatives from many local events, community groups, TAFE, Northern Rivers Tourism and Destination Tweed.

In addition to the feedback received at the round table Council also received two written submissions from the Murwillumbah District Business Chamber and Island Style Promotions as well as further information from Council's Cultural and Community Services Unit.

Taking on board much of the feedback several amendments were made to the Events Strategy primarily to fine tune some of the actions, ensure accessibility to events was also highlighted, make definitions clearer, recognise the need to provide multi-year funding opportunities for small to medium community events and establish some tools to assist local event organisers with the planning, operating and evaluation of their event.

As a result of the feedback received and the need to introduce a process for multi-year funding options, the Communication and Marketing Unit is reviewing the Draft Festivals, Donations and Grants Policy and will bring that back to Council for their consideration by the end of the year. At this stage it is proposed to maintain two different Policies as they currently exist with the Donations Policy to remain as it is, with donations being offered twice a year. The unit will review the Festivals Policy to reflect the Events Strategy (once adopted) and consider ways in which funding can be made available for major and small to medium community events and options for multi-year funding.

There were no comments or submissions made in regards to the Corporate Sponsorship Policy, primarily as this is how Council will seek and receive sponsorship for its programs, not its sponsorship of other programs.

**RECOMMENDATION:**

**That Council adopts the Events Strategy and Corporate Sponsorship Policy and notes the Festivals Policy and Donations Policy are currently being reviewed for Council consideration.**

## REPORT:

The Tweed has a long and proud history of festivals and events, for instance the Tweed River Agricultural Show started in 1890, the Murwillumbah Festival of Performing Arts started 80 years ago and the Banana Festival 60 years ago.

As well as these ongoing community festivals many different festivals and events have developed since then appealing to a wide cross section of the community and visitors to the Tweed.

In earlier years, Council's focus has been on assisting community events through donations and festivals policies established to provide financial assistance and the development of suitable outdoor spaces and indoor facilities for community events.

In 2004/05, under the Tweed Shire City of the Arts Program, the first Tweed Shire Festival and Events Strategy was developed through consultation with local event organisers and audience research surveys of nine local festivals were conducted by Southern Cross University. Council has continued to work towards meeting the objectives in the first Strategic Plan.

With emerging trends in sports tourism and a need to review Council's approach to financial and in-kind support a Draft Events Strategy 2011-2016, Draft Corporate Sponsorship Policy and Draft Festivals, Donations and Grants Policy were placed on public exhibition from 04/05/2011 - 01/06/2011. Advertising for the exhibition program appeared in the Tweed Link on 3 May (Issue 709).

During the exhibition period a roundtable was held on Thursday 26 May 2011 to discuss and consult with local event organisers. The roundtable had representatives from many local events, community groups, TAFE, Northern Rivers Tourism and Destination Tweed.

In addition to the feedback received at the round table Council also received two written submissions from the Murwillumbah District Business Chamber and Island Style Promotions. These submissions are attached to the report.

Many of the issues raised at the roundtable and in the written submissions have been taken on board and primarily were in regards to increased levels of funding support, streamlining of associated processes and introducing tools to assist event organisers.

### **Draft Events Strategy 2011-2016**

The Draft Events Strategy 2011-2016 takes a whole-of-Council approach to provide a framework to assist the community and Council with the development and support of festivals and events in the Tweed. Linking to the Community Strategic Plan, the strategy outlines five key objectives and what Council will do to achieve these.

1. To attract major events to the Tweed.
2. To support the development of small to medium community events.
3. To host Council events that educate and create a sense of community.
4. To build and maintain Council's public assets to meet the needs of future events.
5. To assist event organisers to obtain permission to hold an event on public and/or private land.

A key feature of the Events Strategy is to develop an online Events Toolkit which was discussed in detail at the roundtable. Once the Events Strategy is adopted Council's first priority of the strategy will be to establish the online Events Toolkit featuring a range of

templates and how to guides including traffic plans, risk management, marketing, media lists and much more.

The Events Toolkit will provide links to a range of useful tools and information for local event organisers including grant and educational opportunities as well as publications and how to guides and templates for the various stages of planning, implementing and evaluating an event.

Another action item is to establish regular workshops for event organisers with the roundtable identifying topics including risk management, traffic management, social media and websites, marketing and event evaluations.

### **Draft Corporate Sponsorship Policy**

This is a new policy and has been modelled from other Councils and follows recommendations from ICAC. Council does not currently have a policy on sponsorship and this document relates specifically to how Council will receive sponsorships from other organisations, it does not apply to funds/grants Council distributes.

The Policy outlines what sponsorships Council will and will not accept, with guidelines to assess, manage and report on sponsorship and the rights and responsibilities of each party. Council has not been overly active in this area previously, hence the development of this Policy to ensure one is in place and allow Council to maximise any potential sponsorship opportunities to achieve greater results in our programs and services.

Examples of when a sponsorship may be sought include initiatives to jointly host an event, develop a facility such as in our Art Gallery, Museums, recreation parks or sports fields or gardening competitions, youth and seniors awards and environment programs.

### **Draft Festivals, Donations and Grants Policy**

As a result of the feedback received, the Communication and Marketing Unit is reviewing the Draft Festivals, Donations and Grants Policy and will bring that back to Council by the end of the year for consideration. The revised consideration is recommending to maintain two different Policies as they currently exist - Donations Policy to remain as it is, with donations being offered twice a year and will review the Festivals Policy to reflect the Events Strategy (once adopted) and consider ways in which multi-year funding can be made available.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

### **POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Events Strategy 2011 - 2016 (ECM35702831)
  2. Corporate Sponsorship Policy (ECM35702856)
  3. Submissions Received (ECM35702887)
-

## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

#### MATTERS FOR CONSIDERATION

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

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**7 [PR-CM] 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/refused.

**RECOMMENDATION:**

**That Council notes the June 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, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

<b>DA No.</b>	DA10/0626
<b>Description of Development:</b>	Two (2) lot subdivision
<b>Property Address:</b>	Lot 2 DP 231691 Tweed Valley Way, Burringbar
<b>Date Granted:</b>	23/6/2011
<b>Development Standard to be Varied:</b>	Clause 20(2)(a) - minimum lot size 40ha
<b>Zoning:</b>	1(a) Rural
<b>Justification:</b>	Subdivision of an allotment less than 40 hectares within 1(a) Rural zone
<b>Extent:</b>	Proposed allotment size is 11.97 hectares within 1(a) zone
<b>Authority:</b>	Director General of the Department of Planning and Infrastructure

<b>DA No.</b>	DA10/0636
<b>Description of Development:</b>	Residential flat building (6 units)
<b>Property Address:</b>	Lot 14 Section 5 DP 758571 No. 204 Marine Parade, Kingscliff
<b>Date Granted:</b>	24/6/2011
<b>Development Standard to be Varied:</b>	Clause 32B(4)(b) - overshadowing
<b>Zoning:</b>	2(b) Medium Density Residential



<b>Justification:</b>	<p>The proposed development causes overshadowing of the adjacent 6(a) Open space land. The approximate area of overshadowing caused at 6.30pm December is 343.3m<sup>2</sup>.</p> <p>The proposal does not result in adjacent open space being overshadowed before 3pm midwinter (standard time), but does cast shadow prior to 6.30pm midsummer (daylight saving time).</p> <p>The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the foreshore reserve.</p> <p>The area subject to overshadowing has no active recreation area or beach and is located adjacent to the at grade car parking within the Marine Parade Road reserve.</p> <p>The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve.</p> <p>The overshadowing is minor at 6.30pm midsummer and is non-existent at 3 pm midwinter.</p> <p>The proposal does not overshadow the beach.</p>
<b>Extent:</b>	343.2m <sup>2</sup> of overshadowing at 6.30pm mid summer.
<b>Authority:</b>	Tweed Shire Council

<b>DA No.</b>	DA11/0254
<b>Description of Development:</b>	Shed
<b>Property Address:</b>	Lot 3 DP 211196 No. 385 Terranora Road, Terranora
<b>Date Granted:</b>	30/6/2011
<b>Development Standard to be Varied:</b>	Clause 24 - setbacks to designated roads
<b>Zoning:</b>	1(c) Rural Living
<b>Justification:</b>	Proposed garage and storage shed to encroach 20 metres into the setback from a designated road
<b>Extent:</b>	To vary the setback to Terranora Road being a Designated Road by 20 metres or 67% to accommodate a shed
<b>Authority:</b>	Tweed Shire Council

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**8 [PR-CM] Grant to Undertake the Aboriginal Cultural Heritage Study**

**ORIGIN:**

**Planning Reform**

**FILE NO: GT1/LEP/2010/Heritage/ACH**

**SUMMARY OF REPORT:**

This report has been prepared to respond to the Notice of Motion arising at the Council meeting of 20 July 2010.

In addition to the enquiries arising, this report provides an update on the Community Based Heritage Study (CBHS) and the successful grant application in respect of preparing an Aboriginal Cultural Heritage Management Plan (ACHMP).

This report concludes with an acknowledgement of the importance of both these heritage policies as an essential component of the broader Tweed strategic planning framework.

**RECOMMENDATION:**

**That:**

- 1. The report on the Grant to Undertake the Aboriginal Cultural Heritage Study be received and noted; and**
- 2. Council endorses the acceptance of the successful NSW Heritage Office grant to undertake the preparation of an Aboriginal Cultural Heritage Management Plan for the Tweed Shire and votes the expenditure.**

## REPORT:

At the Council meeting of 20 July 2010, a notice of motion was resolved that:

- "1. *The General Manager undertakes an investigation and reports back to Council, on a Shirewide Aboriginal Cultural Heritage Assessment, the report to give regard to:*
  - *the approximate time frame to undertake the assessment, any state and federal legislation applicable to Aboriginal Cultural Heritage that Council needs to take into consideration;*
  - *an overview of the due process steps and assessment procedures which would be undertaken in any assessment of Aboriginal Cultural Heritage;*
  - *any (possible) assistance that may be required by the Local Aboriginal Land Council;*
  - *any (possible) consultation of local Aboriginal people to assist with the assessment via oral historical information;*
  - *possible cost and policy implications thereafter along with any other relevant matters; and*
2. *Any confidential information from this report is to be contained in a separate confidential attachment to ensure protection of sensitive cultural heritage information."*

Ainsworth Heritage Pty Ltd was engaged in March 2011 to undertake the completion of the draft Community Based Heritage Study (CBHS) (2004). This will progress the study through its final stages to enable the updating of the Tweed LEP and will set up management plans and strategies to assist in the management of heritage in the local government area (LGA). It is anticipated a report on the CBHS will be submitted to Council in the latter part of the year.

The CBHS did not address or assess Aboriginal cultural heritage. In the interim period Council has applied for, and been successful, in obtaining a grant to also prepare an Aboriginal Cultural Heritage Management Plan, which will dovetail with the completion of the CBHS.

This report addresses Council's previous resolution and provides information on Council's successful Aboriginal Cultural Heritage Management Plan grant application.

### **What is Aboriginal cultural heritage?**

Aboriginal cultural heritage is defined in the [former] Department of Environment, Climate Change and Water (DECCW) *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* as follow:

*"Aboriginal cultural heritage consists of places and items that are of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs and history. It provides evidence of the lives and existence of Aboriginal people before European settlement through to the present."*

*Aboriginal cultural heritage is dynamic and may comprise physical (tangible) or non-physical (intangible) elements. It includes things made and used in traditional societies, such as stone tools, art sites and ceremonial or burial grounds. It also includes more contemporary and/or historical elements such as old mission buildings, massacre sites and cemeteries. Tangible heritage is situated in a broader cultural landscape and needs to be considered in that context and in a holistic manner.*

*Aboriginal cultural heritage also relates to the connection and sense of belonging that people have with the landscape and with each other. For Aboriginal people, cultural heritage and cultural practices are part of both the past and the present and that cultural heritage is kept alive and strong by being part of everyday life.*

*Cultural heritage is not confined to sites. It also includes peoples' memories, story-lines, ceremonies, language and 'ways of doing things' that continue to enrich local knowledge about the cultural landscape. It involves teaching and educating younger generations. It is also about learning and looking after cultural traditions and places, and passing on knowledge. It is enduring but also changing. It is ancient but also new.*

*Aboriginal cultural heritage provides crucial links between the past and present and therefore represents an essential part of the identities of Aboriginal people and all Australians."*

## **Legislative requirements and planning context**

### National Parks and Wildlife Act, 1974 and Environmental Planning and Assessment Act, 1979

Aboriginal Cultural Heritage (ACH) is managed through the NSW National Parks and Wildlife Act, 1974 (NP&W Act). The NP&W Act provisions are administered through the Office of Environment and Heritage (former Department of Environment, Climate Change and Water). In addition, the Environmental Planning and Assessment Act, 1979 (EP&A Act) requires consideration of the potential impacts of development on Aboriginal heritage is an element of the environmental impact assessment process considerations.

Key to this process is the requirement for an Aboriginal Cultural Heritage Due Diligence Assessment, guided by the [former] DECCW *Due Diligence Code of Practice for the protection of Aboriginal Objects in New South Wales*, September 2010.

S68 of the NP&W Act sets out a number of offences about 'harm' to an Aboriginal object, which may be an act or omission that:

- destroys, defaces, or damages the object
- moves the object from the land on which it has been situated
- causes or permits the object to be harmed.

An activity which may 'harm' an Aboriginal object requires application for an Aboriginal Heritage Impact Permit (AHIP).

Offences for 'harming' and Aboriginal object may be:

- an offence of harming or desecrating an object which a person knows is an Aboriginal object (a 'knowing offense'), or

- an offense of harming an object whether or not that person knows it is an Aboriginal object (a 'strict liability offense')

In the context of protecting Aboriginal cultural heritage, due diligence involves taking 'reasonable and practicable measures' to determine whether actions will harm an Aboriginal object, and if so what measures can be taken to avoid 'harm'.

Due diligence provides a defence against prosecution for 'harm' if the process is followed.

The [former] Department of Environment, Climate Change and Water (DECCW) has prepared guidelines to assist in consultation required for the assessment and recording of Aboriginal cultural heritage. The document *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* sets out the consultation requirements.

#### Heritage Act, 1977

The Act as administered by the Heritage Branch (part of the Department of Premier and Cabinet), is mainly an act for the protection of non-Aboriginal heritage. However, items on the NSW Heritage Register can, and do, have significance to Aboriginal people in certain instances or can be land that was or is significant to local Aboriginal groups.

#### Aboriginal Land Rights Act 1983

The Act sets out the role of the State and Local Aboriginal Land Councils as follows:

*"(4) A local Aboriginal Land Council has the following functions in relation to Aboriginal culture and heritage:*

- To take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law,*
- To promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area."*

#### Other Acts

The Native Title Act, 1993 (Commonwealth) provides the framework for the recognition and protection of native title, how it is to proceed and determine claims. The NSW Native Title Act, 1994 was introduced to ensure NSW and Commonwealth legislation are in accordance with each other.

The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and The Environmental Protection and Biodiversity Conservation Act 1999 (Commonwealth) may come into effect when state based legislation cannot protect a significant item or when the item is of national significance.

#### Tweed Local Environmental Plan (LEP) 2000

The Tweed LEP 2000 undertakes to conserve and ensure that any development does not adversely impact on the heritage of the Tweed LGA, as listed in Schedule 2.

Clause 44 of the Tweed LEP 2000 sets out the requirements for development assessment likely to impact a site or relic of Aboriginal cultural heritage significance.

## Tweed Draft LEP 2010 and the Standard LEP Template

Similar requirements are carried over into the draft Tweed LEP 2010, however, under the State Government Standard Template (local environmental plans) Order 2006, this is now expanded to encourage the listing of ACH items within the Heritage Schedule (and mapping where appropriate) to ensure their protection.

To inform this process the Department of Planning issues Planning Practice Notes and Guidelines to guide the preparation of LEPs. With regard to heritage, a requirement of converting the LEP to the Standard LEP template, or preparing a planning proposal, is that under *PN11-001, Preparing LEPs using the Standard Instrument: standard clauses*, requires as compulsory:

*The Heritage Schedule (5) “should be divided into 3 sections being heritage items, heritage conservation areas, and archaeological sites. Where agreement is reached with the Aboriginal community to list Aboriginal objects and/or Aboriginal places of heritage significance, the Schedule should also include separate parts listing any such object or place.*

*A Heritage Map may also show the location of all heritage items. Heritage conservation areas (if any) must be shown on the Heritage Map as well as being described in Schedule 5. The location and nature of ‘Aboriginal objects’ and ‘Aboriginal places of heritage significance’ described in Schedule 5 may be shown on the sheet of the Heritage Map marked ‘Aboriginal Heritage Map.’”*

This is supported by NSW Planning Ministerial s117 Direction 2.3 Heritage Conservation, which requires:

*A planning proposal [LEP] must contain provisions that facilitate the conservation of:*

- (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,*
- (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and*
- (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*

Identifying and “mapping” of Aboriginal Cultural Heritage Items requires a sensitive and consultative approach with local Aboriginal interest groups in managing, recording and identifying this information as appropriate. Development of an Aboriginal Cultural Management Plan is the first step in this process.

## Aboriginal Cultural Heritage Management Plan

In February 2011 a grant application was lodged for funding through the NSW Heritage Office Local Government Heritage Planning Study Projects funding.

The application sought funding of \$50,000 to undertake a Tweed Shire Aboriginal Cultural Heritage Management Plan with a dollar for dollar contribution from Council.

In June 2011 Council was notified that this application was successful. The funding offer, of up to \$50,000, acknowledges the significant time required to undertake such a plan, and requires:

1. The project to be completed by within 2 years (by 15 May 2013 with milestone reporting in August 2011, November 2011, May 2012, November 2012, and May 2013);
2. Compliance with the best practice heritage management guidelines; and
3. Use of the Heritage Office (Consultants) brief template.

In summary the Aboriginal Cultural Heritage Management Plan (ACHMP) aims to:

1. Assist Council to develop an effective working relationship with the local Aboriginal community groups and Land Councils.
2. To identify and assess the significance of known, and any potential, Aboriginal cultural heritage which may be located within the Tweed Shire LGA and potentially impacted by future development.
3. To ensure the input of the Aboriginal community is sought and recorded as part of this process to ensure appropriate outcomes for all groups are reached.
4. Provide the Aboriginal community and wider Tweed Shire community with a historical record of the Aboriginal people of the Shire.
5. To develop sound management guidelines and policies to assist in minimising any possible impact on Aboriginal Cultural Heritage (ACH) and implement those policies as part of the planning and development assessment processes.
6. Provide clarity and understanding for Aboriginal people, residents, Council staff and proponents of development seeking to:
  - a. Determine the presence of Aboriginal heritage
  - b. Submit a development application
  - c. Understand the legislative requirements the must be complied with
  - d. Understand what results may be expected from the process.
7. To develop ACH identification, appropriate and acceptable to the Aboriginal community for inclusion in the heritage schedule of the Tweed LEP.

Consultation with the Aboriginal community groups, stakeholders and Land Councils is a key component of the development of the Aboriginal Cultural Heritage Management Plan, undertaken in five stages. There are detailed steps in each of these stages, which are summarised as follows:

- Stage 1 – Consultation and protocols / Memorandum of Understanding (MOU) (to understand to wishes and expectations of Council and the Aboriginal groups and establish protocols)



- Stage 2 – Documentary research and cultural mapping (a comprehensive survey of Aboriginal known sites, knowledge, landscape and site data of Aboriginal living patterns and land uses)
- Stage 3 – Landform mapping and predictive modelling (synthesis of the above data to compile maps appropriate to and respecting Aboriginal group expectations)
- Stage 4 – Recommendations for land planning and management (determine the significance of ACH as a whole for the Tweed and develop management practices and procedures for the future protection of ACH)
- Stage 5 – final reports

It is anticipated that this project will require the full 2 year period to complete.

Staff will be preparing a brief, based on the requirements of the Heritage Office, for the engagement of consultants to undertake this work. The brief will be publicly tendered and assessed consistent with Council's Procurement (Contract for Services) Policy.

#### **CONCLUSION:**

The matters raised by way of this Notice of Motion have been addressed in this report. In addition, the report highlights the recent success in the grant funding application to undertake an Aboriginal Cultural Heritage Management Plan, and briefly outlines the aims and consultation requirements of that process.

The area of heritage law generally is complex and the process of identifying heritage (Aboriginal and European) subject matter is likewise complex and demanding of attention to detail, significant consultation, and resources.

The Planning Reform Unit, in consultation with the Community and Cultural Services Unit, is committed to improving heritage protection, awareness and education in the Tweed.

Both the CBHS and the ACHMP projects represent a significant commitment by Council to preserving the Tweed's heritage, which can be further underpinned by additional policies, such as a Landscape (Scenic Protection) Strategy, at a later time.

These projects are a fundamental component of a holistic strategic planning framework for the Tweed and will provide an excellent opportunity to engage the broader community and interest groups on matters of local and regional significance, and which add to the enrichment of the Tweed as a special place for residents and visitors alike.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The project will be funded by the Heritage Branch grant of up to \$50,000 with a dollar for dollar contribution from Council through the Aboriginal Community Development Program in the 7 year Infrastructure and Services Plan.

The project is likely to require the equivalent of one planning staff for an average of 4 days per month over the next 2 years.

**POLICY IMPLICATIONS:**

There are no immediate policy implications; however, the development of the Aboriginal Cultural Heritage Management Plan will develop a policy and planning framework, including consultation requirements and recommendations for amendment to the LEP, for the ongoing management of Aboriginal cultural heritage.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**9 [PR-CM] Planning Proposal PP10/0005 - Lot 1 DP 1046935 Old Lismore Road, Murwillumbah, known as Hundred Hills extension**

**ORIGIN:**

Planning Reform

**FILE NO: PP10/0005 Pt1**

**SUMMARY OF REPORT:**

Council resolved, at the meeting of 19 October 2010, to proceed with a request to prepare a planning proposal to rezone Lot 1 DP 1046935 Old Lismore Road, Murwillumbah (PP10/0005) from the current 1(c) Rural Living to a low density residential zone.

This report brings to Council a request to include a minor portion of land, part Lot 279 DP 1145129 and currently zoned 2(c) Urban Expansion, in the adjacent planning proposal seeking rezoning of Lot 1 DP 1046935 Old Lismore Road, Murwillumbah (PP10/0005).

**RECOMMENDATION:**

**That Planning Proposal PP10/0005 for Lot 1 DP 1046935 Old Lismore Road, Murwillumbah be amended to include that part of Lot 279 DP 1145129 currently zoned 1(c) Rural Living, as shown on Map 3 within this report.**

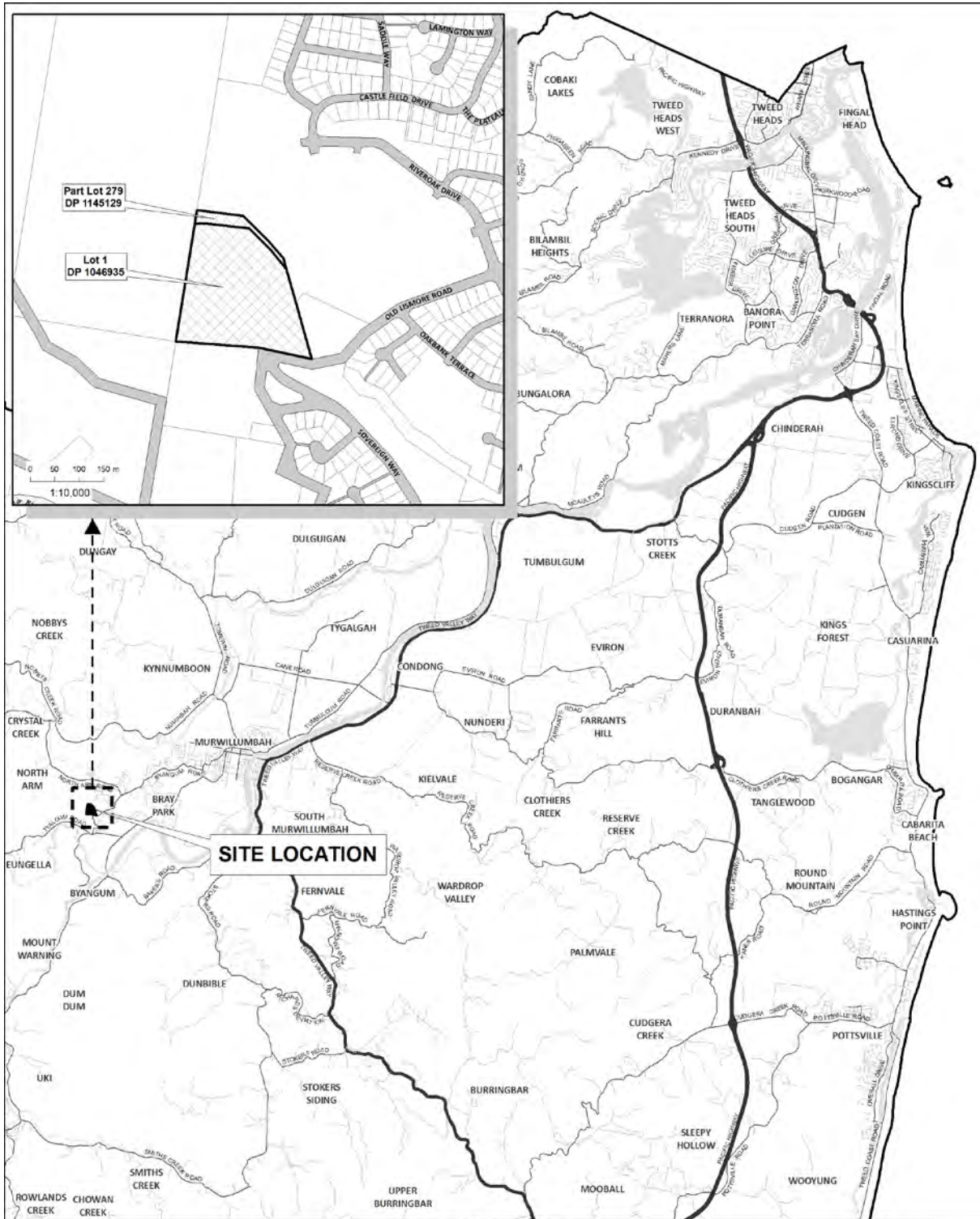
**REPORT:**

At the Council meeting of 19 October 2010, Council resolved to prepare a planning proposal for Lot 1 DP 1046935 Old Lismore Road, Murwillumbah, within the locality as shown on Map 1 (see next page), and to enter into a dialogue with the land owner regarding relevant supporting documentation and technical assessment to satisfy subsequent lodgement of a planning proposal with the Department of Planning for a Gateway determination.

In the months that followed a Memorandum of Understanding (MOU) has been drafted between Council and the land owner to outline the additional studies and technical assessments required to support this proposal.

Council staff has outlined the relevant terms of reference, scope, methodology and report outcomes for each of the studies to ensure the outcomes deliver the information required to be confident of the suitability of the proposal. The studies will be undertaken by the landowner at their cost.

**Map 1 – Locality of the Planning Proposal for Lot 1 DP 1046935 Old Lismore Road, Murwillumbah**

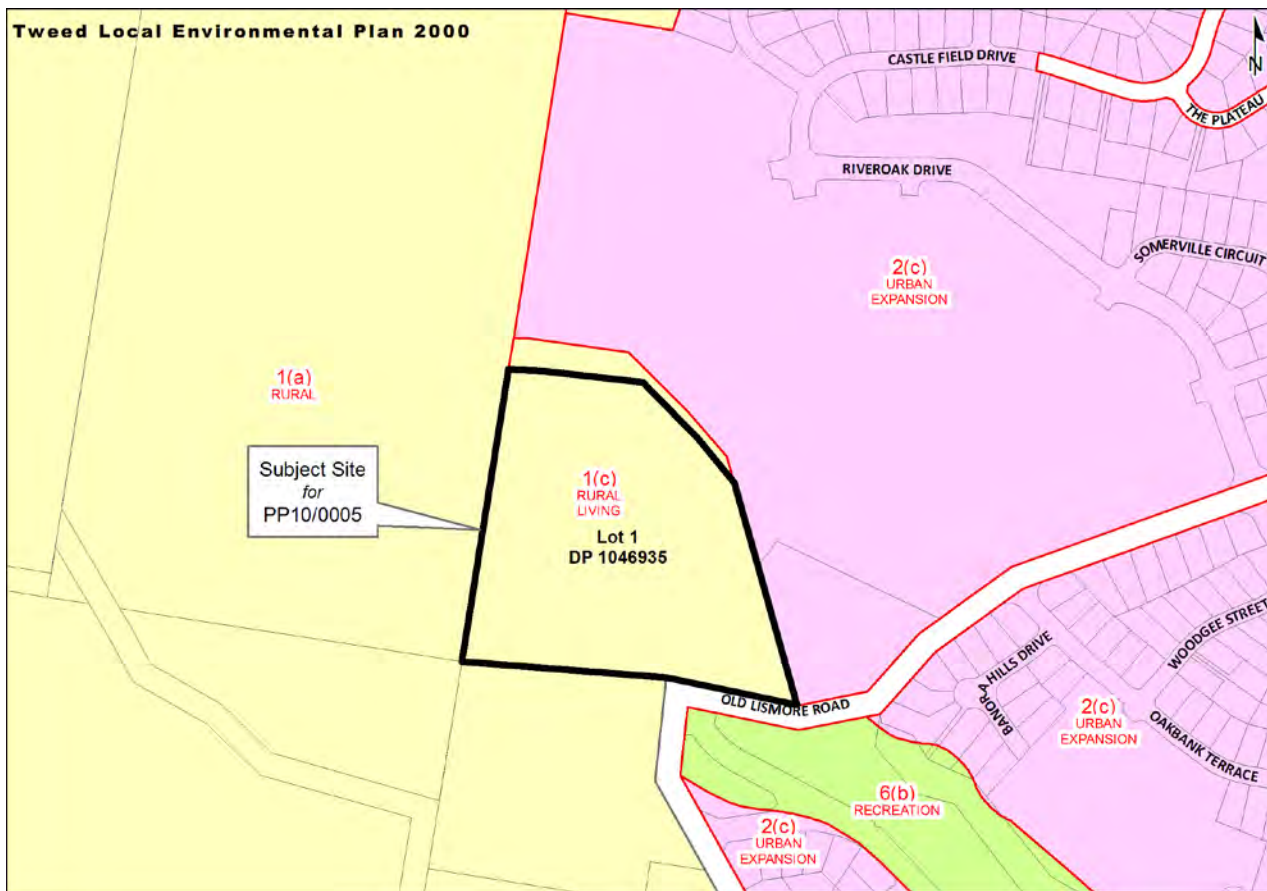


**Locality Plan**

Lot 1 DP 1046935 and Part Lot 279 DP 1145129  
Old Lismore Road, Murwillumbah

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dig before you dig" enquiry must be made by calling 5100. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p><small>Cadastre: 23 June, 2011 © Land and Property Management Authority (LPMA) &amp; Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p>0 1 2 3 Km 1:125,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p><small>Map Projection: Universal Transverse Mercator Horizontal datum: Geocentric datum of Australia 1984 Grid: Map Grid of Australia, Zone 56</small></p>	<p><small>Civic and Cultural Centre 3 Tumbulgin Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400   1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</small></p>
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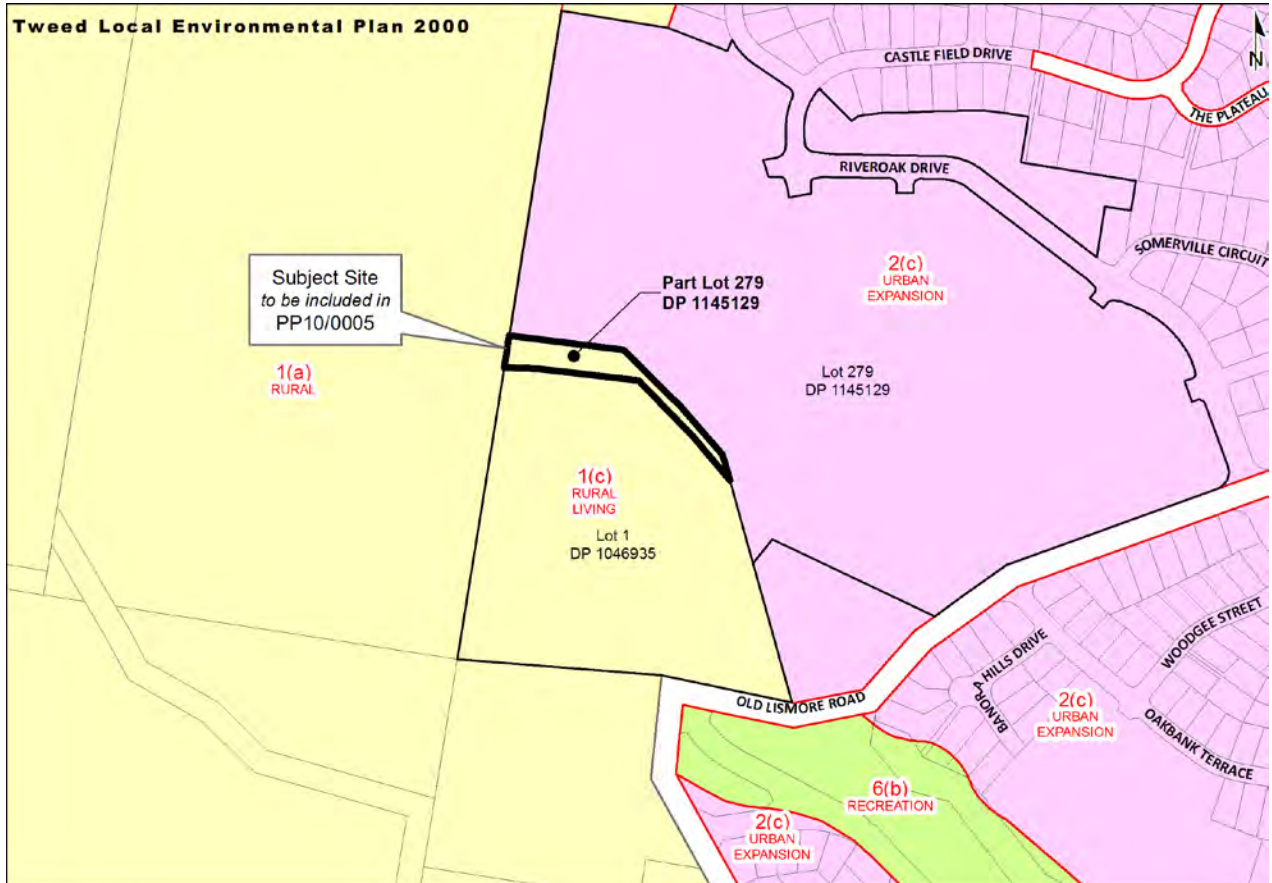
The planning proposal seeks the rezoning of Lot 1 DP1046935 Old Lismore Road from the current 1(c) Rural Living zone to a low density residential zone, consistent with the surrounding residential zoned land, as shown on the following Map 2.



Map 2 – Site of the subject PP10/0005



As part of the review it has been noted that whilst the majority of the adjoining Lot 279 DP 1145129 is currently zoned 2(c) Urban Expansion, a minor portion of land along the southern boundary, adjoining Lot 1 DP1046935 is currently zoned 1(c) Rural Living, that is, the zoning boundary does not match the property boundary, as shown on the following Map 3.



Map 3 – That part of the adjoining site Lot 279 DP 1145129, requested to be included in the PP10/0005

On 3 June 2011, Council received a written request from the landowner (of both Lot 1 DP1046935 and Lot 279 DP 1145129) to include that part of Lot 279 DP 1145129 that is currently zoned 1(c) Rural Living in the planning proposal together with Lot 1 DP 1046935 Old Lismore Road, Murwillumbah (PP10/0005) to be rezoned for low density residential uses.

This is considered to be an appropriate request as:

- Omitting that part of Lot 279 DP 1145129 will, in the event of the planning proposal rezoning request being made, leave a minor portion of land of unusable rural living zoned land between two parcels of urban zoned land;
- It will not increase any potential impact of the planning proposal as a whole; and
- Both properties are in the same ownership.

Should Council be of a mind to support this request, the planning proposal would be amended to include that Part of Lot 279 DP 1145129 currently zoned 1(c) Rural Living, as shown on Map 3, and the file would be amended to reflect the proposal applies to both lots.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. Written request from RPS to include Part Lot 279 DP 1145129 in PP10/0005 (ECM 35353969)
  2. Owners consent from Stockland Developments (ECM 35353969)
-



- 10        **[PR-CM] Planning Proposal PP11/0004 - Stage 1 of Planning Proposal for Tweed City Shopping Centre at Lot 22 DP 23659; No. 24 Kirkwood Road; Lot 21 DP 23659; No. 26 Kirkwood Road; Lot 20 DP 23659; No. 28 Kirkwood Road; Lot 19 DP 23659; No. 30 Kirkwood Roa**

**ORIGIN:**

**Planning Reforms**

**FILE NO:    PP11/0004 Pt1**

**SUMMARY OF REPORT:**

A request to prepare a planning proposal has been received from Urbis Pty Ltd on behalf of Dexus Property Group ("the Group"), who is the site Manager of the Tweed City Shopping Centre.

A desktop strategic (planning) analysis indicates that the expansion of the site incorporating their recent property acquisitions and their use for expanding on the existing centre is a logical one and represents a coordinated response to the consolidation and rationalisation of the properties and their zoning.

The future development of the Tweed City Shopping Centre site is also consistent with the urban consolidation objectives of Council's adopted Retail Policy and Community Strategic Plan.

The proposal is not identified in the Planning Reform Unit's work program and there is no resource presently available to progress it to a detailed planning proposal suitable for a Gateway Determination. There are also several other requests that have been made ahead of this one and that are pending and competing for any available resource.

However, given the strategic merit of the proposal, it is considered appropriate to retain this request in abeyance for the immediate time frame, and to reconsider the proposal in the preparation of the 2012/2013 Planning Reform Unit Work Program.

**RECOMMENDATION:**

**That:**

- 1. Council does not support Planning Proposal PP11/0004 Stage 1 of Planning Proposal for the Tweed City Shopping Centre in the immediate time frame, and**
- 2. The request be held in abeyance and be reconsidered in the preparation of the 2012/2013 Planning Reform Unit Work Program.**

**REPORT:**

A request to prepare a planning proposal has been received from Urbis Pty Ltd on behalf of Dexus Property Group ("the Group"), who is the site Manager of the Tweed City Shopping Centre.

The Group has acquired several adjoining properties in recent times with the view to expanding the services of the centre to match the demand of the growing population. The properties are however inappropriately zoned to accommodate their intended future purpose and arguably their full potential. Several properties are zoned for residential housing whereas there are also part commercial, business and open space zonings over other parcels.

A desktop strategic (planning) analysis indicates that the expansion of the site incorporating their recent property acquisitions and their use for expanding on the existing centre is a logical one and represents a coordinated response to the consolidation and rationalisation of the properties and their zoning. It would assist in reinforcing the precinct's primary objective as a major commercial retail hub consistent with the Draft Tweed City Centres Development Control Plan, which also applies to this locality.

Whether the technical and policy aspects of the proposal likewise support the proposal is very unclear at this stage. The proposal is not identified in the Planning Reform Unit's work program and there is no resource presently available to progress it to a detailed planning proposal suitable for a Gateway Determination. There are also several other requests that have been made ahead of this one and that are pending the availability of resources. These proposals should be evaluated in toto to ascertain their level of priority and where available resources should be directed to in the first instance.

Given that the proposal provides a direct benefit through the provision of a diverse range of services, which would increase with an expansion of the centre, and given that the proposal could demonstrate a strong community net benefit, which is used as one test for determining the level of priority that should be given to a particular project, it is concluded that the request should not be rejected in its entirety.

Based on the strategic advantages of a coordinated response to the site and the locality generally the preferred option would be to defer the making of a planning proposal and ultimately an amending LEP for the time being.

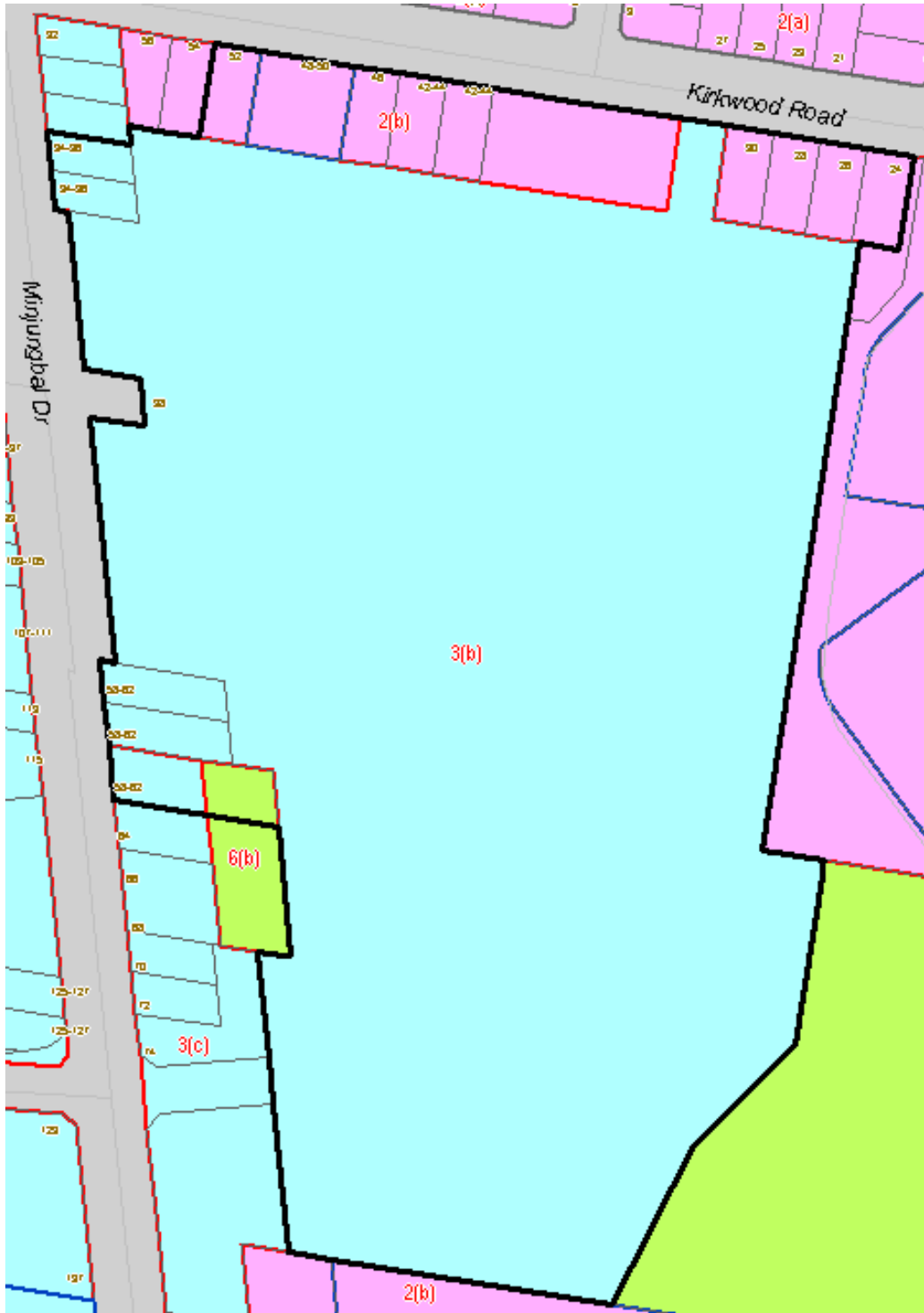
Council officers are currently in the process of evaluating procurement processes and expressions of interest for the contracting out of town planning services. Expectations are that a small number of planning proposals could be contracted out, although it is unclear at this stage how successful this process will be and ultimately what the resourcing impact might be. In particular, while the practice may reduce resourcing impacts on the Planning and Regulation Division it will not alter the substantial commitment required by other areas of the Council, and utilising external consultancies for environmental, engineering and like services has not been contemplated at this stage.

Given that the proponent of any planning proposal has to make significant commercial decisions and funding commitments it would not be reasonable to advance any further proposal on this basis until the practice can be sufficiently tested and evaluated.

### Planning Controls (Zoning)

The site is currently zoned 3(b) General Business, 3(c) Commerce and Trade, 6(b) Private Recreation and 2(b) Medium Density Residential.

The request seeks a reclassification to enable the rezoning of all non 3(b) General Business zones to that zone.



Tweed LEP 2000

**CONCLUSION:**

Based on the circumstances detailed in this report it is concluded that the request has an observable level of strategic justification but lacks both the technical detail and resourcing to progress it further at this time.

It is recommended that the request be held in abeyance pending the allocation of further resourcing.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Undertaking a planning proposal based on the current level of resources would significantly impact on the cross Divisional resourcing of existing work commitments and priorities, and may lead to financial implications.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. Tweed City Shopping Centre Site: Stage 1 - Request to Prepare a Planning Proposal JUNE 2011 prepared by Urbis (ECM35601540)
-

**11 [PR-CM] Planning Proposal PP11/0001 - Lot 378 DP 1148511 Overall Drive, Pottsville (Black Rocks Estate)**

**ORIGIN:**

**Planning Reforms**

**FILE NO: PP11/0001 Pt1**

**SUMMARY OF REPORT:**

This report seeks Council's endorsement to refer the planning proposal (PP11/0001), Black Rocks Estate, under s 59 of the Environmental Planning and Assessment Act 1979 ("the Act") to the Minister for the making of the local environmental plan.

Council resolved at its meeting of 19 April 2011 to prepare a planning proposal for a change in land-use zone classification and to refer it to the Minister under s 56 of the Act for a 'Gateway Determination', which was received with the Minister's conditions on 17 June.

In summary, the conditions are; that no public, State or Commonwealth agency consultation is required; a public hearing is not required, and the timeframe for completing the LEP is 3 months.

As detailed in the Council report of 19 April the subject site is fully constructed, having been filled and retained to achieve Council's flood design requirements for urban residential properties, serviced and, but for the remaining zoning anomaly, ready for residential purposes in-line with that already occurring within this new housing estate.

This report concludes that, in recognition of the processes carried on to-date, the planning proposal and consequent LEP is suitable for referral to the Minister to be made.

**RECOMMENDATION:**

**That the Planning Proposal PP11/0001 (Local Environmental Plan amendment) for Lot 378 DP 1148511 Overall Drive, Pottsville, be referred to the Minister under Section 59 of the *Environmental Planning and Assessment Act 1979*, for the plan to be made.**

**REPORT:**

Council resolved at its meeting of 19 April 2011 to prepare a planning proposal for a change in land-use zone classification over Part Lot 378 DP 1148511 Overall Drive, Pottsville, and to refer it to the Minister under s 56 of the Act for a 'Gateway Determination.'

On the 17 June the Minister's conditions for preparing the LEP were received; they are:



**Planning &  
Infrastructure**

### **Gateway Determination**

*Planning Proposal (Department Ref: PP\_2011\_TWEED\_001\_00): to rezone land being Lot 378 DP 1148511, Overall Drive, Pottsville from part 2(a) Low Density Residential and part 7(1) Environmental Protection (Habitat) to 2(a) Low density Residential across the whole of the site*

I, the Deputy Director General, Plan Making & Urban Renewal as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Tweed Local Environmental Plan 2000 to rezone land being Lot 378 DP 1148511, Overall Drive, Pottsville from part 2(a) Low Density Residential and part 7(1) Environmental Protection (Habitat) to 2(a) Low density Residential across the whole of the site should proceed subject to the following conditions:

1. No community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act").
2. No consultation is required with State and Commonwealth public authorities under Section 56(2)(d) of the EP&A Act:
3. No public hearing is to be held into the matter under section 56(2)(e) of the EP&A Act.
4. The timeframe for completing the LEP is to be **3 months** from the week following the date of the Gateway determination.

Dated *9<sup>th</sup>* day of *June* 2011.

A handwritten signature in blue ink, appearing to read 'Tom Gellibrand', written over a horizontal line.

**Tom Gellibrand  
Deputy Director General  
Plan Making & Urban Renewal  
Delegate of the Minister for Planning and  
Infrastructure**

The future use and rezoning for residential purposes was seemingly contemplated as part of the land dedication trade-off (public open space and environmental protection) that formed the basis of a subsequent deed of agreement, and it is recognised by both the lawful construction of the allotment to a residential standard, as well as, the zoning amendment proposed, and publicly exhibited, under the Draft Tweed LEP 2010, which is the same as that now sought under the planning proposal.

As detailed in the Council report of the 19 April (attached) the subject site is fully constructed, having been filled and retained to achieve Council's flood design requirements for urban residential properties, serviced, and but for the remaining zoning anomaly ready for residential purposes in-line with that already occurring within this new housing estate.

The April report also discussed an important element of the proposal relating to the current environmental protection zoning and noted that the land was identified as having no environmental significance. This occurred prior to the lawful construction of the site and the rehabilitation of the adjacent estuarine terrestrial reserve, which formed part of the land dedication agreement. The proposed realignment of the environmental boundary is consistent with the prevailing natural and built environment.

#### **CONCLUSION:**

Since 2006 the Black Rocks Estate subdivision has been all but completed, with many new homes under construction. However, as arises with many large scale development proposals, there are actions that arose out of the initial processes that require attention and which would otherwise enable the orderly development of the Estate to be concluded.

The expedient nature in which the proposal has progressed through both the Council's and Department of Planning and Infrastructure's processes is indicative of both the long-term intended outcomes for the land and is reflective of the fully constructed nature of the site and the absence of any unforeseen or planned impact.

It is extremely rare for a rezoning proposal to succeed through the system in such a short period of time given the veracity of the procedural and assessment processes associated with plan making under the Act. The ability for this proposal to proceed so quickly is testament to Council's long-term planning and assessment processes.

On that basis, the planning proposal and consequent LEP is suitable for referral to the Minister to be made.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

There are no known adverse implications associated with the making of the LEP.

#### **POLICY IMPLICATIONS:**

The making of the LEP is a proactive planning policy reflecting Council's long-term vision for the use of the land for residential purposes.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. Planning Proposal (Draft LEP Amendment 88) "Final" v.3 (ECM35556761)
  2. Council report of 19 April 2011 (see Attachment 1 of the Planning Proposal (Draft LEP Amendment 88) "Final" v.3 which is Attachment 1 to this report) (ECM 35556761)
-



**12 [PR-CM] Development Application DA11/0062 for a Boundary Adjustment - Five (5) Lots into Three (3) at Lot 246, 230 DP 755701; Lot 1 DP 358918; Lot 3, 4 DP 1072659, Cudgera Creek Road, Cudgera Creek**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA11/0062 Pt1**

**SUMMARY OF REPORT:**

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 95%. However, the three proposed lots have the following areas: 45.7, 46.9 and 43.9 hectares.

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 Zones 1(a) or 1(b2) if the area of each allotment created is at least 40 hectares.

Each proposed lot contains an area of 1(a) zoned land that is less than 40 hectares. In addition, proposed Lot 3 contains an area of 1(b2) zoned land that is less than 40 hectares.

Resulting variation to the 40 hectare minimum standard for the 1(a) zoned land is as follows:

Lot 1	5ha	87.5%
Lot 2	2ha	95%
Lot 3	29.5ha	26.25%

Resulting variation to the 40 hectare minimum standard for the 1(b2) zoned land is as follows:

Lot 3	14.4ha	64%
-------	--------	-----

The current allotment configuration (5 lots in the same ownership) is composed of only one (1) allotment with an area greater than 40 hectares. Four (4) of these allotments are split-zoned and undersized. An existing maximum 99.9% variation to the abovementioned development standard currently relates to the site.

The applicant seeks consent for a three (3) lot rural residential subdivision, including a proposed Right of Carriageway over an existing access track and nomination of two dwelling sites on proposed Lot 1 and Lot 2. An existing dwelling is located on proposed Lot 3.

The objective of the proposal is to achieve viable and sustainable agricultural units which are capable of efficient and effective operational management.

Following consideration of the application, concurrence was granted by the Director General in this instance for the following reasons:

- The existing agricultural use of the land designated as Regionally Significant Farmland is unlikely to be adversely affected by the proposed subdivision; and
- The proposal is consistent with the intent of the development standard and the objectives of the 1(a) Rural and 1(b2) Agricultural Protection zones.

As such, the proposal results in the creation of three (3) allotments that, although split-zoned, each have a total area of over 40 hectares.

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

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

#### **RECOMMENDATION:**

**That Development Application DA11/0062 for a boundary adjustment - five (5) lots into three (3) at Lot 246, 230 DP 755701; Lot 1 DP 358918; Lot 3, 4 DP 1072659, Cudgera Creek Road Cudgera Creek 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 18151 Revision C (Proposed Subdivision) prepared by B & P Surveys Consulting Surveyors and dated 11 May 2011,**  
**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. **This development consent does not approve the nominated dwelling site on Lot 2 DP 1072659 as shown in the following reports contained as Annexures to the Statement of Environmental Effects:**
  - **HMC Onsite Sewerage Management Design Report dated November 2010**
  - **Preliminary Site Contamination Investigation Report dated December 2010**
  - **Civil Engineering Assessment Report dated 22 November 2010, and**
  - **Acid Sulphate Soils Preliminary Investigation dated 9 December 2010.**  
[GENNS01]
4. **Both proposed dwelling sites on proposed Lots 1 and 2 are to be located a minimum of 30m from the alignment of Cudgera Creek Road.**  
[GENNS02]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

5. 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]

**PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0985]

**DURING CONSTRUCTION**

7. 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]

8. 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]

9. 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]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

10. 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:**

13 Trips @ \$1125 per Trips \$14,625

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

S94 Plan No. 4

Sector8\_4

**(b) Open Space (Casual):**

2 ET @ \$526 per ET \$1,052

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

**(c) Open Space (Structured):**

2 ET @ \$602 per ET \$1,204

(\$575 base rate + \$27 indexation)

S94 Plan No. 5

**(d) Shirewide Library Facilities:**

2 ET @ \$792 per ET \$1,584

(\$792 base rate + \$0 indexation)

S94 Plan No. 11

**(e) Eviron Cemetery:**

2 ET @ \$120 per ET \$240

(\$101 base rate + \$19 indexation)

S94 Plan No. 13

- 
- (f) **Community Facilities (Tweed Coast - North)**  
2 ET @ \$1305.6 per ET \$2,611  
((\$1305.6 base rate + \$0 indexation)  
S94 Plan No. 15
  - (g) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
2 ET @ \$1759.9 per ET \$3,519.80  
((\$1759.9 base rate + \$0 indexation)  
S94 Plan No. 18
  - (h) **Regional Open Space (Casual)**  
2 ET @ \$1031 per ET \$2,062  
((\$1031 base rate + \$0 indexation)  
S94 Plan No. 26
  - (i) **Regional Open Space (Structured):**  
2 ET @ \$3619 per ET \$7,238  
((\$3619 base rate + \$0 indexation)  
S94 Plan No. 26

[PSC0175]

11. **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]

12. **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) **Identify all allotments to be created as dual occupancies.**
  - (c) **The creation of a 4.6 metre wide Right of Carriageway in favour of proposed Lot 1 and burdening Lot 2.**

**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]

13. 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]

14. 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]

15. 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]

16. 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]

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

1. A 10 metre APZ shall be maintained around the existing dwelling.

The APZ shall be managed as an inner protection area (IPA) as outlined within Appendices 2 and 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

2. Landscaping within the APZ shall comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

**REPORT:**

**Applicant:** Mrs EG Hardy and Mr RA Hardy  
**Owner:** Mrs Elaine G Hardy & Mr Ross A Hardy  
**Location:** Lot 246, 230 DP 755701; Lot 1 DP 358918; Lot 3, 4 DP 1072659, Cudgera Creek Road Cudgera Creek  
**Zoning:** 1(a) Rural & 1(b2) Agricultural Protection  
**Cost:** Nil

**BACKGROUND:**

History

On 16 April 2010 a proposal based on seven (7) existing lots being subdivided into five (5) lots was discussed with the Development Assessment Panel. Having regard to the Panel's advice and following further investigations and consideration of the various issues, the proposal is now for the subdivision of five (5) lots into three (3) by way of boundary adjustments.

The land to which this application relates includes two original Parish Portions (230 and 246), a 26.62 hectare parcel being Lot 1 DP 358918 and Lots 3 and 4 DP 1072659 being residue land following acquisition of part of the original parcels by the Roads and Traffic Authority for the widening of Cudgera Creek Road in 2004.

The result of a search of the Land and Property Information – Historic Parish Maps was included in application documentation. Parish maps 1913 to 1969 were reviewed. It indicated that no change in lot boundaries occurred during this period. The site was shown within the larger (82 acres) portion 50 that included the proposed dwelling site locations and extended south of Cudgera Creek Road.

The land has generally been used for cattle grazing and dairying from 1923 until 1980 when sugar cane production commenced.

The objective of this application is to rationalise the existing lot configuration such that all land north of Cudgera Creek Road which is used for sugar cane production is contained within two discrete lots and the whole of the land south of Cudgera Creek Road which is used for grazing is contained within one lot.

The boundary rationalisation will assist with improved management efficiency and operational arrangements for stock watering and will enable all 1(b2) zoned land north of Cudgera Creek Road to be contained in compliant 40 hectare parcels.

The 1(b2) zoned land south of Cudgera Creek Road is not used for sugar cane production. Because of its fragmentation by the Creek and soil types, poor drainage and accessibility, it is not suitable for cane production notwithstanding the 1(b2) zoning.

Aerial imagery (below) indicates that the current land use of the site dates back to 1970 including use of the existing dwelling and agricultural use of the balance of the land north and south. The applicant has clarified that his grandfather settled the land in the early 1900's and that the original homestead was built in the 1920's. The current dwelling was built in 1946 following sale of the original homestead to an adjoining land owner.





1970 imagery - existing dwelling located south of roadway (circled)

### The Subject Site

The site is situated at Cudgera Creek approximately three (3) kilometres west of Pottsville in an area of rural residential farm land holdings.

The subject land is described as Lot 1 DP 358918, Lots 230 and 246 DP 755701 and Lots 3 and 4 DP 1072659, Cudgera Creek Road, Cudgera. The land has an extensive frontage to Cudgera Creek Road and Cudgera Creek itself runs through proposed Lot 3 on the southern side of Cudgera Creek Road.

The land has a total area of 136.5 hectares with the land north of Cudgera Creek Road being used for cane production and the area south of Cudgera Creek Road being used for grazing. A dwelling house exists on that part of the land south of Cudgera Creek Road. Surrounding land is used for agriculture and grazing purposes.

The site is generally clear of vegetation north of Cudgera Creek Road with scattered remnant vegetation south of Cudgera Creek Road. This vegetation is protected by the 2004 and 2011 Tree Preservation Orders. A small dam associated with grazing activities is located on proposed Lot 3, south-east of the dwelling.

Land zoned 1(b2) is considered to be regionally significant farmland. However, no referral in relation to this status was required.

### The Proposed Development

The applicant seeks consent for a three (3) lot rural residential subdivision, including the creation of a Right of Carriageway over an existing access track on proposed Lot 2. Land areas of the proposed lots are as follows:

- Lot 1 = 45.7ha [split zone 1(a) = 5ha; 1(b2) = 40.7ha]
- Lot 2 = 46.9ha [split zone 1(a) = 2ha; 1(b2) = 44.9ha]
- Lot 3 = 43.9ha [split zone 1(a) = 29.5ha; 1(b2) = 14.4ha]

The proposal includes:

- Subdivision of the site from 5 into 3 rural residential lots (Torrens Title)
- Additional provision of 4.6m wide Right of Carriageway over the existing access track burdening proposed Lot 2 and benefiting proposed Lot 1
- Nomination of suitable dwelling sites on proposed Lot 1 and Lot 2, and
- Retention of the continuing use of the existing dwelling on proposed Lot 3.

The original subdivision plan as lodged and reports within the Statement of Environmental Effects (SEE) make reference to a proposed dwelling site on adjoining Lot 2 DP 1072659 to the west of the subject site. The proposed dwelling site and Lot 2 DP 1072659 do not form part of this application. The subdivision plan has been amended to this effect and assessment of the SEE takes this anomaly into account.

The dwelling sites are well removed from Cudgera Creek and there is no proposed land use change to the subject site (agricultural cane production and cattle grazing to continue). No changes are proposed to the existing dwelling on proposed Lot 3. Unreasonable impacts on Cudgera Creek are not anticipated.

The creation of individual allotments does not require any earthworks and therefore no geotechnical concerns are raised.

#### Dwelling Entitlements

Proposed Lots 1 and 2 both contain an area of land zoned 1(b2) that exceeds 40 hectares. As such, these allotments, once created, are granted a dwelling entitlement.

Proposed Lot 3 contains the existing dwelling, which as a farmhouse, dates back prior to the 1970's to the first agricultural use of the surrounding land. The existing dwelling is currently located on Lot 3 DP1072659, intersected by Cudgera Creek Road and with a total area of 57.09 hectares, this lot enjoys a dwelling entitlement.

Council undertook preliminary investigations to determine how many dwelling entitlements were enjoyed over the existing five (5) subject lots. The outcome of the investigations indicated that existing Lot 3 DP 1072659 was the only allotment that enjoyed a dwelling entitlement.

As part of a request from the Department of Planning in relation to concurrence issues, further information was required of the applicant in March 2011 to determine the current, accurate configuration of dwelling entitlements over the land. In summary, the applicant was required to undertake historical title searches of adjoining land parcels as part of Council's investigation process that would indicate whether any additional dwelling entitlements were enjoyed.

The applicant chose not to undertake the historical searches and the Department of Planning was satisfied that the additional two dwelling entitlements would be created over proposed Lots 1 and 2. As such, concurrence was granted.

The application proposes to locate the existing dwelling on proposed Lot 3. Although proposed Lot 3 has a total area of over 40 hectares (at 43.9ha), it is split-zoned. It contains 29.5 hectares of 1(a) zoned land and 14.4 hectares of 1(b2) zoned land. Neither of the zone areas meets the requirement for a dwelling entitlement or for the location of a dwelling as per Clause 11. As such, the original dwelling entitlement associated with the existing dwelling is forfeited.

The location of a dwelling on proposed Lot 3 is prohibited under the Tweed LEP 2000. Ongoing use of the existing dwelling relies on existing use rights and associated restrictions in accordance with Sections 106, 107 and 108 of the Environmental Planning and Assessment Act 1979. According to the land owner, the existing dwelling was built in 1946 after the original homestead, located to the east on the hillside, was sold. This was some time before consent was required to be obtained for such structures under Shire of Tweed's Interim Development Order No. 1 which came into force 29 May 1964.

It is possible that further investigation by way of historical title searches may have indicated that the subject land enjoyed more than one existing dwelling entitlement. It should be noted that dwelling entitlements cannot be transferred from one land parcel to another.

Subsequently, in accordance with standard subdivision assessment process and in the absence of additional identified dwelling entitlements, Section 94 contributions have been levied on proposed Lots 1 and 2. Section 64 contributions do not apply to this land as no reticulated water or sewer services are available.

#### Summary

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding rural residential and agricultural development, amenity issues and an assessment against SEPP 1 and Clause 20(2)(a) of the Tweed LEP 2000 in particular, the proposed three (3) lot subdivision is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.







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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Zone objectives

The site is zoned 1(a) Rural & 1(b2) Agricultural Protection as per the Tweed LEP 2000.

**1(a) Rural Zone**

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

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

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

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

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

- the proposal enables the consolidation of undersized allotments in order to increase the viability of the ongoing agricultural use of the land. The proposed development does not interfere with surrounding land that is utilised for agricultural purposes

- the proposal does not detract from the rural character or amenity of the locality.

### **1(b2) Agricultural Protection Zone**

The primary objective of the 1(b2) Agricultural Protection Zone relates to the protection of identified prime agricultural land from fragmentation and the economic pressure of competing land uses.

The secondary objective allows other development that is compatible with agricultural activities.

Proposed Lots 1 and 2 contain more than 40 hectares of land zoned 1(b2) and therefore, enjoy dwelling entitlements. Dwelling houses are permissible with consent on an allotment of at least 40 hectares in this zoning. Therefore, the proposed dwelling pads represent a future lawful use of the proposed allotments should development applications be lodged for associated dwellings.

The proposed subdivision consolidates agricultural land and makes minor alterations to the original zoning configuration of the subject site that reduces the degree of variation to development controls. It does not impact upon the historical grazing and sugar cane production activities on the southern and northern sides (respectively) of Cudgen Creek Road.

The proposed lot configuration retains the existing dwelling on an allotment of more than 40 hectares. The continuing land use of the site is considered compatible with the zone objectives.

#### Clause 15 - Essential Services

Council's reticulated water supply and piped effluent disposal infrastructure are not available within the area.

Electricity services are currently provided to the area via Country Energy infrastructure. Telecommunications services are currently provided to the area via Telstra Infrastructure.

It is proposed that rainwater tanks will be used to provide a potable water supply and for other domestic purposes in respect of any future dwelling to be erected on proposed Lots 1 and 2. This will be assessed at the time of lodgement of the dwelling applications along with the provision of on-site effluent treatment and disposal systems.

#### Clause 16 - Height of Building

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

#### Clause 17 - Social Impact Assessment

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

### Clause 35 - Acid Sulfate Soils

Council's Enlighten indicates that the site is generally covered by Class 3 Acid Sulfate Soils with a small portion of proposed Lot 3 exhibiting Class 5 Acid Sulfate Soils.

No physical work is required as the construction of the driveway for proposed Lot 1 from the Right of Carriageway to the dwelling pad location will take be constructed as the same time as the future dwelling. As such, Acid Sulphate Soils are unlikely to be exposed or disturbed. Standard restrictive conditions have been applied.

### Other Specific Clauses

#### Clause 34 – Flooding

The design flood level for the proposed site is RL 6.7m AHD and the floor level for any future dwelling house shall be RL 7.2m AHD. Flooding matters will be addressed when the future dwelling applications are lodged for assessment.

### Specific Clauses

#### Clause 19 – Subdivision (General)

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

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

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

Clause 20 provides for the subdivision in 1(a) or 1(b2) zoned land if the area of each zone within each allotment created is at least 40 hectares. This application reduces the current degree of zone fragmentation within the original five (5) lots by increasing the overall size of each lot and consolidating the agricultural land into three (3) lots.

There is no change of use to land zoned 1(a) or 1(b2). No new development is proposed on land zoned 1(a) or 1(b2) apart from designation of potential dwelling sites that will be the subject of separate development applications.

However, areas of land zoned 1(a) and 1(b2) still fall short of the required 40 hectares despite the total area of each lot created being greater than 40 hectares.

It is therefore the subject of a SEPP 1 Variation Report which has received the concurrence of the Director General and is discussed in full at a later stage within this report.



### Clause 22 – Development near Designated Roads

Cudgera 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.

Existing access to the existing dwelling on the subject site is from Cudgera Creek Road. Similarly, the existing access track north of the designated road is accessed directly.

Dwelling pads have been nominated in this subdivision application for proposed Lots 1 and 2. However, access issues will be assessed by way of future development applications for associated dwellings.

Therefore, existing access will not be changed as a part of this application and the nomination of dwelling pads on proposed Lots 1 and 2 does not compromise the objectives of this clause.

Therefore, the objectives of this clause are considered to be satisfied.

### Clause 24 – Setbacks to Designated Roads

As discussed above, dwelling pads have been nominated for proposed Lots 1 and 2. The dwelling pads are located no closer than 30m from the designated road. This complies with the desired 30m setback set out in this clause.

### Clause 39 – Remediation of Contaminated Land

A Preliminary Site Contamination Investigation, HMC December 2010 was submitted for consideration. A detailed site and land use history was established. Soil sampling was undertaken at the location of the two proposed dwelling pads. Eight (8) samples were taken at each site and combined into composite samples.

Test results for the relevant potential contaminants indicate levels to be above background levels but below the 'Health Investigation Level' for Residential A occupancy. The report indicates that the dwelling pad locations on proposed Lots 1 & 2 are suitable for the future use.

The Investigation was prepared substantially in accordance with the relevant Department Environment, Climate Change and Water NSW contaminated land policies.

### 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 10 March 2011 for consideration and comment, as the southern portion of subject

site is bushfire prone land. A response was received 12 May 2011. The Service recommended two conditions be attached to the development consent, should it be granted.

The conditions relate to Asset Protection Zones and Landscaping.

#### Clause 54 – Tree Preservation Order

The area following Cudgera Creek on the southern side of Cudgera Creek Road is affected by the 2004 Tree Preservation Order. The whole of the site is affected by the 2011 Tree Preservation Order. However, there will be no removal of vegetation in association with the proposed subdivision or the proposed dwelling sites.

Maintenance of the 10m Asset Protection Zone around the existing dwelling on proposed Lot 3 also does not require removal of vegetation.

### **State Environmental Planning Policies**

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

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

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

The history of the use of the site for the past 50 years constitutes grazing and sugar cane production with rural residential use.

Adjoining and surrounding land is similarly utilised.

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

##### Clause 15: Rivers, Streams and Wetlands

This clause requires the consent authority to take into account the likely impact of the proposal on rivers, streams and wetlands. Cudgera Creek is located immediately south of Cudgera Creek Road and goes through part of proposed Lot 3.

No change in land use or physical works are required or proposed as a result of this subdivision. Therefore, no impacts on Cudgera Creek are expected and the proposal is consistent with the objectives of this clause.

##### 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.

Dwelling pad locations have been proposed. Site erosion will be minimised as there are no actual works proposed. The density of the proposed development has been maximised to cater for the 40 hectare minimum standard. The proposed density does not adversely affect the environmental / agricultural features of the land.

#### SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size in the 1(b2) zone for subdivision purposes as contained within Clause 20(2)(a) of the Tweed LEP 2000.

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

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

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

The applicant submits that *upholding of the objection would be consistent with the aims of SEPP 1 in that strict compliance with the 40 hectare development standard would unreasonably preclude the appropriate subdivision of the site in accordance with the capability of the land to facilitate more efficient and sustainable use of Lots 1 and 2 for sugar cane production.*

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

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

- The proposed subdivision will eliminate four (4) nonconforming allotments within land zoned 1(b2) and achieve two (2) compliant allotments that can continue to be used for sustainable and efficient agricultural purposes.
- The proposed subdivision does not result in the creation of isolated rural residential development
- The subject land has negligible ecological values north of Cudgera Creek Road as it is used entirely for sugar cane production
- Cudgera Creek contains riparian vegetation and the whole of the creek frontage will be located in proposed Lot 3 and no change in land use or physical disturbance is proposed or required.
- The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment
- Compliance with the 40ha development standard would preclude a logical subdivision of the site to reflect the location of Cudgera Creek Road, existing land capabilities for sugar cane production and constraints imposed by Cudgera Creek, flooding and soil types

- Compliance with the development standard would hinder 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
- No change in land use results from the subdivision
- No physical disturbance to the landform or vegetation results from the subdivision
- Each lot north of Cudgera Creek Road will contain more than 40ha of 1(b2) land
- The land south of Cudgera Creek Road does not contain an area of 1(b2) land greater than 40ha and therefore because of the split zoning, compliance with the 40ha requirement for 1(a) and 1(b2) land is simply not possible
- The shape of each lot and common boundary location provides 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 impacts are likely to be created by the proposal on the surrounding area.

The applicant concludes that no matters of Regional planning significance are raised and that there is considered to be no public benefit in maintaining the standard.

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

The following assessment of the SEPP No. 1 objection 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 that has been adopted.

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

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

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

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

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

The proposal provides for a Torrens Title subdivision that consolidates five (5) allotments into three (3) with no evidence of an unreasonable burden on public infrastructure being created.

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

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

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

No public benefit issues are adversely affected by not being able to maintain the development standard in this case as four (4) existing allotments are already non-compliant and the degree of non-compliance will be reduced.

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

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

- The existing agricultural use of the land designated as Regionally Significant Farmland is unlikely to be adversely affected by the proposed subdivision; and
- The proposal is consistent with the intent of the development standard and the objectives of the 1(a) Rural and 1(b2) Agricultural Protection zones.

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

A Preliminary Site Contamination Investigation, HMC December 2010 was submitted for consideration. A detailed site and land use history was established.

Soil sampling was undertaken at the location of the two proposed dwelling pads. Eight (8) samples were taken at each site and combined into composite samples.

Test results for the relevant potential contaminants indicate levels to be above background levels but below the 'Health Investigation Level' for Residential A occupancy. The report indicates that the dwelling pad locations on proposed Lots 1 & 2 are suitable for the future use.

The Investigation was prepared substantially in accordance with the relevant Department Environment, Climate Change and Water NSW contaminated land policies.

#### SEPP (Rural Lands) 2008

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

None of the provisions contained within the SEPP relate specifically to this site as only dwelling pads have been nominated and the future use of these dwelling pads is for rural residential use associated with the agricultural nature of the land.

The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of denser residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

The shire-wide Draft Local Environmental Plan was recently placed on exhibition. The draft zones are RU1 Primary Production (replaces 1(b2)), RU2 Rural Landscape (replaces 1(a)) and E2 Environmental Conservation.

Cudgera Creek is draft zoned E2. This does not affect the proposal.

The proposed subdivision involves rearrangement of portions of land draft zoned RU1 and RU2 in order to consolidate agricultural activities over the subject site and provide large enough allotments north of Cudgera Creek Road to enable dwelling entitlements for two of the proposed lots associated with sugar cane production.

Minimum allotment sizes for the draft zones are as follows:

- 40ha for RU1
- 40ha for RU2

This is consistent with current zoning provisions. Objectives for both zones are also consistent with current zoning provisions.

The existing dwelling house and future dwelling pads are located within the draft RU1 zone. However, dwelling houses are a permissible form of development in both draft zones. A 'dwelling house' is a form of 'Residential' development'.

Land Use Controls:

RU1

**3 Permitted with consent**

Agricultural Produce Industries; Animal Boarding or Training Establishment; Aquaculture; Bed and Breakfast Accommodation; Biosolid waste applications; Boat Sheds; Cellar Door Premises; Dual Occupancies (attached); Dwelling houses; Extractive Industries; Farm Buildings; Farm Stay Accommodation; Flood Mitigation Works; Forestry; Helipads; Home Based Child Care; Home Businesses; Home Industries; Intensive Livestock Agriculture; Mining; Roadside Stalls; Rural Worker's Dwellings; Turf Farming; Water Recreation Structures; Water Storage Facilities.

Any other development not specified in item 2 or 4

RU2

**3 Permitted with consent**

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

Clause 4.6 (6) states that consent must not be granted under this clause for a subdivision of land in Zone RU1 or RU2 if:

- a. The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- b. The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

In the case of this subdivision proposal, the development standard is varied considerably (up to 95% in regard to proposed Lot 2) which would require the applicant to justify the contravention of the development standard and for concurrence of the Director-General to be obtained by the consent authority.

This is a similar process to that which is conducted under SEPP 1, which has been discussed above in this report.

It is therefore concluded that the subdivision proposal may be assessed as a form of development that would be considered favourably under the draft zoning provisions, given concurrence of the Director-General.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

The design flood level for the proposed site is RL 6.7m AHD and the floor level for any future dwelling house shall be RL 7.2m AHD. Flooding matters will be addressed when the future dwelling applications are lodged for assessment.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate “best practice” subdivision development in line with the policies of Council and the State. The DCP defines “subdivision” liberally as “the division of land into two or more parts” and includes the creation of lots in community title subdivisions.

Council’s Development Assessment Engineer has assessed compliance of the proposal against Section A5.5 of this DCP – Rural Subdivision Guidelines and Development Standard and has concluded that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

B21-Pottsville Locality Based Development Code

The Pottsville Locality Based Development Code came into effect 28 April 2010. It is intended to provide the framework for managing growth in Pottsville over the next 25 years, building upon the work contained within the Pottsville Village Strategy 1998.



The code provides policy guidance in relation to a number of key strategy areas. These include:

- Urban structure
- Major retail development
- Pottsville village centre
- Residential neighbourhoods
- Employment
- Community facilities
- Public domain improvements
- Traffic and transport
- Open space and recreation, and
- Infrastructure.

The code is intended to provide provisions for development within the Pottsville locality that will:

- Contribute to the growth and character of the Pottsville village centre and surrounding areas
- Protect and enhance the public domain, and
- Provide for future retail and employment centres as the population increases to meet the needs of the Pottsville locality area.

The main component identified within the subject site by this code is the cane land north of Cudgera Creek Road and the green corridor of Cudgera Creek itself. The land is not identified as being within the town and village growth boundary, nor is it identified as a future urban release area or an employment area.

There are no specific controls put in place to address the future development of the subject site. As such, the proposed development does not conflict with the objectives of the code.

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

Clause 92(a) Government Coastal Policy

The subject land is not affected by the coastal policy.

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

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by this management plan.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by this management plan.

Coastal zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)

The subject site is not located within an area that is affected by this management plan.

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

Access, Transport and Traffic

The proposed boundary alteration has frontage to Cudgera Creek Road which exhibits a bitumen sealed pavement of 10.0m in good condition. As the proposal is a boundary alteration, no upgrading of the existing road infrastructure is required.

A public transport service currently services the Pottsville area and is accessible to both allotments.

Proposed Lots 2 and 3 have existing access from Cudgera Creek Road which are 10m wide at the road pavement and 4m wide at the property boundary.

Proposed Lot 1 will have a new driveway access from the proposed Right of Carriageway located within Lot 2 which will be constructed at the same time as a future dwelling.

Currently, there are no footpaths constructed in the Cudgera Creek Road area and therefore there will be no requirement for the construction of any footpaths.

The proposed boundary alteration will not generate any additional traffic for the local area. Adequate parking and manoeuvring is available to each proposed allotment.

Stormwater and Drainage

Proposed Lots 1 and 2 drain to the north from Cudgera Creek Road to a cane drain which grades to the north. The existing cane drain runs adjacent to the cane road flowing north through a network of drains where it enters a tributary of Cudgera Creek.

Flora and Fauna

There is a large fig tree to the east of the existing dwelling on proposed Lot 3. NSW Rural Fire Service has imposed a condition stating that a 10m Asset Protection Zone (APZ) is to be maintained around the existing dwelling.

The owner of the existing dwelling is currently maintaining a pruning regime for this large fig tree which is compliant with the proposed APZ condition. Council's ecologist has inspected the site and does not consider any sensitive vegetation to be impacted by the 10m APZ requirement.

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

Landuse / Amenity

Existing agricultural land uses are proposed to continue. No unreasonable conflict is anticipated in regard to the proposed dwellings sites and future rural residential use.

Effluent

With respect to the existing dwelling on proposed Lot 3, a current approval OSSMF 1465 exists for the on-site system. The system is not impacted by the proposed boundary adjustment and any future upgrade or modifications required for this system can be determined in the Section 68 inspection / approval regime.

An On Site Sewerage Management Design Report, HMC November 2010 has been submitted. The Report provides an on site sewage management design for the two future dwellings on proposed Lots 1 & 2 that will be subject to an assessment as part of separate future development applications.

However, it is considered that the on-site sewage treatment and disposal method (disposal 480m<sup>2</sup> shallow surface drip irrigation) as detailed in the On-Site Sewerage Management Design Report, including all recommendations of the report are sufficient to attain an acceptable level of environmental impact within the allotment boundaries as assessed in accordance with AS1547/2000.

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

The application was not required to be notified but was referred, as integrated development to NSW Rural Fire Service for comment and to the Department of Planning for Concurrence with regard to SEPP 1.

The NSW Rural Fire Service imposed two conditions in relation to asset protection zones and landscaping. Refer to the SEPP 1 section for a detailed assessment inclusive of the Department of Planning's response.

**(e) Public interest**

In accordance with Council's Notification DCP, there was no requirement for advertising or notification of this application, and therefore no public submissions were received.

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed three (3) lot subdivision is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**13 [PR-CM] Development Application DA08/1069 for an Expansion of Existing Burringbar Quarry at Lot 6 DP 868345, Howards Road, Burringbar**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1069 Pt2**

**SUMMARY OF REPORT:**

Council is in receipt of a development application for the continuing operation and expansion of Burringbar Quarry, which supplies prepared roadbase for the Council area. The application was lodged 2 October 2008 following extensive investigations and withdrawal of a similar development application D95/0085 on 25 January 2006.

The application was originally lodged as 'expand existing Burringbar Quarry'. However, it was amended to include continuing operations under the current development description on 31 March 2009 following a request by Council's Development Assessment Unit for the applicant to clarify a claim to existing use rights.

The proposal is classified as 'designated development', being a type and a scale specified under Schedule 3 of the Environmental Planning and Assessment Regulation 2000.

In this instance and in accordance with Schedule 3, the quarry operations:

- disturb a total surface area of more than 2 hectares
- are located on land that slopes at more than 18 degrees to the horizontal, and
- blast within 500m of a dwelling not associated with the development.

Accordingly, an Environmental Impact Statement (EIS) is required under the Environmental Planning and Assessment Act 1979 and has been provided by the applicant.

On 1 July 2009, the provisions of the Environmental Planning and Assessment Amendment Act 2008 relating to joint regional planning panels (JRPP's) commenced along with amendments to the Major Projects SEPP that required designated development to be assessed by the JRPP.

The amendments to the Major Projects SEPP (now called the Major Development SEPP) contained savings provisions. Amendments to the SEPP do not apply to development applications which were made but not finally determined before 1 July 2009.

As such, this development application which was lodged 2 October 2008 is not required to be assessed by the JRPP.

Quarry reserves are presently close to exhausted. This application proposes to extend the life of the quarry from between 15 to 30 years, by expanding the quarry area into the

southern sector of the site. Land affected is approximately 3.3 hectares or 60% of the southern section of the subject site.

It is anticipated that the final land use for Burringbar Quarry will be Council owned community land for conservation purposes with restriction of public access.

Having regard to relevant statutory controls and an assessment against the Tweed LEP 2000, the proposed continuing operation and expansion of Burringbar Quarry is generally considered suitable for the location and therefore the proposed development is recommended for approval subject to deferred commencement conditions.

## **RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 3 is 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)**
- 2. Development Application DA08/1069 for an expansion of existing Burringbar quarry at Lot 6 DP 868345, Howards Road, Burringbar 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 12 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 applicant shall provide to Council an initial dilapidation report of the adjacent dwelling located at Lot 5 DP 868345.**
- B. The applicant shall undertake trial blasting that reflects typical proposed operations as outlined in the Environmental Impact Statement prepared by Sinclair Knight Merz and dated 8 April 2009. Advance notification of the trial blasting is to be undertaken to the satisfaction of the General Manager or delegate.**
- C. The applicant shall provide a report to Council outlining the results and recommendations of the trial blast addressing the blasting impact attenuation characteristics for the site and inclusive of a second dilapidation report of the adjacent dwelling located at Lot 5 DP 868345. The report and results shall be to the satisfaction of the General Manager or delegate.**

- D. Approval or notification of exemption under the Native Vegetation Act 2003 must be gained from the Northern Rivers Catchment Management Authority for clearing of native vegetation. Should a Property Vegetation Plan arise from such approval, this plan may be regarded as the Habitat Restoration Plan for the site.

**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 Environmental Impact Statement Revision 4 Project No. ENO1991 prepared by Sinclair Knight Merz and dated 8 April 2009, except where varied by the conditions of this consent.

[GEN0005]

2. Progressive ecological restoration of the quarry as it descends shall be undertaken within created benches as described within the Environmental Impact Statement accompanying the application. The species list for planting in these areas must be approved by the General Manager or delegate.

[GENNS01]

3. Restoration works must be undertaken in accordance with a Habitat Restoration Plan approved by the General Manager or delegate or a Property Vegetation Plan approved by the Northern Rivers Catchment Management Authority.

[GENNS02]

4. Habitat to be retained and restored outside the development footprint must be protected through reclassification to Community Land or other mechanism approved by the General Manager or delegate. Such process must be commenced within one year of the date of this development consent.

[GENNS03]

5. The maximum annual rate of extraction in any 12 month period is 30,000 tonnes.

[GENNS04]

**PRIOR TO COMMENCEMENT OF WORK**

**6. Section 94 Contributions**

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

Prior to commencement of works, all Section 94 Contributions are to be paid with the Certifying Authority having 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:

16.3676 Trips @ \$1124 per Trips \$18,397

(\$1021 base rate + \$103 indexation)

S94 Plan No. 4

Sector11\_4

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5.1.1 prior to the commencement of works. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

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

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

[PCWNS01]

7. A dust management plan shall be prepared and implemented to the satisfaction of Council's General Manager or delegate prior to the commencement of operations. The dust management plan shall incorporate appropriate mitigation measures as outlined in Section No. 6.2 of the Air Quality Assessment prepared by Sinclair Knight Merz and dated August 2008.

[PCWNS02]

8. A groundwater and surface water quality monitoring program is to be prepared and implemented to the satisfaction of Council's General Manager or delegate prior to the commencement of operations.

[PCWNS03]



9. A sediment and erosion control management plan shall be prepared and implemented to the satisfaction of Council's General Manager or delegate prior to the commencement of operations.  
[PCWNS04]
10. A noise management plan shall be prepared to the satisfaction of Council's General Manager or delegate prior to the commencement of operations. The noise management plan shall incorporate ongoing community consultation and appropriate mitigation measures as outlined in Section No. 6 of the Noise Impact Assessment prepared by Sinclair Knight Merz and dated August 2008.  
[PCWNS05]
11. Turning paths for typical articulated heavy vehicles that will be used for quarry operations shall be provided prior to commencement of operations that show safe exit / entry at the following locations:
- Tweed Coast Way and Cudgera Creek Road, and
  - The quarry entrance and Cudgera Creek Road.
- [PCWNS06]
12. Intersection / entrance driveway corner widening shall be provided prior to commencement of operations if shown to be required by the turning paths referenced in Condition 11.  
[PCWNS07]
13. Chevron markers shall be provided on the bridge approaches on Cudgera Creek Road prior to commencement of operations.  
[PCWNS08]
14. Vegetation shall be removed to the left and right of the entrance road on Cudgera Creek Road to improve sight distance prior to commencement of operations.  
[PCWNS09]
15. Additional guideposts shall be provided on Cudgera Creek Road for better delineation of road geometry prior to commencement of operations.  
[PCWNS10]
16. The existing quarry access road shall be bitumen sealed for at least the first 15 metres from the edge of the Cudgen Creek Road carriageway prior to commencement of operations.  
[PCWNS11]
17. A Property Vegetation Plan approved under the Native Vegetation Act 2003 or, in its absence, a Habitat Restoration Plan formulated in accordance with Council Draft Guidelines and which demonstrates restoration of native vegetation impacted by the proposed development to the satisfaction of Council must be submitted for approval by the General Manager or delegate prior to commencement of works.  
[PCWNS12]

18. Prior to commencement of works and prior to removal of vegetation, the site must be inspected at dusk by a suitably qualified and experienced fauna ecologist familiar with microhabitat requirements and the behavioural patterns of rainforest and wet sclerophyll-dependent fauna species for signs of activity. Should any threatened species or other native fauna be located within vegetation to be cleared, they must be collected and released into adjoining unaffected suitable habitat the next evening.

[PCWNS13]

**USE**

19. 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]

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

[USE0145]

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

- \* 7:00am to 5:00pm - Mondays to Fridays
- \* 7:00am to 12:00pm - Saturdays
- \* No operations are to be carried out on Sundays or Public Holidays except for emergency requirements.
- \* All deliveries and pickups relating to the business are to occur within the approved hours
- \* During the approved hours the following annual restrictions apply to specific quarry operations:

Activity	Total
Blasting	2 periods.
Drilling	200hrs.
Screening & Crushing	500hrs.
Loading and Transport	2700 truck movements.

An operational log book is to be maintained at all times and shall be made available to Council's Building & Environmental Health Unit upon request.

[USE0185]

22. A community liaison officer and community liaison contact phone number shall be available on a 24-hour basis on the days that quarry activities are undertaken (including 24 hours pre-and post-event). Local, directly affected residents shall be notified by means of an individual letter drop a minimum of fourteen (14) days prior to crushing, screening, drilling or blasting activities.

[USE0215]

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

[USE1035]

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

[USE1045]

25. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate.

[USE1055]

26. All quarry operations shall be undertaken in accordance with the approved Noise Management Plan, Dust Management Plan and Sediment & Erosion Control Management Plan.

[USENS01]

27. Vegetation shall be removed or lopped only as strictly necessary to complete the proposed works. Boundaries of significant vegetation to be retained must be clearly marked in the field with highly visible traffic control barriers prior to the commencement of any clearing operations. No machinery is to traverse beyond the marked boundaries. All tree-felling and vegetation removal must be undertaken so as to avoid damage to remaining native vegetation.

[USENS02]

28. Topsoil removed during construction must be stockpiled and reused within restoration areas to improve re-vegetation success.

[USENS03]

**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council  
**Location:** Lot 6 DP 868345, Howards Road, Burringbar  
**Zoning:** 1(a) Rural  
**Cost:** \$50,000

**BACKGROUND:**

History

There are 29 operational quarries within the Tweed Shire area, 14 of which supply material as a prepared roadbase commodity.

Burringbar Quarry has been in operation since at least 1972 with evidence of some activity prior to this time following review of historical aerial photography. Due to a lack of records, however, the exact quarry operation commencement date and subsequent existing use status is difficult (if not impossible) to determine.

The enacting of SEPP 37 in 1993 provided a moratorium for existing use quarries to register and gain approval for any proposed expansion. Burringbar Quarry was registered and an Environmental Impact Statement (EIS) commenced to seek formal approval under the SEPP 37 process. However, the EIS was not completed and it is only now that Council is seeking approval for the continuing operation and expansion of Burringbar Quarry.

D95/0085 (application for extensions to Burringbar Quarry) was lodged 27 March 1995 and withdrawn 25 January 2006, given the inactivity of the file.

Current Operations

The current quarry operations occupy approximately 1.7 hectares at the northern end of the southern section of Lot 6 DP 868345. The current rate of extraction is approximately 5,000 – 10,000 tonnes per annum and consists of the following operations:

- drilling and blasting activities once every one to two years, depending on demand
- screening (and crushing where required) using mobile equipment
- stockpiling of extracted and processed material; and
- loading of material into trucks for transportation.

The existing quarry is located wholly within the footprint of the proposed quarry expansion and therefore no rehabilitation of the existing quarry areas is required.

NSW Department of Industry and Investment description of Burringbar Quarry

**Name:** Burringbar Quarry

**Operator:** Tweed Shire Council

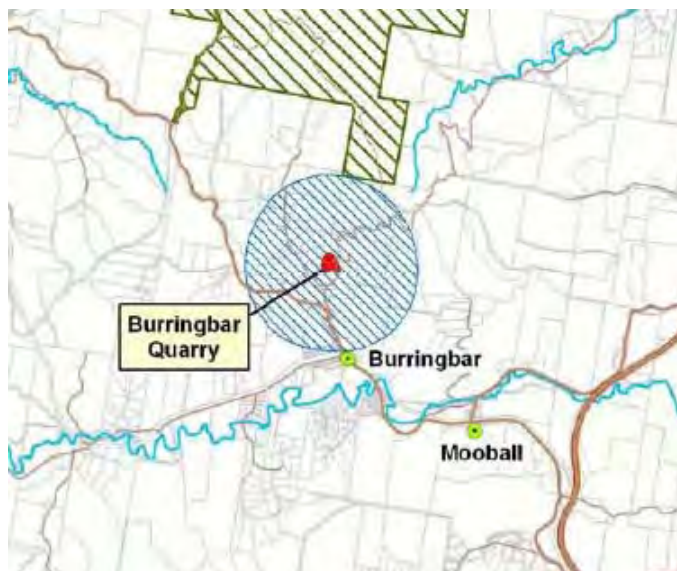
**Commodity:** Prepared roadbase

**Rock Type:** Chert

**Status:** Operating - intermittent



**Comment:** Resource > 1 M tonnes. Long life at last years production rate of 6 500 – 7 000 tonnes. Proposal (DA lodged) to expand and increase production to 30 000 per annum, implying a life of 30 – 40 years.

Extract from Plan 1 Mineral Resource Audit of Tweed Shire May 2011:



Burringbar Quarry site

Key:

	<p><b>Identified Resource Area – containing active mineral, petroleum and/or extractive operations and/or identified resources.</b></p> <p>Development within these areas could adversely affect or be affected by <b>current</b> or <b>future</b> resource development operations. Any proposed zoning changes or developments that may prohibit or restrict <b>current</b> or potential <b>future</b> operations in these areas should be referred to I&amp;I NSW.</p>
	<p><b>Transition Area – areas adjacent to identified resource areas.</b></p> <p>Development within these areas could adversely affect or be affected by <b>current</b> or <b>future</b> resource development operations in the adjacent resource area. Any proposed zoning changes or developments that may prohibit or restrict <b>current</b> or potential <b>future</b> operations in the adjacent resource areas should be referred to I&amp;I NSW.</p>

The Subject Site

The subject site is located on Cudgera Creek Road at Lot 6 DP 868345, approximately 1km north of Burringbar township. It is classified as operational land vested with Council.

Burringbar Quarry is located in the southern section of Lot 6 which includes the existing quarry and semi-disturbed bushland.

The site is not identified as flood prone or regionally significant / State significant farmland but it is bushfire prone.

Total land area is 12.396 hectares.

Aerial imagery dating back to 1970 substantiates clear felling of the site and surrounds.



1970 Aerial Imagery of Lot 6 DP 868345

### The Proposed Development

The proposed development is an expansion of an established quarry which is currently used by Tweed Shire Council for supply of road construction materials, gravel, aggregates and other quarry material for local use in road maintenance.

The development involves the expansion of an existing quarry including:

- Gradually expand the quarry south to a maximum limit of the RL70 contour
- extraction of a maximum of 30,000 tonnes per annum of material throughout the life of the quarry
- intermittent extraction and crushing operations with materials stockpiled at the quarry
- transportation of stockpiled material to the immediate area for use in road maintenance and upgrade activities; and
- drilling, blasting (1-2 times per year) and screening activities (2-3 times per year) using mobile equipment which is shared with other quarries across the Shire
- revegetation and restoration.

The primary objectives of the proposed development are to:

- provide quarry materials for use by Council maintenance crews in the immediate area without outsourcing to external commercial quarries
- undertake the optimal extraction and utilisation of an identified resource
- implement the required environmental safeguards to ensure the quarry is environmentally acceptable; and
- comply with the expectations of the community and the requirements of legislation.

It is anticipated that the quarry would produce up to 30,000 tonnes of material per year, averaging 20,000 tonnes per year, depending on demand within the local area. Based on estimated reserves in the quarry, this would continue for 15 – 30 years.

Five staff are to attend the site for approximately 6 weeks of the year to supervise extraction and crushing operations. Two staff would attend the site (independently of the former) to supervise truck haulage for approximately 9 weeks of the year.

Hours of operation are restricted from 7am to 5pm Mondays to Fridays and 7am to 12noon on Saturdays. Therefore staff will attend the site for six days within the week.

Truck movements are estimated at approximately 100 trips per day on average for a period of 9 weeks in the year.

The main impact of the proposed quarry extension will be the removal of a small area of semi-disturbed forest bushland which provides potential habitat to native fauna in the area. The applicant proposes to mitigate this impact by minimising the quarry as much as possible, maintaining a continuous bushland corridor, planning for a final landform and gradually rehabilitating the site.

### Extraction Methodology

Initial extraction removes material down to RL100, which is the existing upper bench level. Subsequent extraction involves creation of 5m benches initially taking a crescent shape in the plan with the concave side facing north / north-east. A berm is to be left at the top of each bench along its southern edge.

This operation creates a series of bench steps along the western quarry face with each step being 5m high and 3m wide.

This extraction method is to continue down to the 70m contour.

Below the 70m contour, extractions are to continue as above with the bench steps continuing across the southern and eastern quarry faces with operations becoming increasingly screened from the south and east.

### Rehabilitation and Restoration

The site is to be rehabilitated progressively with the return of topsoil and revegetation of the site. As each bench step is created, the previous step is to be covered with topsoil and mulched vegetation and planted with indigenous species. Progressive restoration of the site ensures that the view of exposed quarry faces is screened by vegetation as soon as possible.

Upon completion of extraction activities, the quarry floor will be a relatively large flat area sloping gently to the sedimentation pond. Rehabilitation methods include:

- covering with topsoil
- contour deep ripping to retain moisture
- tube-stock tree planting along the rip lines
- hydro-mulching with a seed mix containing native species and a sterile annual grass to provide initial rapid cover and mulch layer.

### Public Submissions

The development application was advertised as designated development for a period of 30 days with three (3) submissions being received within the exhibition period.

### Summary

Having regard to the site's characteristics, the site history, ongoing use, intended use, proximity of surrounding village, rural residential and agricultural development, amenity issues and an assessment against relevant clauses of the Tweed LEP 2000, the proposed continuing operation and expansion of Burringbar Quarry is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval subject to deferred commencement conditions.





**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 considered consistent with the aims of the Tweed Local Environmental Plan and consistent with the vision of the shire "to manage growth so that the unique natural and developed character of the Tweed shire is retained." The proposed development is for the continuing and expanded operation of an existing quarry and is considered to be consistent with the character of the shire.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally compliant with the principles of ecological sustainable development.

Following a full assessment of the Environmental Impact Statement and the applicant's proposed mitigation measures, the proposed development is not considered to have a detrimental impact on the environment and is generally in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

Clause 8 – Consent Considerations

Clause 8(1) (a) the proposed development has been considered in regards to the primary objective of the zone and this is discussed under Clause 11 below.

Clause 8(1) (b) the proposed development has been considered in accordance with the aims and objectives of the plan above under Clause 4.

Clause 8(1) (c) Cumulative Impact: The proposed development is not considered to create a detrimental cumulative impact in the locality. The proposed continuing operation and expansion of Burringbar Quarry is specific to the site and does not allow or induce other land holders undertake such development. It will not result in any detrimental cumulative impact on the surrounding locality given the existing operations of the quarry for several decades.

Clause 11 - Zone objectives

The subject site is zoned 1(a) Rural under the provisions of the Tweed LEP 2000. As such, all current and proposed quarrying activities are located wholly within the 1(a) zone. The current and proposed quarrying activities are defined as an extractive industry, which is a permissible use, with development consent in the 1(a) Rural zone. The primary objectives of the zone focus on enabling ecologically sustainable development that is suitable for natural resource utilisation while protecting the rural character and amenity.

The proposal is considered to comply with these objectives and includes restoration of vegetated areas with consideration of blasting impacts upon the locality and upon one nearby residence in particular. The expansion of the quarry will allow better utilisation of a valuable primary product (chert) that is in high demand in the Shire for use as prepared roadbase. Furthermore, the proposed expansion is not considered to have any substantial negative impact on the rural character and amenity of the area, as the quarry is already in operation.

The proposal is consistent with primary zone objectives and is considered to satisfy the consent considerations under Clause 11.

#### Clause 15 - Essential Services

Reticulated sewer and water are not available to the site.

#### Clause 16 - Height of Building

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

#### Clause 17 - Social Impact Assessment

The proposed development does not require a social impact assessment.

#### Clause 35 - Acid Sulfate Soils

Class 5 Acid Sulfate Soil is present on the site, however soil will be removed in order for the quarry operations to take place. As such, there will be no impact upon Acid Sulfate Soil.

#### Clause 39A – Bushfire Protection

The site is bushfire prone. However, the activities proposed as part of the continuing operation and expansion of the quarry do not increase the risk for bush fire.

The application was referred to NSW RFS as part of the advertising requirements for designated development. A response was received 26/6/09 stating that the service had reviewed the plans and documents received for the proposal and subsequently raised no concerns or issues in relation to bush fire.

### **North Coast Regional Environmental Plan 1988**

#### Clause 12: Impact on agricultural activities

Clause 12 states

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

The proposed continuation and expansion of the Burringbar Quarry is confined to the existing site which has been designated for such use, and will not impact upon the use of adjoining land for agricultural activities. It will not cause a loss of prime crop or pasture land.

Clause 18: Extractive industry

The application clearly demonstrates that site rehabilitation will be carried out progressively. Any consent will be appropriately conditioned to address this issue.

**State Environmental Planning Policies**

SEPP No. 44 - Koala Habitat Protection

SEPP 44 requires assessment of the presence of potential or core Koala habitat and the impacts of development on that habitat. The basis for determining potential Koala habitat is the presence of certain tree species, listed under Schedule 2 to SEPP 44, as more than 15% of total tree species present on a site.

The site does not contain Primary Koala Habitat nor any Primary Koala Food trees. Koalas are known from the immediate vicinity in the past (1987 to the north; 1998 on an area of the quarry floor since having trees removed), however, no evidence of Koala use of the site was recorded during the 2007 consultant survey or the 2011 Ecologist's site visit. The predominant vegetation type is Brushbox wet sclerophyll forest grading to rainforest and is considered unsuitable for Koala use. Nonetheless, the function of the area as a movement corridor remains important and all vegetation outside the quarry expansion footprint should be retained. This aspect has been conditioned.

SEPP (Infrastructure) 2007

Since commissioning the current Environmental Impact Statement, the SEPP (Infrastructure) 2007 was enacted. The SEPP Infrastructure does not deal with extractive industries although it repealed SEPP 11 – Traffic Generating Developments.

Traffic generating developments are now dealt with under Schedule 3 of the SEPP Infrastructure.

Under Schedule 3, the proposed development would be defined as 'any other purpose' and would require the capacity of the site to enable 200 or more vehicles to access any road from the site.

The proposal does not trigger Schedule 3 of the SEPP.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

Under the provision of the SEPP (Mining, Petroleum Production and Extractive Industries) 2007, underground mining may be undertaken, with development consent on any land. Open cut mining, petroleum production and extractive industry may be undertaken with development consent on land subject to pre-existing mining or petroleum production leases or where development for the purposes of agriculture or industry may be carried out.

Of note is that under the SEPP, a land-use compatibility assessment must be undertaken by the consent authority for any proposed development adjacent to an existing mine, quarry or petroleum production facility or on land identified as containing state or regionally significant mineral, petroleum or extractive resources.

SEPP (Rural Lands) 2008

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

None of the provisions contained within the SEPP relate specifically to this site. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities. The existing extractive industry does not impact upon existing farming activities.

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

The shire-wide Draft Local Environmental Plan was placed on exhibition in early 2010. The draft zone is RU2 – Rural Landscape.

The proposed continuation and expansion of an extractive industry is permissible in this zone, as outlined below.

**3 Permitted with consent**

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

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

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

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

Tweed Development Control Plan

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

Clause 92(a) Government Coastal Policy

The proposed site is not located within the area covered by the Government Coastal Policy.

Coastal Zone Management Plans (within the meaning of the *Coastal Protection Act 1979*)

The subject site is not located within an area that is affected by the following policies of management:

- Tweed Shire Coastline Management Plan 2005
- Tweed Coast Estuaries Management Plan 2004
- Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 Meeting”).

**(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**

Noise

The EIS is supported by a Noise Impact Assessment (NIA) dated August 2008. Noise modelling has been undertaken to predict noise impacts on the closest sensitive receivers. A majority of sensitive receiver benefit from the shielding provided by the quarry face.

The NIA indicates that sensitive receiver No.6 will be subjected to noise greater than the adopted noise criteria of 43dbA for screening and crushing activities for the current quarry configuration. The report indicates however that the future configuration of the quarry will reduce noise impacts at sensitive receiver No.6 below the adopted noise criteria.

Proposed operating hours of the Quarry are 7:00am to 5:00pm Monday to Fridays and 7:00am to 12:00pm on Saturdays, which is to be conditioned.

The following quarry activities are proposed and will be conditioned;

Activity	Total
Blasting	2 periods/year
Drilling	200hrs
Screening & Crushing	500hrs
Loading and Transport	2700 truck movements per year.

An operational log book is to be maintained at all times to ensure the above requirements are not exceeded. The log book shall be made available to Council Environmental Health Unit upon request.

It is considered important that ongoing community consultation be undertaken prior to significant quarry activities being undertaken to minimise potential noise conflicts.

The development of a noise management plan is required prior to the commencement of operations. The noise management plan shall incorporate ongoing community consultation and appropriate mitigation measures as outlined in Section No.6 of the Noise Impact Assessment prepared by Sinclair Knight Merz dated August 2008.

It is considered that noise impacts will be experienced by the sensitive receivers, however considering the proposed hours of operation, intermittent usage of operational equipment and proposed mitigation measures these impacts will be minimised.

**Blast Activities**

A Review of Blast Activities has been undertaken by The Saros Group dated November 2009. Blast vibration can have impacts on the structural integrity of building and structures and impact on human comfort levels. It is considered that noise generated from blasting activities will have impacts on human comfort levels.

These impacts can be minimised through appropriate community consultation prior to blasting activities being undertaken and shall be included in the Noise Management Plan. Blasting activities will also be limited to two (2) times per year.

### Construction Noise

The NIA predicts that constructions noise impacts associated with the clearance of vegetation will exceed the adopted noise criteria of 43dBA at all sensitive receivers. Significant noise impacts are anticipated with this activity however considering the short term nature of this works the impacts are considered acceptable.

### Air Pollution

The EIS is supported by an Air Quality Assessment (AQA) dated August 2008. Air quality modelling has been undertaken to predict dispersion of PM10, TSP and dust deposition on the closest sensitive receivers. The AQA modelling indicates that quarry activities are unlikely to cause exceedences in the Department of Environment, Climate Change and Water requirements as detailed in Section No.5 of the AQA.

The development of a dust management plan is required prior to the commencement of operations. The dust management plan shall incorporate appropriate mitigation measures as outlined in Section No.6.2 of the Air Quality Assessment prepared by Sinclair Knight Merz dated August 2008, which is to be conditioned.

It is anticipated that due to the quarry site location, topography of the land and significant vegetative buffers that impacts from dust will be minimal. This will be further enhanced with the implementation of a dust management plan.

### Chemical / Fuel Storage

Potential environmental risks exist from spillage of fuels, oil or other chemicals if not appropriately managed. The EIS indicates that no hazardous materials or dangerous good will be stored on-site with the exception of oils and grease. Standard conditions will apply to ensure all chemicals are appropriately stored to minimise the risk to the environment.

### Access, Transport and Traffic

A traffic and transport study was provided at Appendix H of the EIS. Council's traffic engineer has reviewed the traffic and transport study and recommended conditions of consent to ensure that access to and from the quarry via local roads is upgraded to cater for the additional proposed truck movements.

Conditions have been applied.



### Flora and Fauna

The lot is constricted in the centre, with the existing quarry and proposed expansion limited to the southern half. Vegetation on site is mapped as “highly modified/disturbed” in the south and “Brush Box Open Forest on bedrock substrate” in the north. The Ecological Status of the site ranges from High in the northern section, Unclassified in the existing quarry section and Low in the southern section of the site. More detailed vegetation mapping has been undertaken with the application for the site and is included as Figure 1 below.

The development is focused upon the low conservation area, where Brushbox is mixed with Camphor Laurel dominated areas. The understorey within the more intact Brushbox forest to the immediate south-east of the existing quarry area however, is exhibiting good regeneration of rainforest species and occasional rainforest canopy species. For this reason; consideration was given as to whether any part of the site may represent the Endangered Ecological Community (EEC) *Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions*. Comparison with the Scientific Committee determination, particularly with regard to dominant canopy species, revealed that the site could not be so classified and thus no EEC's are considered to occur on the site. Nonetheless, this patch is of moderate to high conservation value and areas outside the footprint should be retained and protected.



Figure 1: Vegetation Communities, RoTAP Species and Proposal Area

No threatened flora species were recorded on site over two survey periods, although three rare flora species were recorded, as listed below.

**Table 1:** Significant plant species observed on site

Species	Scientific Name	RoTAP Class	No. present on site
Veiny Lace Flower	<i>Archidendron muellierianum</i>	3RCa	1
Black Walnut	<i>Endiandra globosa</i>	2RC	2
Smooth Turpentine	Scrub <i>Rhodamnia maideniana</i>	2RC	1

RoTAP Codes - 2 = geographic Range in Australia less than 100km; 3 = geographic Range in Australia greater than 100km; R = Rare – uncommon plants with no current threats; C = Reserved. a = 1000 plants or more known from conservation reserves; - = reserved population size not accurately known

The value of the habitat on the study area for fauna is considered low to moderate and is evidenced by the low faunal diversity recorded over two surveys (i.e. 67 species across the allotment) and the lack of complex structural and floristic diversity. No water resources are present on the site and the habitat lacks critical features for fauna with a scarcity of fruiting and flowering native trees and shrubs and a low abundance of hollow trees and logs. The site retains some moderate value for common fauna species in particular sheltering and breeding opportunities for birds, mammals and reptiles and may constitute a refuge or strategic stepping stone for highly mobile species moving through the landscape to access other higher quality forest habitats in the locality.

Nonetheless, two threatened fauna species were recorded in the study area; the Koala (*Phascolarctos cinereus*) on the basis of scratch marks in 1998, and the Little Bent-wing Bat (*Miniopterus australis*). An additional six threatened fauna species were identified as potentially occurring in the study area on the basis of suitable habitat, including the Rose-crowned Fruit Dove (*Ptilinopus regina*), White-eared Monarch (*Monarcha leucotis*), Large Bent-wing Bat (*M. schreibersii*), Greater Broadnosed Bat (*Scoteanax rueppellii*), Eastern Freetail Bat (*Mormopterus norfolcensis*) and Northern Long-eared Bat (*Nyctophilus bifax*).

The proposed site sits within the Burringbar II mapped Regional Fauna Corridor identified by DEC (2003) which has particular value to species with larger home ranges and dispersing individuals establishing new territories. This 'regional corridor' does not form part of a continuous vegetated corridor but includes fragmented forests and cleared land. The implications of the proposed scale of clearing in this corridor are considered unlikely to significantly impact on fauna movements or the exchange of genetic material for regional populations.

The focal species for this corridor is the Koala, with alternate links and additional wet Eucalypt Forest dependent species also important. A Koala Wildlife Atlas record occurs to the immediate north of the allotment, arising from 1986 and the initial 1998 fauna survey recorded characteristic scratch marks on two Grey Gums, since removed from the quarry floor area. The recent Tweed Coast Koala Habitat Study (Biolink 2011) has mapped the area of the quarry and southwards as unassessed/ other (cleared) and as Secondary B Koala Habitat in the northern half. The inclusion of Koala food trees in restoration planning outside of the development footprint has been conditioned.

In regards to noise impacts on fauna at the site, it is generally considered unlikely that the noise due to the construction of the project and subsequent operational activities will have a lasting or major impact on the native fauna. The following points are proposed to support this assumption:

- The site is an existing quarry and subsequently, there may already be some level of habituation to quarry operation noise at the site (including screening/crushing/infrequent blasting/loading activities) albeit at a marginally lesser scale.
- The residual areas of the site have been subject to past clearing resulting in a lack of complex fauna habitats and subsequently, the site supports a comparatively low vertebrate species diversity and as a consequence, limited habitat for legislatively significant species.
- Operational hours would be limited to diurnal periods thereby having little to no impact on nocturnally active species, crepuscular species, and high activity vocalising periods for diurnal birds (dawn and dusk).
- As the quarry develops, physical barriers would be in place to buffer quarry operations from remnant vegetation bordering the site and further a-field.
- Field assessments did not record roosting colonies of the Grey headed Flying-fox (*Pteropus poliocephalus*) such that the noise from the proposal is not expected to impact on existing flying fox colonies in the area.

In addition the following assessment has been undertaken in relation to the Native Vegetation Act 2003:

Legislation	Section(s)	Comment
<i>Native Vegetation Act 2003</i>	Division Excluded clearing Clause Legislative exclusions	<p>4</p> <p>25</p> <p>The Act applies to Rural land and generally requires dual consent where vegetation clearing is proposed. The vegetation is of an age that is regarded as either remnant vegetation or protected regrowth, thus should not be cleared without (dual) consent. The application was referred to the Northern Rivers CMA and a response received indicated that the clearing was a matter of interest to them and that:</p> <ol style="list-style-type: none"> <li>1. The development should demonstrate consistency with the targets of the Northern Rivers Catchment Action Plan</li> <li>2. Council must assess whether any clearing of native vegetation falls under the jurisdiction of the NV Act and if so must seek approval prior to the commencement of any clearing work.</li> <li>3. Council should have regard to the document <i>North Coast Guide for reducing rural landuse conflict and interface issues</i>.</li> </ol>

Legislation	Section(s)	Comment
		<p>The Act does not apply to the following types of clearing of native vegetation:</p> <p><i>Division 4 Clause 25 (f) any clearing that is, or that is part of, designated development within the meaning of the EPA Act and for which development consent has been granted under that Act.</i></p> <p>Because the NV Act necessitates a dual consent role and development consent under the EP&amp;A Act has not yet been granted, consent should first be sought from the Catchment Management Authority for the clearing of native vegetation. The most likely process to arise from such consent is the formulation of a Property Vegetation Plan to offset the clearing. Since a restoration plan is required by Council and has been proposed by the applicant anyway, the process is not considered onerous and has been included as a deferred commencement condition. It should be noted that once a PVP is agreed, clearing is exempt from the Act provisions as shown below.</p> <p><i>Division 4 Clause 25 (d) any clearing carried out in accordance with a property management plan approved by the Director-General of the Department of Environment and Conservation for the purposes of the Threatened Species Conservation Act 1995,</i></p>

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

Surrounding Landuses/Development

Surrounding land uses include rural, semi-rural and agricultural uses to the east, northeast, south and west.

Groundwater / Surface Water

Surface flows are currently diverted to a sediment basin located immediately adjacent to Cudgera Creek Road. Surface waters then flow to a drainage line along Cudgera Creek Road that feed into tributaries of Burringbar Creek.

It is proposed to undertake works to improve the existing sediment basin and construct a new sediment basin as the expansion of the quarry moves south. The mitigation measures proposed appear to be adequate however the development of a sediment & erosion control management plan is required prior to the commencement of operations.

No groundwater or surface water quality monitoring has been undertaken or proposed by the EIS. This is considered important and prior to the expansion of quarry operations the applicant is required to develop and implement a Water Quality Monitoring Program which is to be conditioned.

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

Public Agencies

On 15 May 2009, the proposal was referred to several external agencies based on Council's perception that these agencies may have an interest in the proposal as designated development. A response was not mandatory.

<b>Agency</b>	<b>Response</b>
Department of Planning	No response received.
Department of Environment & Climate Change (EPA Licensing Authority) (now known as DECCW)	A response was provided 1/6/09 stating that as the matter is not scheduled with respect to the Protection of the Environment Operations Act 1997, DECC does not intend to review or provide any further response on the matter.
Roads and Traffic Authority	A response was provided 3/6/09 with advice in relation to the impacts on road safety, efficiency and traffic management. The comments were provided to Council's Traffic Engineer for incorporation into final comments and conditions for the proposed development.
North Coast Catchment Management Authority (now known as Northern Rivers Catchment Management Authority)	A response was provided 19/7/10 including advice regarding 3 points of interest. Council's ecologist has incorporated these points of interest into the assessment and final comments / conditions for the proposed development.
NSW Rural Fire Service	A response was received 26/6/09 stating that the service had reviewed the plans and documents received for the proposal and subsequently raised no concerns or issues in relation to bush fire.
Department of Water and Energy (now known as NSW Office of Water)	No response received.

Public Exhibition

The application was placed on public exhibition for 30 days from 20 May 2009 to 19 June 2009 in accordance with Section 79 of the Environmental Planning and Assessment Act 1979 and Sections 77 to 81 of the Environmental Planning and Assessment Regulation 2000.

A copy of the application documentation was made available at Council's Tweed Heads and Murwillumbah offices. Copies were also available for viewing at Kingscliff Library and the Department of Planning's offices in Grafton and Sydney.

During this period the application attracted three (3) objections that were based on the following concerns:

Objection	Concerns
1	The proposed expansion comes to within 80m of our dwelling. Dust, noise, impact upon collection or rainwater. Effect upon resale value of property. Potential structural damage to buildings and bore from blasting and ground vibrations.
2	Too many trucks and impact on young families.
3	Devaluing of property. Impact from drifting of dust.

The applicant responded in detail to the concerns raised within the submissions as follows:

Adequate buffer distances to adjacent dwelling

The proposal will maintain existing vegetated buffer widths at the site which vary between about 20m and 50m along the western boundary of Lot 6 DP 868345. The adequacy of a buffer relates to the buffer's ability to ameliorate or absorb the impacts of the development.

Due to the topography of the site, a ridge would be maintained along the western boundary of the quarry, with the quarry expanding to the south and facing north-east.

As a consequence, the retained buffer, although narrow, would not be subject to impacts such as changes to surface water hydrology, nutrient loading, incremental clearing through stockpiling, or ongoing access works for example.

In addition, the provision of a high wall between lot 5 and lot 6 would also help mitigate operational noise and air quality issues.

There would be no line of sight issues on lot 5.

Environmental pollution (eg. dust) from additional quarrying activities

Refer to comments raised above and Section 5.7 (**Attachment 1**) and Appendix E (**Attachment 2**) of the EIS.

### Property devaluation

When the property was purchased, the quarry was already in existence and operations. This is evidenced by the 88B instrument, development application and other documents provided by the respondent.

In the above documents, there is a clear understanding that the quarry would continue to operate.

### Potential damage to infrastructure (including existing bore) from blasting vibration

Refer to Review of Proposed Blast Activities by the Saros Group (**Attachment 3**) clause 2.3 which states that the predicted ground vibration and air overpressure from blasting is well below the guidelines in AS2187.2 for structural damage.

Refer also to letter from consulting structural engineers Michael Samms & Associated P/L (**Attachment 4**) attached to the building file for Lot 5, 72 Howards Road stating that the building design has the structural facility for ground vibration and air overpressure at the current legislative levels.

In regards to human discomfort levels, the Saros Report states that 'based on the distance to the residence and the limits discussed, vibration levels are likely to be strongly perceptible and could be considered to cause a significant impact'.

Section 5.4.1 of the EIS notes that accurate estimation of ground air blast levels and vibration is complex due to variations in blasting processes and rock types.

For air blast levels, the graphical representation of the reduction of air blast levels with distance (Figure 5.5, S5.4.2 EIS) do not take into account the orientation of the quarry face. Thus, some sensitive receivers are likely to benefit from shielding by the quarry walls, and therefore, lower air blast levels may be realised than those presented in the EIS.

For air blast and ground vibration limits, it is argued that due to the very low frequency of proposed blasting activities (eg. 1 to 2 blasts per year pending demand), the impact on human comfort levels could be successfully managed through a dedicated notification strategy to adjacent sensitive receivers thereby limiting this impact substantially.

In addition to the low frequency blasting proposed, a trial blast program with concentrated vibration monitoring is proposed to ascertain site specific vibration attenuation characteristics to more accurately understand the real impacts of the blasting program on human comfort levels.

### Adequacy of bridge on Cudgera Creek Road to support truck movements

The bridge on Cudgera Creek Road has the structural capacity to withstand the loads imposed by truck haulage of quarry products. The bridge has a trafficable width of 6.5m and has two lanes. The speed limit is 60kph. The bridge is adequate for the increased traffic movements associated with quarry operation.



Amenity impacts on residents from truck movements on Cudgera Creek Road

Addressed in Section 5.8 of the EIS (**Attachment 5**). Transport of quarry products was not raised as an issue by these residents in door-knock interviews or public meeting.

Council Assessment

Council's assessment generally accepts the mitigation measures outlined in the Environmental Impact Statement and considers that the benefits of the continuing operation and expansion of the Burringbar Quarry for the general community and Shire as a whole, are significant.

Assessment also takes into account the definite life span of the quarry of up to 30 years into the future and understands that the quarry will be returned to community bushland following completion of extraction activities, which is also of benefit to the general community and the Shire as a whole in perpetuity.

However, the impacts of blasting activities on the adjacent residential dwelling remain uncertain and unqualified. It is agreed, as highly recommended at the end of the *Review of Proposed Blast Activities* by the Saros Group that *'further investigation and a more detailed review is undertaken in conjunction with a trial blast program with concentrated monitoring'*.

As such, support for the development application is based on deferred commencement conditions that request the following, in the following order:

- Dilapidation report on adjacent dwelling
- Trial blasting designed to reflect typical proposed operations as outlined in the EIS
- Results of the trial blast addressing the blasting impact attenuation characteristics for the site and second dilapidation report on adjacent dwelling to be submitted with outcome to be to the satisfaction of DAU.

Once the deferred commencement conditions have been satisfied, operation of development consent is enabled to allow production blasting to take place.

In further support of the continuing operation and expansion of Burringbar Quarry, the following extracts from *Plan 1 Mineral Resource Audit of Tweed Shire May 2011* by Industry and Investment NSW suggest that the operating quarry should be protected from sterilisation or hindrance by encroachment of incompatible adjacent development.

Minerals can only be mined where they occur. Economic, environmental and other constraints further limit the areas available for mining. An important aspect of mineral resource evaluation and development from a land use planning viewpoint is that the locations of minable deposits cannot always be predicted. This makes it imperative that known resources should be protected from sterilisation by inappropriate zoning or development, and that access to land for mineral exploration should be maintained over as much of the planning area as possible.

I&I NSW recommends that councils adopt the following strategies regarding mineral resources in its planning.

1. **Operating mines and quarries should be protected from sterilisation or hindrance by encroachment of incompatible adjacent development.**
2. **Known resources and areas of identified high mineral potential should not be unnecessarily sterilised by inappropriate zoning or development.**

It is understood that in 1996 Council put in place the following restriction by way of a Section 88B instrument upon the title of adjacent Lot 5 DP 865491 in order to cater for future residential development of the land:

*No dwelling shall be constructed outside of the building envelope designated and the foundations of any such dwelling are to be designed to the satisfaction of the Tweed Shire Council in relation to any ground vibrations and air blast pressure from adjacent quarry operations.*

An application for a dwelling on Lot 5 was lodged on 22 May 2003 prompting a request for a variation of covenant so that the dwelling could be constructed outside of the designated building envelope and closer to the quarry site, with potential to jeopardise quarry operations.

Approval of the dwelling was based on the successful variation of covenant and production of a design certificate from a structural engineer confirming that the dwelling's foundations were designed to account for any ground vibration or air overblast pressure resulting from quarry operation.

The dwelling was approved 20 November 2003. The property was sold to a new owner on 8 June 2010.

**(e) Public interest**

As outlined through this report the proposal is not likely to adversely affect the general public. It will actually have some public benefit through the provision of the continued use of an extractive material for community purposes such as road base. The quarrying operations currently have some adverse effects on some members of the public from the truck usage of Cudgen Creek Road and will continue to do so as such an activity in the proximity of any residence will always have some adverse impact. However, the site has been used for such purposes for many years and this application is not considered to exacerbate these effects but rather reduce the potential impact. Subject to the compliance with the recommended conditions of consent the proposed application is considered to be satisfactory having regard to the public interest.

**OPTIONS:**

1. Approve this application in accordance with the recommendation for approval.
2. Resolve to refuse the development application with reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed continuing operation and expansion of Burringbar Quarry integrated is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development, pending successful resolution of matters contained within Schedule A of the proposed development consent.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Section 5.7 of the EIS (ECM 35638073)
  2. Appendix E of the EIS (ECM 35639155)
  3. **Confidential Attachment** Review of Proposed Blasting Activities prepared by The Saros Group and dated November 2009 (ECM 35638076)
  4. Letter from consulting structural engineers Michael Samms & Associated P/L, undated and faxed to Council 11 December 2003 (ECM 35639078)
  5. Section 5.8 of the EIS (ECM 35639114)
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**14 [PR-CM] Development Application DA10/0178 for the Erection of an Attached Dual Occupancy at Lot 2 DP 1058988, No. 1 Kennedy Drive, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0178 Pt1**

**SUMMARY OF REPORT:**

Consent is sought for the erection of a two storey attached dual occupancy at the site, including the construction of retaining walls and a steep driveway due to the slope of the site. The proposal incorporates a 3 storey element for a garage for proposed Unit 2, which is cut into the site. A SEPP 1 Objection has been submitted in this regard to Clause 16 of the Tweed Local Environmental Plan 2000 which prescribes a 2 storey height limit for the subject site. The application is being reported to Council in accordance with the Department of Planning requirements or SEPP1 objections that involve a variation of greater than 10%. It should be noted that the variation is considered minor however given storeys cannot be quantified any variation of storeys of any magnitude is reported to Council.

**RECOMMENDATION:**

**That Development Application DA10/0178 for the erection of an attached dual occupancy at Lot 2 DP 1058988, No. 1 Kennedy Drive 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 plans as listed in the table below, except where varied by the conditions of this consent.**

<b>Title</b>	<b>Prepared by</b>	<b>Dated</b>
<b>SK01 – Site Layout (as highlighted and excluding driveway details)</b>	<b>Luke Stephens Building Design</b>	<b>12/10/2010</b>
<b>SK02 - Lower Level Floor Plan</b>	<b>Luke Stephens Building Design</b>	<b>12/10/2010</b>
<b>SK03 – Upper Floor Plan</b>	<b>Luke Stephens Building Design</b>	<b>12/10/2010</b>
<b>SK05 – South and East Elevations</b>	<b>Luke Stephens Building Design</b>	<b>12/10/2010</b>
<b>SK06 – North and West Elevations</b>	<b>Luke Stephens Building Design</b>	<b>12/10/2010</b>

Tr <Right Click> Name Tr <Right Click> Name  RESOLVED SK07 – 3D views	Luke Stephens Building Design	12/10/2010
SK08 – 3D views	Luke Stephens Building Design	12/10/2010
SK09 – Section A	Luke Stephens Building Design	12/10/2010
Cut and Fill Plan (CF1)	Planit Consulting	1/6/2011
SK3 – Driveway Plan (Issue E, as amended in red)	Cozen Reagan Williams Prove	01/11
SK4 – Driveway Longitudal and Cross Sections (Issue C)	Cozen Reagan Williams Prove	10/10
SK5 – Driveway Longitudal and Cross Sections (Issue B)	Cozen Reagan Williams Prove	10/10

2. **Driveway gradients shall comply with Plan No SK 7 (Issue A) prepared by Cozen Reagan Williams Prove and dated 06/11. This plan takes precedence over gradient information contained in all other plans.**  
[GEN0005]
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 development is to be carried out in accordance with Councils Development Design and Construction Specifications.**  
[GEN0265]
6. **The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.**  
[GEN0300]]
7. **This development consent does not include demolition of the existing structures on the subject site. A separate approval will need to be obtained for this purpose, as statutorily required.**  
[GEN0305]

8. A person must not carry out vegetation clearing of the following koala food trees of three metres or more in height on land identified as 'Tweed Coast Koala Habitat Study Area' on the map entitled "Tree Preservation Order (2011)" dated 15 February 2011: Swamp Mahogany Eucalyptus Robusta, Forest Red Gum E. Tereticornis, Tallowwood E. Microcorys, Grey Gum E. Propinqua.

[GENNS01]

9. All habitable rooms shall have operable windows.

[GENNS02]

10. Dwellings shall have an acoustic seal on the front door to reduce noise transmission from Kennedy Drive.

[GENNS03]

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

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

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

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

1.3 Trips @ \$656 per Trips \$853

(\$596 base rate + \$60 indexation)

S94 Plan No. 4

Sector1\_4

**(b) Open Space (Casual):**

0.75 ET @ \$526 per ET \$395

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

- (c) **Open Space (Structured):**
  - 0.75 ET @ \$602 per ET \$452
  - (\$575 base rate + \$27 indexation)
  - S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
  - 0.75 ET @ \$792 per ET \$594
  - (\$792 base rate + \$0 indexation)
  - S94 Plan No. 11
- (e) **Bus Shelters:**
  - 0.75 ET @ \$60 per ET \$45
  - (\$60 base rate + \$0 indexation)
  - S94 Plan No. 12
- (f) **Eviron Cemetery:**
  - 0.75 ET @ \$120 per ET \$90
  - (\$101 base rate + \$19 indexation)
  - S94 Plan No. 13
- (g) **Extensions to Council Administration Offices  
& Technical Support Facilities**
  - 0.75 ET @ \$1759.9 per ET \$1319.93
  - (\$1759.9 base rate + \$0 indexation)
  - S94 Plan No. 18
- (h) **Cycleways:**
  - 0.75 ET @ \$447 per ET \$335
  - (\$447 base rate + \$0 indexation)
  - S94 Plan No. 22
- (i) **Regional Open Space (Casual)**
  - 0.75 ET @ \$1031 per ET \$773
  - (\$1031 base rate + \$0 indexation)
  - S94 Plan No. 26
- (j) **Regional Open Space (Structured):**
  - 0.75 ET @ \$3619 per ET \$2714
  - (\$3619 base rate + \$0 indexation)
  - S94 Plan No. 26

[PCC0215]

12. 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.
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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:	1 ET @ \$11571 per ET	\$11571
Sewer Tweed Heads:	1 ET @ \$5560 per ET	\$5560

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

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

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

[PCC0265]

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

[PCC0465]

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.

[PCC0585]

15. The footings, floor slab and site retaining shall be designed by a practising Structural Engineer after consideration of a site stability report prepared by a practising geotechnical engineer and details shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

16. A construction certificate application for works that involve any of the following:-
  - connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control works

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

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

[PCC1145]

17. 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]

18. Prior to the issue of a Construction Certificate, applications shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for the following works (as applicable, but not limited to);

- (a) Water
  - Provision of individual water meters for each dwelling,
- (b) Sewerage,
- (c) Drainage works,
  - Erosion and sediment control works.

The Legal Point Of Discharge for piped stormwater for the development is via connection into the existing piped drainage within the site.

[PCC1195]

19. The construction of any retaining wall must at no time result in additional overland flow discharging upon neighbouring properties. Where applicable, catch drains are to be provided along the top side of retaining walls, in accordance with Council's Development Design Specification D6 – Site Regrading.

The retaining wall in the north western corner of the site must be set back at least 500mm from the western property boundary and provide appropriate drainage along the top of the retaining wall.

Detailed engineering plans of cut/fill levels, retaining walls and perimeter drainage shall be submitted with a S68 Stormwater application for Council approval.

[PCCNS01]

20. A detailed Geotechnical Report, prepared by a suitably qualified geotechnical engineer shall be prepared and submitted to Principal Certifying Authority, advising of site's stability and confirming the suitability of the proposed development, prior to the issuing of any Construction Certificate.

[PCCNS02]

**PRIOR TO COMMENCEMENT OF WORK**

21. 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]

22. 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]

23. 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]

24. 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]

25. 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]

26. 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]

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

[PCW0745]

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

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]

29. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

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

[PCW1065]

#### **DURING CONSTRUCTION**

31. 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]

32. Construction and/or 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]

33. 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]

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

[DUR0245]

35. 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]

36. 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]

37. 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]

38. 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]

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

[DUR0445]

40. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.
- [DUR0815]
41. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.
- Please note timber retaining walls are not permitted.
- [DUR0835]
42. 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]
43. 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]
44. 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]
45. 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]
46. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.
- [DUR1015]
47. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.
- [DUR1045]
48. 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 buildings.

[DUR1875]

49. No portion of the structure may be erected over any existing easement. The building shall be designed so that no structural load will be imposed on services within the easement.

[DUR1945]

50. Any retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation Certificate.

[DUR1955]

51. 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]

52. 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.

[DUR2205]

53. 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]

54. 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]

55. 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]

56. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

57. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR2515]



58. 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]

59. 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]

60. 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]

61. 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.

[DURNS01]

62. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 68 of the Local Government Act. The proponent shall liaise with Councils Engineering and Operations Division to arrange suitable inspections, as required.

[DURNS02]

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

63. 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]

64. 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]

65. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
  - (i) the method of protection; and

- (ii) the date of installation of the system; and
- (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
- (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

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

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

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

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

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

[POC0265]

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

[POC0435]

68. 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]

69. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act.

[POCNS01]

70. All constructed retaining structures in excess of 1.2m in height are to be certified by a suitably qualified geotechnical/structural engineer.

The certification is to be submitted to the Principle Certifying Authority and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

[POCNS02]

71. Prior to the issue of an Occupation Certificate, a certificate from a registered Geotechnical Engineer shall be submitted to the Principal Certifying Authority, certifying that the site is stable and is suitable for its intended use.

[POCNS03]

## **USE**

- 72. 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]

- 73. 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]

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

[USE0735]

- 75. All externally mounted air conditioning units, heat pump water systems, and any other mechanical plant and equipment shall be acoustically treated where required by Council's Environmental Health Officer so as to avoid the creation of offensive or intrusive noise to any occupant of neighbouring or adjacent premises.**

[USENS01]

- 76. 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.**

[USENS02]

**REPORT:**

**Applicant:** Mrs V Campbell  
**Owner:** Teton Trading Pty Ltd  
**Location:** Lot 2 DP 1058988, No. 1 Kennedy Drive, Tweed Heads  
**Zoning:** Uncoloured Land & 2(a) Low Density Residential  
**Cost:** \$580,000

**BACKGROUND:**

Consent is sought for the erection of a two storey attached dual occupancy at the site, including the construction of retaining walls and a steep driveway due to the slope of the site. The proposal incorporates a 3 storey element for a garage for proposed Unit 2, which is cut into the site. A SEPP 1 Objection has been submitted in this regard against Clause 16 of the Tweed Local Environmental Plan 2000 which prescribes a 2 storey height limit for the subject site.

The site is zoned 2(a) Low Density Residential as well as being partially unzoned, however is located within 300m of Council's identified 'Tweed Heads Business Centre', thus the minimum lot size is reduced from 450m<sup>2</sup> per dwelling to 250m<sup>2</sup> per dwelling, with which the development complies.

The development incorporates cut to 4.9m within the footprint of the building to create a 'basement' garage for Unit 2, as well as a large retaining wall along the eastern boundary to create a driveway without which it is not envisaged that appropriate vehicle access could be provided to proposed Unit 2. Cut of 3.07m and retaining is also required in the northern corner of the site to create a turning area for Unit 1 to ensure the site can be exited in a forward direction.

The development is comprised of the following:

**Unit 1 (ground floor)**

Double garage and associated turning area in the northern corner of the site  
Dwelling entry  
2 bedrooms (Bdrms 2 and 3)  
Laundry  
Bathroom and shower  
South facing balcony off bedrooms

**First Floor**

Master bedroom at rear with ensuite and walk in robe  
Dining, kitchen and living room  
Powder room with toilet  
South facing balcony

**Unit 2 (garage level and technical ground floor)**

Double garage and stairs to first floor

**First Floor**

Dwelling entry and small porch area (from ground level at entry to garage)

Secondary stairs from rear of garage (internal)

2 bedrooms (Bdrms 2 and 3)

Laundry

Bathroom and shower

South facing balcony off bedrooms

**Second Floor**

Master bedroom at rear with ensuite and walk in robe

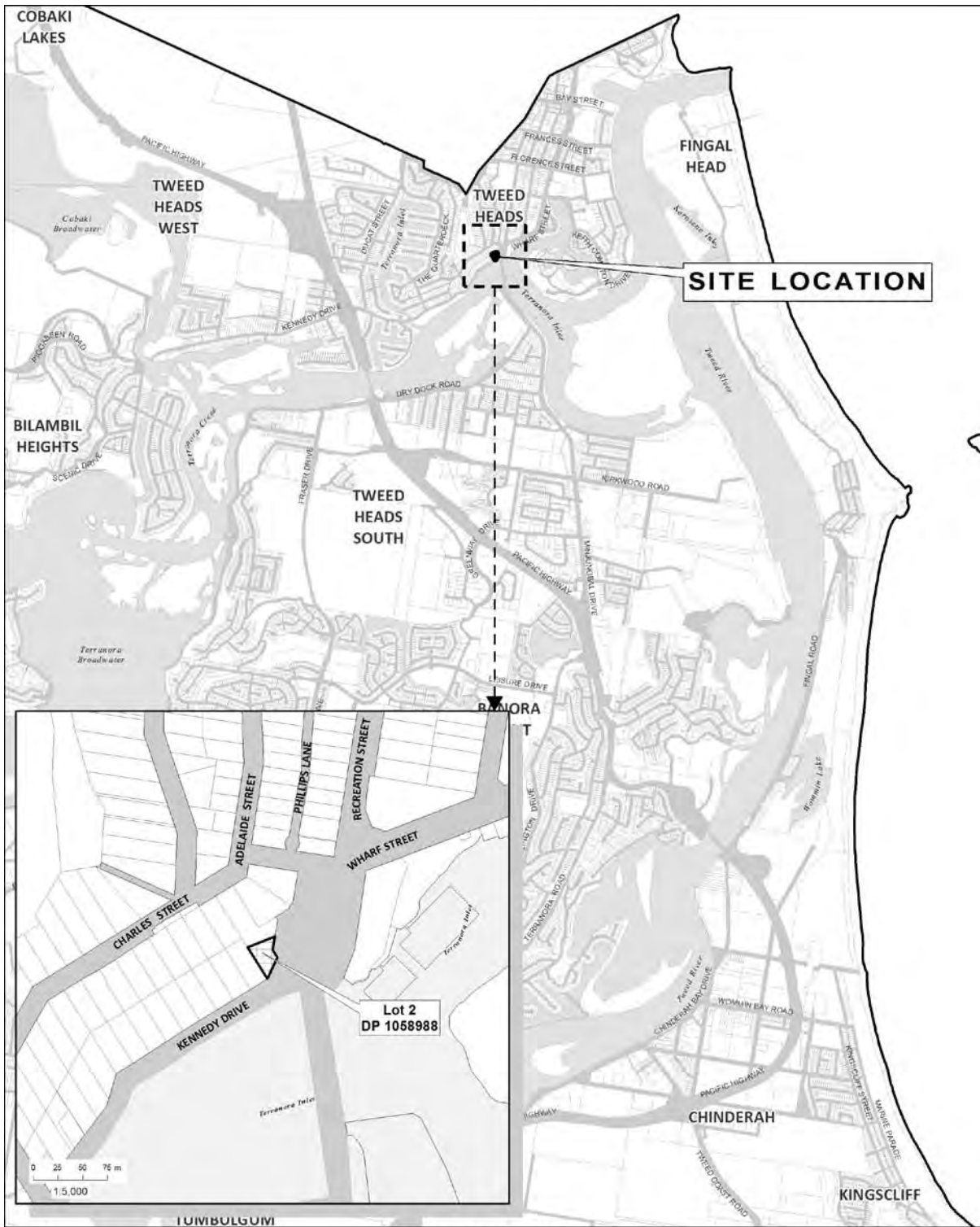
Dining, kitchen and living room

Powder room with toilet

South facing balcony

As discussed, the development is technically three storeys for a small portion of Unit 2 (approximately 4.2m) where the proposed 'basement' garage protrudes more than 1.5m above natural ground level. The accompanying SEPP 1 Objection is discussed further in this report.

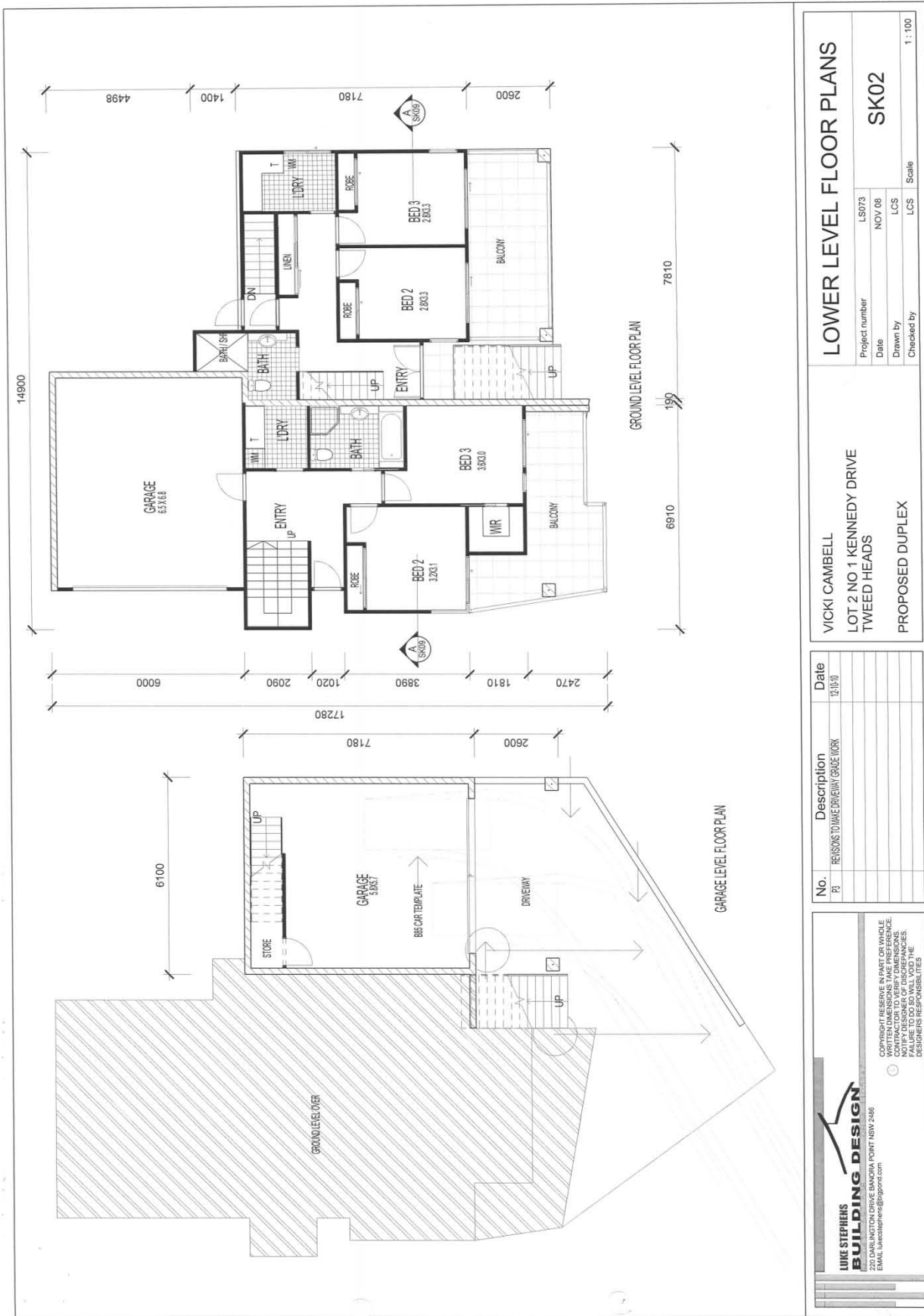
**SITE DIAGRAM:**



**Locality Plan**  
 Lot 2 DP 1058988  
 No.1 Kennedy Drive, Tweed Heads

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DEVELOPMENT PLANS:



**LOWER LEVEL FLOOR PLANS**

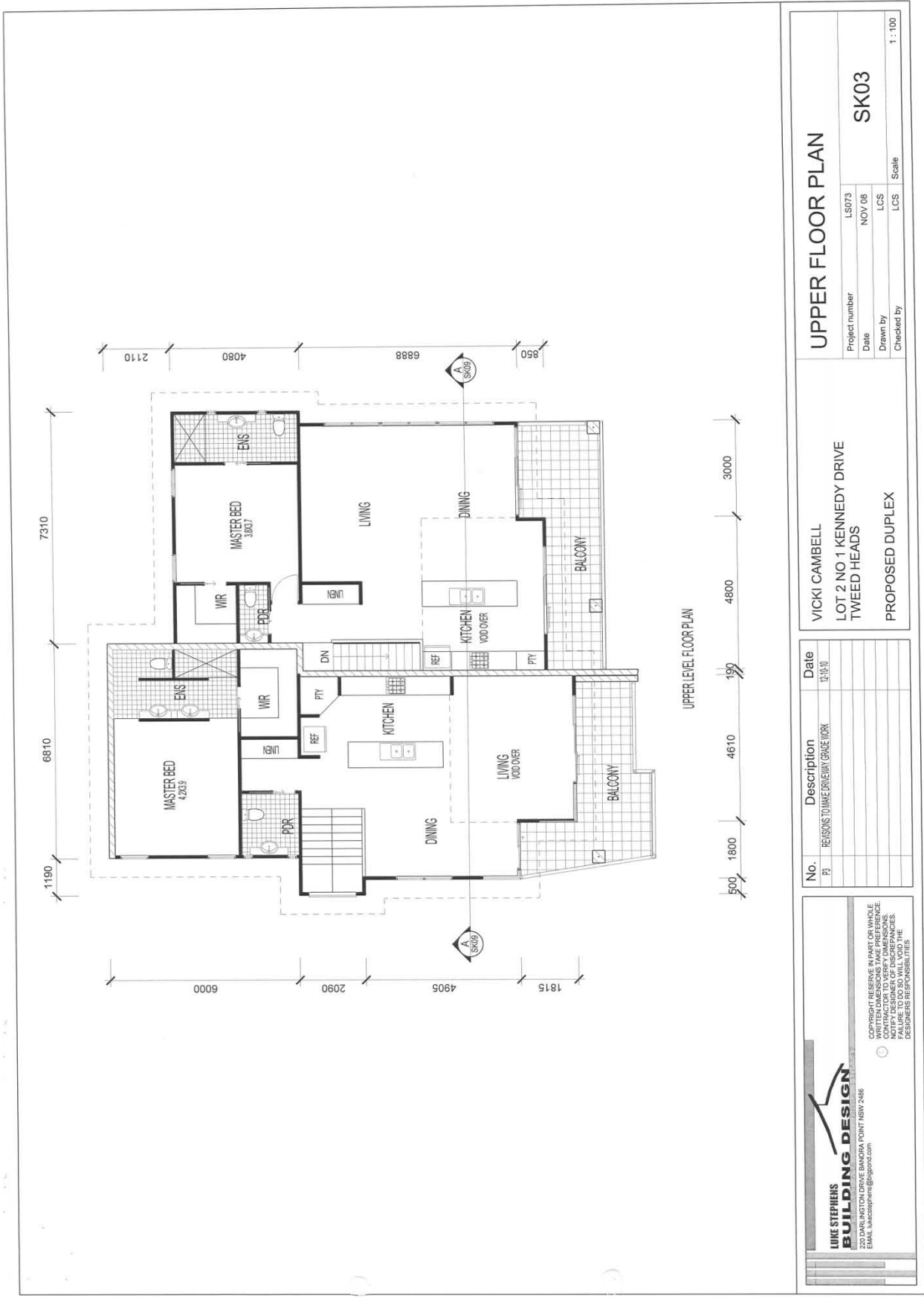
Project number: LS073  
 Date: NOV 08  
 Drawn by: LCS  
 Checked by: LCS  
 Scale: 1:100

VICKI CAMBELL  
 LOT 2 NO 1 KENNEDY DRIVE  
 TWEED HEADS  
 PROPOSED DUPLEX

No.	Description	Date
P3	REVISIONS TO MAKE DRIVEWAY GRADE WORK	12-10-10

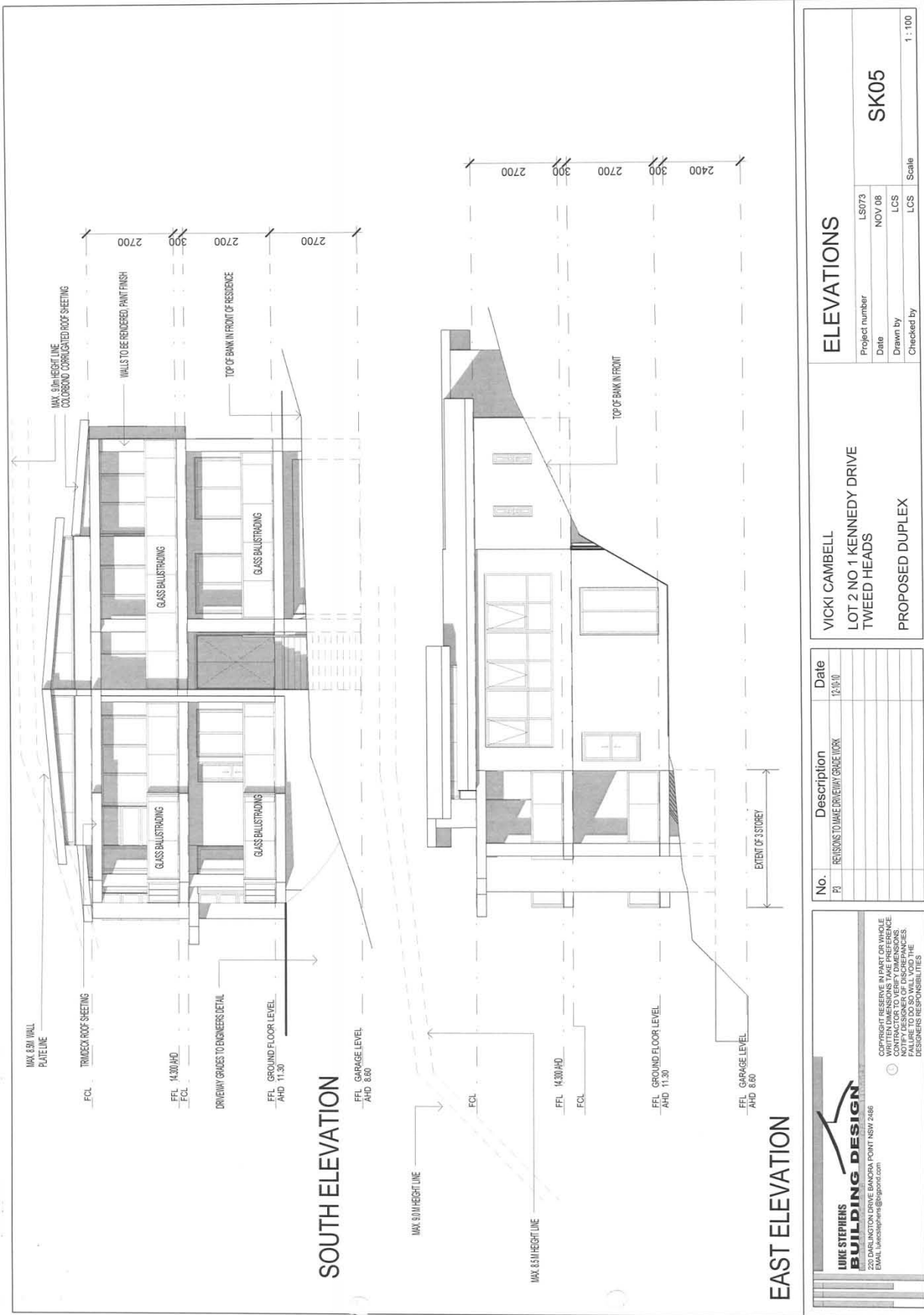
**LUKE STEPHENS BUILDING DESIGN**  
 220 DARLINGTON DRIVE BANDORA POINT NSW 2446  
 EMAIL: lukestephens@opponent.com

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<b>UPPER FLOOR PLAN</b>		
Project number	L5073	
Date	NOV 08	
Drawn by	LCS	
Checked by	LCS	
Scale 1 : 100		
<b>VICKI CABELL LOT 2 NO 1 KENNEDY DRIVE TWEED HEADS PROPOSED DUPLEX</b>		
No.	Description	Date
PT	REASONS TO MAKE DRIVEWAY GRADE WORK	12-10-10
<p><b>LUKE STEPHENS BUILDING DESIGN</b>                  220 DARLINGTON DRIVE BANCORA POINT NSW 2486                  EMAIL: <a href="mailto:lukestephens@legend.com">lukestephens@legend.com</a></p> <p><small>COPYRIGHT RESERVE IN PART OR WHOLE                  NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN PERMISSION OF THE DESIGNERS RESPONSIBILITIES.</small></p>		





<b>ELEVATIONS</b>		Project number LS073	
Date NOV 08		Project number SK05	
Drawn by LCS		Checked by LCS	
Scale 1 : 100			

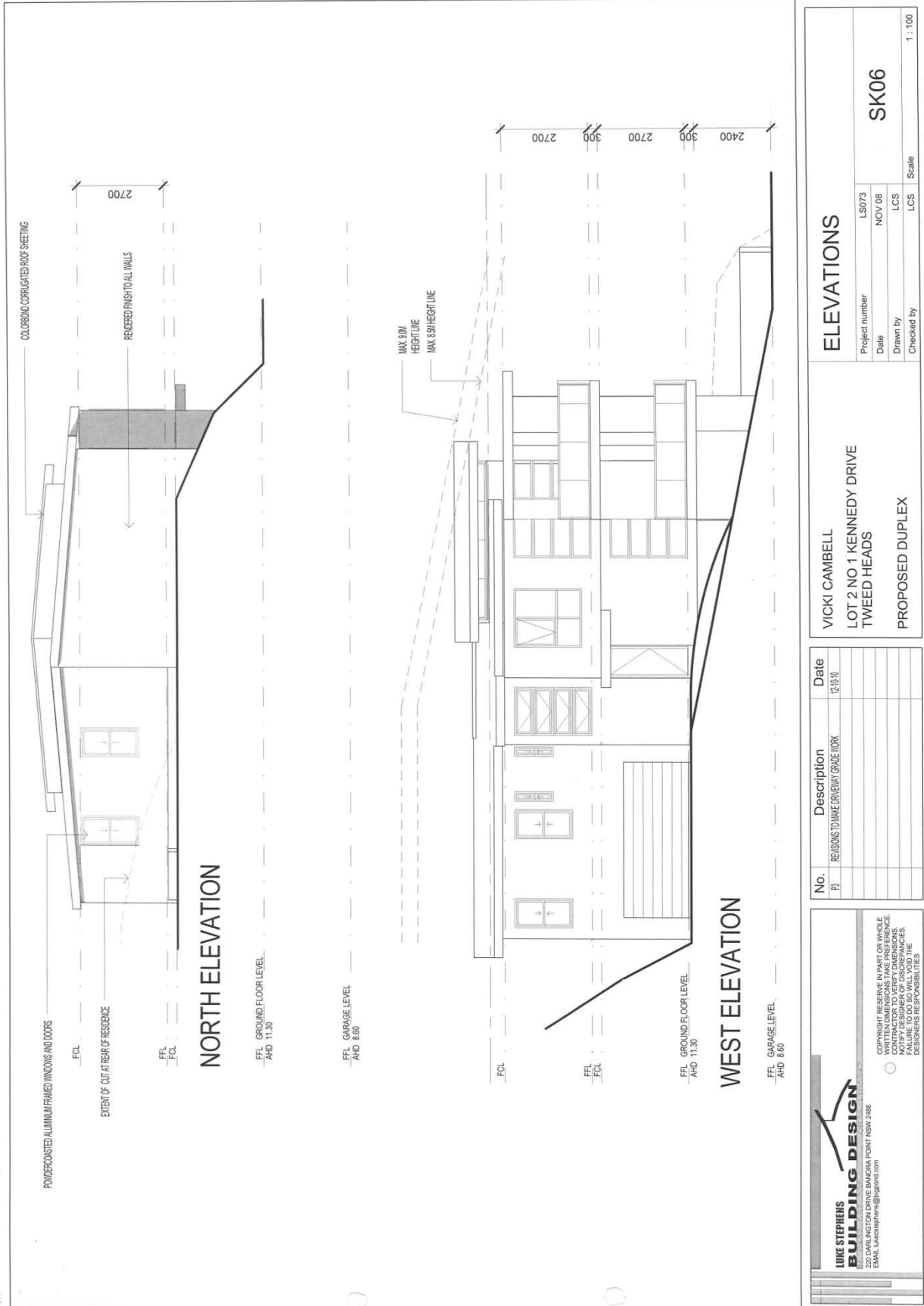
<b>VICKI CABBELL</b>	
LOT 2 NO 1 KENNEDY DRIVE	
TWEED HEADS	
PROPOSED DUPLEX	

No.	Description	Date
P1	REVISIONS TO MAKE DRIVEWAY GRADE WORK	12/10/10

<p><b>LUNE STEPIENS</b>  <b>BUILDING DESIGN</b>                  220 DARLINGTON DRIVE BANORA POINT NSW 2486                  EMAIL: lunestepiens@goond.com</p>	<p><small>COPYRIGHT RESERVE IN PART OR WHOLE                  NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS WITHOUT THE WRITTEN PERMISSION OF THE DESIGNER'S RESPONSIBILITIES</small></p>
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<p><b>LUKE STEPHENS BUILDING DESIGN</b>                  220 DARLINGTON DRIVE BAKKARA POINT NSW 2456                  EMAIL: luke@lstephens.com</p>		<p>Copyright Reserve in Part or Whole                  This Drawing is the Property of                  the Contractor to Verify Dimensions                  and Materials. It is not to be used                  for any other purpose without the                  Designer's Responsibility.</p>	
No.	Description	Date	
P3	REVISIONS TO MAKE DRIVEWAY GRADE WORK	12-13-10	
<p><b>ELEVATIONS</b></p>			<p>Project number: LS073                  Date: NOV 08                  Drawn by: LCS                  Checked by: LCS                  Scale: 1 : 100</p>
<p>VICKI CABBELL                  LOT 2 NO 1 KENNEDY DRIVE                  TWEED HEADS                  PROPOSED DUPLEX</p>			<p>SK06</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”.

The proposed development is considered to be generally consistent with the aims of the Tweed Local Environmental Plan 2000.

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.

The proposed development is not considered to contravene the principles of ecologically sustainable development, noting in particular that significant deep soil and landscaped area is proposed and the site is located within a designated residential zone.

Clause 8 – Consent Considerations

Clause 8 prescribes 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.

With regard to the subject application, the primary zone objective is to:

*"to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity."*

Whilst the development proposes a medium density design (which is permitted by Clause 51A of the LEP, the design of the dwellings is not considered to be unreasonable in terms of density, particularly given the topography of the site results in the proposed development being hardly visible from the street. The characteristics of the site are unique in that the site is located within 300m of a Council identified business centre therefore the proposal does not create any unreasonable precedent with regard to increases in density within a 2(a) zone.

The proposed development is consistent with Clause 8(a).

All relevant aims and objectives of the TLEP have been considered in this report. The proposed development is consistent with Clause 8(b).

The circumstances of the site inclusive of its topography and high level above the street are unique and the development is not considered to have an unacceptable cumulative impact on the Tweed Heads area or the Shire as a whole. The proposed development is consistent with Clause 8(c).

#### Clause 11 – Zone Objectives

The primary objectives of the 2(a) zone are as follows:

*In the case of land within Zone 2 (a) between the Tweed Heads Bypass and Cobaki Bridge:*

- *to minimise the number of dwellings subject to unacceptable aircraft noise and to limit development within the Kennedy Drive traffic catchment so that development is compatible with Kennedy Drive traffic capacity.*

In the case of all other land within Zone 2 (a):

- *to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.*

The secondary objectives of the zone are as follows:

- *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 site is not located between the Tweed Heads Bypass and Cobaki Bridge and as such the first objective is irrelevant.

With regard to the secondary primary objective, whilst the development proposes a medium density design (which is permitted by Clause 51A of the LEP, the design of the dwellings is not considered to be unreasonable in terms of density, particularly given the topography of the site results in the proposed development being hardly visible from the street. The characteristics of the site are unique in that the site is located within 300m of a Council identified business centre therefore the proposal does not create any unreasonable precedent with regard to increases in density within a low density area.

With regard to the secondary objectives, the proposed development contributes to a diversity of housing types in the locality whilst remaining consistent with the intent of the primary objective.

The proposal is consistent with the secondary objectives.

#### Clause 15 - Essential Services

All essential services are made available to the site.

#### Clause 16 - Height of Building

The LEP prescribes a 2 storey height limit for the subject site. A SEPP 1 objection accompanies this application to vary the 2 storey standard for a portion of Unit 2 at ground level to accompany the proposed garage. It is noted that the overall height of the building is 9m which remains consistent with the maximum height for a 2 storey building under both the LEP (4.5m per storey) and DCP A1 which is addressed further in this report. Notwithstanding the SEPP 1 Objection which is addressed further below, the proposed development is considered to be consistent with the intent of Clause 16.

#### Clause 17 - Social Impact Assessment

No significant social impacts are envisaged as a result of approval of this application.

#### Clause 35 - Acid Sulfate Soils

The site exhibits Class 5 ASS. No concerns have been raised in this regard by Council's Environmental Health Officer given the elevated nature of the site and a management plan is not required.

#### Other Specific Clauses

#### Clause 13 - Development of Unzoned Land

A small triangular area of the site is uncoloured on the zoning maps, and is directly adjacent to the 2(a) – Low Density Residential zoning of the majority of the site.

Clause 13 of the LEP refers to development of uncoloured land. Consideration must be given as to whether the proposed development is compatible with development permissible within the adjoining zone. The zoning of the adjacent and surrounding land is 2(a) Low Density Residential. As noted above, the proposed development is considered to be consistent with the zone objectives.

#### Clause 39 – Contaminated Land

This clause requires contaminated land to be adequately remediated prior to development occurring, in accordance with the provisions of State Environmental Planning Policy No 55 – Remediation of Land. Council's Environmental Health Officer has reviewed the application and advised that contamination is not considered a constraint for the site.

#### Clause 51A – Multi-dwelling Housing Densities in Zone 2(a)

The objective of this clause is as follows:

- *to control the density of multi-dwelling housing in Zone 2(a) ( Low Density Residential zone) by the use of a development standard.*

The clause prescribes that multi-dwelling housing proposed to be erected on land within Zone 2(a) is to be at a density not greater than:

- (a) one dwelling per 450 square metres of site area, or
- (b) if the site is within 300 metres of a business centre as indicated on the Business Centres Map – one dwelling per 250 square metres of site area.

The applicant is relying on this clause to affect the density proposed by the subject dual occupancy, which proposes 1 dwelling per 325m<sup>2</sup>. This is consistent with Clause 51A.

### **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 the Coastline Management Manual.

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. Nor does the development overshadow any area of beach or waterfront open space. Accordingly, the proposal fully complies with this clause of the REP.

### Clause 43 – Residential Development

The proposed development is consistent with Clause 43, being residential development in a dedicated residential area, with established access to services and the road network.

The proposal does not contravene the remaining components of the NCREP.

### SEPP No. 1 - Development Standards

As noted above, a SEPP 1 Objection has been made in relation to the proposed development incorporating elements of three (3) storeys when a height limit of two (2) storeys applies to the site, pursuant to Clause 16 of the Tweed Local Environmental Plan 2000.

The area of non compliance relates to the southern side of Unit 2, whereby the proposed garage (which is cut into the site toward the rear) provides a technical third storey for approximately 4.2m (until the garage 'roof' is less than 1.5m above natural ground level).

The applicant has supplied the following justification for the SEPP 1 Objection:

*"The proposed development, being an attached dual occupancy incorporates a technical third storey. The site has a two (2) storey height limit. As such an objection pursuant to SEPP No. 1 is submitted seeking a variation to the provisions of Clause 16 of Tweed Local Environmental Plan 2000. The relevant provisions of clause 16 are as follows:*

#### *Heights of buildings*

##### *(1) Objective*

- to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.*

##### *(2) Consent must not be granted to the erection of a building which exceeds the maximum height or number of storeys indicated on the Height of Buildings map in respect of the land to which the application relates.*

*State Environmental Planning Policy No. 1 - Development Standards, provides a mechanism by which Council can consent to a variation to a development standard where it is considered **unreasonable** or **unjustified** to request strict adherence to the standard or where the granting of such a variance will not result in the compromising of the objects of the Act. The objective of the height limitation clause is:*

*"to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land".*

*It is contended that the proposal is entirely consistent with the abovementioned objective and it is noted that the integrity of the LEP or specifically Clause 16 will not be impacted upon via the approval of the development. In this regard, the following matters are considered relevant to assessing the merits of the proposed departure from the development standards:*

- 1. The development has been designed to comply with the 9m maximum physical height limit applicable to two (2) storey developments under Section A1 of the Tweed Development Control Plan 2008.*
- 2. The proposal presents as a two (2) storey form to Kennedy Drive.*
- 3. The proposed three (3) storey area is effectively screen by existing remnant vegetation located along the eastern boundary.*
- 4. The proposal will appear as two (2) useable storeys only, with the lay person unlikely to be able to decipher whether the proposal is three (3) storeys in part.*
- 5. The proposal steps down the slope and adopts urban design principles such as are promoted within Section A1 of the TDCP 2008.*
- 6. The partial third storey results in a building that is responsive to the sites environmental characteristics particularly in relation to minimising cut and fill.*

*Please also refer to the architectural drawings and photo montage contained within Appendix A of this planning submission. These plans provide a graphical representation of the extent of the technical third storey element and clearly demonstrate that its height is entirely appropriate.*

*Accordingly, it has been demonstrated that strict compliance with the two (2) storey development standard is unreasonable and unnecessary. Furthermore, it is clear that the proposal is consistent with the objectives contained within section 5(a) of the Environmental Planning and Assessment Act 1979."*

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.

The applicant contends that the objectives of the standard (*"to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land"*) are achieved notwithstanding the minor non compliance which is for a length of only 4.2m.

Planning assessment generally concurs with the applicant's assessment, noting that the topography of the site will screen the proposed three storey element (retaining wall below ground level along driveway to Unit 2 and existing vegetation), also noting that the maximum height limit for the remainder of the development is met and the extent of technical non compliance is small.

As such, the objection is considered to be well founded.

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 relaxation of the building height controls is not considered to hinder the proper management, development and conservation of any resources. 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 due to the very minor extent of the non compliance (only 4.2m) and the unique topography of the site. No public benefit is considered to be maintained by strict application of the standard in this instance.

In conclusion, it is considered that the development is of a scale and design that complements the locality without undue or unnecessary impact and that strict compliance with the two-storey height limit is both unreasonable and unnecessary in the circumstances of this case. The Development Assessment Unit recommends that the concurrence of the Minister administering the Environmental Planning and Assessment Act, 1979 be assumed in this instance and the SEPP 1 Objection be supported.

#### SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen 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 compatible with the intent for the development of the locality.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certification accompanied the development application (which required modification due to significant amendments to the building design during the assessment process). A revised certificate was submitted and SEPP (BASIX) is considered satisfied.

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

The site is covered by the Tweed City Centre LEP with a draft equivalent zoning of R2 Low Density Residential. In such a zone, 'dual occupancy' remains permissible with consent. A 9m height limit remains with which the proposal remains predominantly consistent.

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

Tweed Development Control Plan

A1- Residential and Tourist Development Code

A detailed DCP A1 (Part B) assessment is available on file. Compliance with the document is generally achieved, with the exception of the following variations (which are considered to be appropriate):

Building Types Control:

Dual occupancy development is permitted only:

- On significantly regular, rectangular or square, shaped lots
- Each dwelling is to be designed so that the access way to the front door is clearly identifiable from the public street
- Each dwelling with a street frontage is to be designed so that the front door faces the street

With regard to the above, the topography of the site is such that identification of the accessways to each dwelling from the street is not possible. It is considered that entry to the dwellings is easily discernable upon entry to the site. This variation is considered acceptable.

The site is not a regular shaped allotment. However, the applicant has demonstrated that the proposed design is suitable for the site with only minor non compliances with DCP A1 and the subject SEPP 1 Objection. This variation is therefore considered acceptable.

External Living Areas Control:

The site has a southerly aspect with views over the Tweed River, hence the development has been designed to address this aspect (which is aided by the topography which slopes to the south).

The control requires external living areas to be oriented to the north where possible. As mentioned, external living areas are oriented to the south to make use of views over the Tweed River. Considerable cut would have been required for north facing external living areas. As such, this variation is considered acceptable.

Landscaping Control:

The 900mm wide pathway from the street to the rear of the dwellings is not provided due to the topography of the site. In addition, the applicant notes that due to the slope of the site, the rear setback is unusable for anything other than landscaping/seep soil zone, hence provision of the path would serve no reasonable purpose. This is considered acceptable.

Cut and Fill Control:

The development incorporates cut and fill as follows:

Cut:

3.07m in northern corner of driveway to Unit 1 (to provide reversing area)  
3.2m under north eastern corner of Unit 1 (contained within building footprint)  
1.44m under north eastern corner of Unit 2 (contained within building footprint)  
4.9m in northern corner of Unit 2 (to provide for basement garage)  
Varying cut to create driveway access to Unit 2, retained by max height 2.35m retaining wall at Unit 2 and 3.0m retaining wall at Unit 1 reversing area.

Fill:

1m maximum at south western corner of proposed Unit 1, contained within the building footprint.

Appropriate conditions with regard to compliance with boundary setbacks (500mm) for the Unit 1 retaining wall have been applied (to ensure adequate drainage), with Council's Development Assessment Engineer noting such setback is not required for the Unit 2 driveway retaining wall as the land falls away from the wall cutting. Additional conditions regarding certification of the structural adequacy of all retaining walls over 1.2m have been applied

As such, cut and fill at the site are considered to be acceptable. It is noted that issues pertaining to achievable vehicle access along the proposed driveway have been clarified by way of the applicant's provision of tyre longsections which show that scraping, tyres becoming airborne or bottoming out do not occur.

Setbacks control:

Whilst no setback requirements are specifically provided for 3 storey townhouse development, the DCP prescribes that a 1.5m setback shall occur for 2 storey townhouse development with minor encroachments (up to 900mm from boundary) for guttering etc being allowable.

Whilst a setback of only 900mm is provided (with encroachments by guttering to 350mm), it is noted that the eastern and southern sides of the site are bounded by road reserve and as such, reduced setbacks on these sides will not result in overlooking or crowding of any residential dwellings.

The proposed variation is considered acceptable in this instance ONLY due to the height above road level of the site and the unique 'wrapping' of the road reserve along the site's southern and eastern boundaries.

The proposed variations are considered acceptable and support of the application is therefore recommended.

#### A2-Site Access and Parking Code

DCP A2 requires the provision of two car spaces per dwelling which are accommodated within double garages.

#### A3 - Development of Flood Liable Land

The site is not flood prone.

#### A11- Public Notification of Development Proposals

The application was notified for a period of 14 days from 14 April 2010 to 29 April 2010. During this time, nil (0) submissions were received.

#### B2 -Tweed Heads

The site is covered by DCP B2 – Tweed Heads, however the policy prescribes that DCP A1 is to be used in lieu of the design guidelines of DCP B2 for all residential developments of three storeys or less. As such, the design controls of DCP A1 apply (which have been assessed as above).

Notwithstanding, the subject site is located in the 'Razorback Precinct' prescribed by the DCP, which has objectives relating to retention of an attractive residential area with buildings that respect the slope and take advantage of views and preserve vegetation where possible.

This area is also noted to have potential geotechnical difficulties (in fact the subject site is identified specifically within the relevant map). As such, a condition has been applied requiring submission of geotechnical certification prior to the issue of a construction certificate.

The proposed development is considered to be consistent with the Razorback precinct objectives as it steps down the slope, provides generous external living areas and remains consistent with the existing scale of development in the locality.

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

Clause 92(a) Government Coastal Policy

The subject land is within the coastal policy area. The proposed development is consistent with the objectives strategies and actions of the policy.

Clause 92(b) Applications for demolition

Demolition is not sought under this application. A condition has been applied to the effect that demolition of the existing dwelling shall be subject to future development consent.

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

Tweed Shire Coastline Management Plan 2005

The proposed development does not contravene the plan.

Tweed Coast Estuaries Management Plan 2004

The proposed development does not contravene the plan.

Coastal zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)

The proposed development does not contravene the plan.

**(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 immediate locality surrounding the subject site is essentially residential in character, with a mixture of older one and two storey residential dwellings and multi dwelling housing developments. The property adjoining the northern boundary consists of a four dwelling townhouse development at 70 Adelaide Street, with no neighbouring lot to the east or south. The property to the west supports a single dwelling. Landscaping is proposed in order to minimise any potential amenity/privacy issues with the adjoining properties though negligible impacts are envisaged.

Access, Transport and Traffic

During assessment of the application, access to the proposed garages was an ongoing matter, the provision of which is made difficult by the slope and shape of the site. In an effort to demonstrate compliance with Council's controls, the applicant has provided turning templates for both units, showing that vehicles (in plan view) can enter and exit the designated garages in a forward direction.

The applicant has also provided complying long sections to service both units. It is noted that the existing driveway (within the road reserve) which is intended to remain is slightly steeper than Council's maximum (of 25%) but as this portion of driveway is to remain as is, this is acceptable (as advised by Council's Development Assessment Engineer).

With specific reference to the Unit 2 driveway, although Council's documentation on driveways does not specify maximum allowable crossfalls, Council are reluctant to approve a driveway with a crossfall exceeding 5%. The amended plans propose a crossfall of up to 15% at Section A.

The Applicant (at Council's request) has provided additional long sections showing that a standard B99 Template (as per Figure C1 – Ground Clearance Template of AS2890.1:2004) can access Unit 2 (being the unit of greatest concern for access) without "bottoming out".

Council's Development Assessment Engineer recommended that the applicant provide a statement acknowledging that the driveway may be challenging to drivers and that they are well aware of this and recommend that Council support the proposal. Such a statement has been supplied.

As such, the applicant has appropriately resolved issues pertaining to driveway access.

#### Erosion and Sediment Control

Conditions have been applied requiring submission of an Erosion and Sediment Control Plan prior to issue of a construction certificate.

#### Flora and Fauna

No threatened or protected flora or fauna species are recorded on the site. The site is covered however by Council's 2011 Tree Preservation Order (Study Area) which prohibits vegetation clearing without consent on land identified as 'bushland'. The applicant has provided information indicating that removal of ornamental landscaping only is required. A condition prohibiting the removal of any vegetation covered by the TPO has been applied.

#### Overshadowing

The applicant has lodged shadow diagrams for the proposed development. The diagrams indicate that the proposal will have minimal impact upon the adjoining residences to the north or west.

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

#### Surrounding Landuses/Development

The development remains consistent with surrounding residential land uses which include other multi dwelling developments on similarly sloping sites.

### Contamination

Though demolition does not form part of this application, a Pre-Demolition Soil Contamination Investigation was submitted at the request of Council's Environmental Health Officer which shows that all results are below the reporting limit. Contamination from sub-slab treatment for termite protection is not considered a constraint.

### Geotechnical Stability

The Applicant has not submitted a Geotechnical Assessment (as per DCP B2 Tweed Heads) that assesses the subject site. The report submitted with the application assessed the neighbouring Lot 2 DP 780214 and Lot 20 DP 1517. Notwithstanding, Council's Development Assessment Engineer has advised that as there is "no evidence of past instability on the lots" an appropriate condition requiring submission of a geotech report prior to issue of a construction certificate is sufficient to be applied.

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

Nil submissions were received.

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

The proposal is not considered to be in conflict with the general public interest in the locality. The proposed development is considered to be suitable for the subject site with negligible environmental impacts (subject to conditions) and is consistent with intended development for the locality.

#### **OPTIONS:**

1. Approve the proposed development in accordance with the recommended conditions.
2. Refuse the development application.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the right of appeal to the Land and Environment Court should they be dissatisfied with the determination.

#### **POLICY IMPLICATIONS:**

Nil – support of the SEPP 1 objection in the circumstances of this case is not considered likely to have adverse policy implications.

#### **CONCLUSION:**

The proposed development has regard to the design and scale of development in the area and has achieved the intentions of Council's development control plans for the area. Having had regard for all of the matters relevant to the proposal it is considered that the proposal warrants conditional consent. Therefore, the SEPP 1 objection should be supported and the application approved, subject to conditions of consent.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**15 [PR-CM] Development Application DA10/0360 for a Six (6) Lot Community Title Subdivision at Lot 205 DP 755721; Lot 5 DP 821963, No. 532 Upper Burringbar Road, Upper Burringbar**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0360 Pt1**

**SUMMARY OF REPORT:**

The proposed development is to undertake a six lot community title subdivision (5 residential lots and one community lot for driveway access).

A SEPP 1 objection accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(l) Environmental Protection (Habitat) zone. The SEPP 1 objection relates to proposed Lot 6 which has a total area of 39.26 hectares (17.88ha within the 1(b1) – Agricultural Protection zone and 21.36ha in the 7(l) – Environmental Protection (Habitat) zone).

The application was referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard because all land in the 7(l) zone will be retained in a single allotment and the subdivision of the balance of the land complies with the standard for the 1(b1) zone.

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.

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

**RECOMMENDATION:**

**That Development Application DA10/0360 for a six (6) lot community title subdivision at Lot 205 DP 755721; Lot 5 DP 821963, No. 532 Upper Burringbar Road, Upper Burringbar 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;**
    - Drawing Titled "Plan of Proposed Community Title Subdivision of Lot 5 DP 821963 and Lot 205 DP 755721 at Burringbar" Revision G, prepared by Brown and Hann, dated 27-01-10,**
- and**

- Drawing No. A3-4206-D02 A,
- Drawing No. A3-4206-D03 A,
- Drawing No. A3-4206-D04 A,
- Drawing No. A3-4206-D08 A,
- Drawing No. A3-4206-D09 A,
- Drawing No. A3-4206-D10 A,
- Drawing No. A3-4206-D11 A,
- Drawing No. A3-4206-D12 A,
- Drawing No. A3-4206-D13 A,

prepared by Tweed Coast Consulting Engineers Pty Ltd, dated July 09, 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. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Geotechnical Engineering Assessment Report, prepared by Border-Tech and dated 4 February 2010, except where varied by the conditions of this consent.

All individual house sites are subject to further geotechnical testing at time of building approval.

[GENNS01]

5. The proposal for Road Closure within the subject allotment is subject to a separate application under the Roads Act and does not form part of this consent.

[GENNS02]

6. No Primary Koala food trees Tallowwood (*Eucalyptus microcorys*), may be removed without separate approval from the Director Planning and Regulation or his delegate. These trees must be protected throughout the development site during construction works and the operational phases of the development.

[GENNS03]

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

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

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

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

[PCC0275]

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

[PCC0285]

9. Where earthworks result in the creation of batters and/or cuttings greater than 1m high and/or slopes within allotments 17° (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan endorsed by Council. This Plan shall accompany the Construction Certificate application.

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

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

[PCC0455]

10. Prior to the issue of a construction certificate, documentary evidence shall be submitted to Tweed Shire Council demonstrating that a Controlled Activity Approval (CAA) under the Water Management Act 2000 has been obtained for works within 40m of waterfront land (as defined under the Water Management Act 2000) or any works that involve an aquifer interference activity as defined under the Water Management Act 2000.

[PCC0575]

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

[PCC0865]

12. 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. Unless agreed otherwise by Council, the detailed plans shall include (but are not limited to) the following:

- earthworks
- roadworks/furnishings
- Upgrade of the intersection of Upper Burringbar Road and the unnamed Public Lane servicing the development to provide a Type AUR Right Turn Treatment in accordance with AUSTRROADS Pt 5 "Intersections at Grade", giving particular attention to sight distance.
- Upgrade of the unnamed Public Lane to provide:
  - a minimum 4.5m sealed pavement upon a 6.5m formation,
  - widening of the seal to 6.0m (minimum) to accommodate passing areas of minimum length 20m, between chainage 100 and the creek crossing and near chainage 320.
  - a cul-de-sac head of 18m dia with full kerb and gutter.
  - concrete lined table drains where longitudinal grades are less than 0.5% or between 5% and 8%. Where longitudinal grades exceed 8%, kerb and gutter is to be provided.
  - Construction of a complying, private access road to service the development, providing:
    - a minimum 4.5m sealed pavement upon a 6.5m formation, with passing bays in accordance with the NSW Rural Fire Service, Planning For Bushfire Protection, 2006.
    - concrete lined table drains or kerb and gutter where longitudinal grades exceed 8%.
    - a standard driveway layback off the public road cul-de-sac to service the development.
    - Individual, complying driveways providing a minimum 3m wide, 2 coat bitumen sealed.
  - stormwater drainage, including;
    - replacement of the existing causeway with box culverts.
  - landscaping works
  - sedimentation and erosion management plans
  - location of all service conduits

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]

13. Permanent stormwater quality treatment shall be provided in accordance with Councils *Development Design Specification D7 - Stormwater Quality*.

[PCC1105]

14. 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]

15. The Construction Certificate Application must include a detailed Hydraulic Report confirming that the proposed culverts over Burringbar Creek provide flood immunity to the Q10 storm event.

In accordance with the NSW Rural Fire Service, Planning For Bushfire Protection, 2006 the crossing must be capable of carrying a fire fighting load of 15 tonnes.

[PCCNS01]

16. Prior to issue of the construction certificate, the applicant is to submit a Habitat Restoration Plan in accordance with Council's draft guidelines attached to this consent detailing additional environmental enhancement works across the site. The Habitat Restoration Plan must be approved to the satisfaction of Council's Director of Planning and Regulation or delegate prior to commencement of works. The plan is to include planting (including koala food trees) in areas unaffected by any subdivision works and riparian zone restoration. The Habitat Restoration Plan is to be incorporated into the Community Management Statement and a funding mechanism established and approved by Council.
17. Prior to issue of the construction certificate, a Threatened and Significant Protected Species Management Plan for Koalas, Platypus, threatened rainforest flora and any other threatened species known from or found on the site or as a result of the proposed works is to be lodged and approved to the satisfaction of Council's Director of Planning and Regulation or delegate, in accordance with Council's draft guidelines attached to this consent. The Plan is to identify and protect any known or potential threatened and significant protected species locations and habitat on the subject land and outline measures to reduce known threats or impacts to the species. The Threatened and Significant Protected Species Management Plan is to be incorporated into the Community Management Statement and a funding mechanism established and approved by Council.

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

[PCNS02]

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

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

[PCW0005]

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

[PCW0015]

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

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

[PCW0025]

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

- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
  - (i) the consent authority, or
  - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
  - (i) has appointed a principal certifying authority,
  - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
    - C4: Accredited Certifier – Stormwater management facilities construction compliance



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

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and

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

[PCW0815]

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

[PCW0835]

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

[PCW0985]

**DURING CONSTRUCTION**

25. 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]

26. 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]

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

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

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

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

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

[DUR0215]

- 28. 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]

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

[DUR0815]

- 30. 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]

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

[DUR0995]

- 32. 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]

- 33. Any watercourse crossing is to be in compliance with current NSW Fisheries Policy and Guidelines for Bridges, Roads, Causeways, Culverts and Similar Structures.**

[DUR1205]

34. 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]
35. 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]
36. 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]
37. 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]
38. Any damage caused to public infrastructure (roads or services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate.
- [DUR1875]
39. 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:-

**Road and Driveway works**

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

**Drainage**

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

40. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

41. 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]

42. The development must be undertaken in accordance with the requirements of the approved Habitat Restoration Plan and Threatened Species Management Plan.
43. A water quality monitoring program is to be undertaken weekly during any earthworks and construction activity for any runoff from the site, and is to continue until stabilisation of any exposed areas. Parameters to be measured include pH, suspended solids (mg/L), salinity (ppt), Total N and Total P. Any runoff to the creek that breaches ANZECC guidelines for receiving waters shall be reported to Council and will include adaptive management measures proposed to rectify the breach.

[DURNS01]
44. Dogs and cats are prohibited from entering this locality by a covenant applying to this land. All persons associated with the development of this site and construction of this building/subdivision are prohibited from permitting any such domestic animals to enter this subdivision locality. Please note that this prohibition also applies to all contractors, sub-contractors and other trades persons accessing this site.
45. The consent holder is responsible for installation and maintenance of signage sufficient to clearly indicate the prohibition of cats and dogs at any and all entrances to the development at all times.
46. Trail bike riding is prohibited within the environmental protection areas described in the approved Habitat Restoration Plan.
47. All works and use of the site must comply with the approved Threatened Species Management Plan.

[USENS01]

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

48. 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]

#### **49. 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:**  
19.5 Trips @ \$1124 per Trips \$21,918  
(\$1021 base rate + \$103 indexation)  
S94 Plan No. 4  
Sector11\_4
- (b) **Open Space (Casual):**  
3 ET @ \$526 per ET \$1,578  
(\$502 base rate + \$24 indexation)  
S94 Plan No. 5
- (c) **Open Space (Structured):**  
3 ET @ \$602 per ET \$1,806  
(\$575 base rate + \$27 indexation)  
S94 Plan No. 5
- (d) **Shirewide Library Facilities:**  
3 ET @ \$792 per ET \$2,376  
(\$792 base rate + \$0 indexation)  
S94 Plan No. 11
- (e) **Eviron Cemetery:**  
3 ET @ \$120 per ET \$360  
(\$101 base rate + \$19 indexation)  
S94 Plan No. 13
- (f) **Community Facilities (Tweed Coast - North)**  
3 ET @ \$1305.6 per ET \$3,917  
(\$1305.6 base rate + \$0 indexation)  
S94 Plan No. 15
- (g) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
3 ET @ \$1759.9 per ET \$5,279.70  
(\$1759.9 base rate + \$0 indexation)  
S94 Plan No. 18
- (h) **Regional Open Space (Casual)**  
3 ET @ \$1031 per ET \$3,093  
(\$1031 base rate + \$0 indexation)  
S94 Plan No. 26

- (i) **Regional Open Space (Structured):**  
3 ET @ \$3619 per ET **\$10,857**  
(**\$3619 base rate + \$0 indexation**)  
S94 Plan No. 26

[PSC0175]

50. **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]

51. **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]

52. **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]

53. **Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.**

**The plans are to clearly identify private and public infrastructure and must 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]

54. **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]

55. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act.

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]

56. 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]

57. 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]

58. 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]

59. 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 and Driveway Access
- (b) 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]

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

[PSC0925]

61. 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 deemed by Council to be a safety risk 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]

62. Prior to issue of Subdivision Certificate a final Community Management Statement is to be submitted to and approved by Council. The statement is to include provisions for (but not be limited to) the use of the access road by emergency services, bona fide members of the public and public authorities.

The statement must also provide a Utility Services Plan, showing works as executed (WAE).

[PSC1005]

63. 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 culverts 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]

64. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply to proposed Lots 2 to 6 has been completed.

[PSC1165]

65. 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 proposed Lots 2 to 6.

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]

66. Prior to the issue of subdivision certificate the applicant shall decommission the existing on-site sewage system including the septic tank and effluent disposal area servicing the existing dwelling on proposed Lot 6 in accordance with the guideline Advisory Note 3 dated May 2006 prepared by NSW Health. Following the decommissioning the applicant shall provide to Council a certification statement from a NSW licensed plumber confirming the decommissioning has been completed in accordance with Advisory note 3.

[PSCNS01]

67. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the subdivision is required to provide a pit and conduit network to allow for the installation of fibre to the home (FTTH) broadband services.

[PSCNS02]

68. A Restriction As To User shall be created over all lots such that:

- a) Areas external to the nominated building sites, asset protection zones and existing cleared areas on each lot are to be maintained and restored for conservation purposes in accordance with the approved Habitat Restoration Plan. . Burden: Each lot. Benefit: Tweed Shire Council.
- b) Any boundary and internal fencing must be fauna-friendly to permit the unhindered dispersal of fauna across the site.
- c) Restriction as to user regarding no dogs or cats permitted on the site at any time. Burden: Each lot on the subject site. Benefit: Tweed Shire Council
- e) Restriction as to user regarding protection of all Koala food tree species on the site of 3m or greater in height. Burden: Each lot on the subject site. Benefit: Tweed Shire Council
- f) Restriction as to user regarding building only within the designated building envelope. Burden: Each lot on the subject site. Benefit: Tweed Shire Council

69. All future owners are to be provided with a copy of an Environmental Education Brochure which describes owners obligations in regard to environmental protection and management.

70. Habitat restoration works must be completed to a level specified in the approved Habitat Restoration Plan prior to the release of the subdivision certificate and shall be maintained at all times to the satisfaction of the General Manager or his delegate. Trees identified for retention in the Habitat Restoration Plan shall not be removed without separate Council approval.

[PSCNS03]

#### GENERAL TERMS OF APPROVAL UNDER THE FISHERIES MANAGEMENT ACT

1. The watercourse crossing design used at chainage 200-220 is to be consistent with fish passage requirements outlined in DPI Fisheries Guidelines for Fish Friendly Watercourse Crossings and Why do fish need to cross the road? available respectively at:  
[http://www.dpi.nsw.gov.au/data/assets/pdf\\_file/0004/202693/Why-do-fish-need-to-cross-the-road\\_booklet.pdf](http://www.dpi.nsw.gov.au/data/assets/pdf_file/0004/202693/Why-do-fish-need-to-cross-the-road_booklet.pdf)  
[http://www.dpi.nsw.gov.au/data/assets/pdf\\_file/0003/202692/Fish-friendly-waterway-crossings-Policy-and-guidelines.pdf](http://www.dpi.nsw.gov.au/data/assets/pdf_file/0003/202692/Fish-friendly-waterway-crossings-Policy-and-guidelines.pdf)
2. A permit under s198-202 of the *Fisheries Management Act* 1994 for dredge and reclamation activities be obtained prior to commencement of the works associated with the waterway crossing.
3. Environmental safeguards (silt curtains, booms etc.) are to be utilised during construction of the new driveway approaches 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. Dewatering works are to be undertaken consistent with Best Management Practice to avoid the release of sediment downstream.
4. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.
5. Works be undertaken during periods of low flow
6. To ensure minimal risk of water pollution from oil or petroleum products and to minimise disturbance to the streambed substrate machinery is not to enter, or work from the waterway unnecessarily.
7. Floating silt booms and/or hay bales wrapped in geo-textile fabric are to be used to minimise impacts of turbidity and mobilised sediment during the construction and removal of the causeway to minimise the impact of the works at the site and on downstream habitats.
8. No snags (large woody debris) are to be removed, realigned or relocated without first consulting DPI Fisheries as "Removal of large woody debris" is listed as a Key Threatening Process under the provisions of the *Fisheries Management Act* 1994.
9. Damage to riparian vegetation is to be minimised and any damage caused is to be restored as "Decline in native riparian vegetation" is listed as a Key Threatening Process under the provisions of the *Fisheries Management Act* 1994.

10. On completion of the works the site is to be rehabilitated and stabilised. Surplus construction materials and temporary structures (other than silt fences and other erosion and sediment control devices) installed during the course of the works are to be removed.

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

1. The existing managed areas as detailed within the Bushfire Hazard Assessment Report prepared by Building Code and Bushfire Hazard Solutions Pty Ltd, dated 5 February 2010, ref. 80463, Attachment 1, shall continue to be managed as an inner protection area (IPA) as outlined within Appendices 2 and 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.
2. Water, electricity and gas are to comply with section 4.1.3 of Planning for Bush Fire Protection 2006.
3. The entire access road shall comply with section 4.1.3(1) of Planning for Bush Fire Protection 2006. A perimeter road and secondary access road are not required in this case.
4. Road widths shall comply with Table 4.1 in Planning for Bush Fire Protection 2006.
5. If the existing dwelling is to remain, it is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

**REPORT:**

**Applicant:** Landsurv Pty Ltd

**Owner:** Mr PJ Bodey, Ms TM McGeown and Mr PB Brain

**Location:** Lot 205 DP 755721; Lot 5 DP 821963, No. 532 Upper Burringbar Road  
Upper Burringbar

**Zoning:** 1(b1) Agricultural Protection; 7(l) Environmental Protection (Habitat)

**Cost:** Nil

**BACKGROUND:**

Consent is sought for a six (6) lot community title subdivision (Lot 1 comprising an internal access road and Lots 2 - 6 comprising residential allotments).

Each proposed lot is as follows:

Lot 1 – internal access road (approximately 0.32ha)

Lot 2 – 10 hectares, entirely within 1(b1) – Agricultural Protection zone

Lot 3 – 10 hectares, entirely within 1(b1) – Agricultural Protection zone

Lot 4 – 10 hectares, entirely within 1(b1) – Agricultural Protection zone

Lot 5 – 10 hectares, entirely within 1(b1) – Agricultural Protection zone

Lot 6 - 39.26 hectares (17.88ha within the 1(b1) – Agricultural Protection zone and 21.36ha in the 7(l) – Environmental Protection (Habitat) zone).

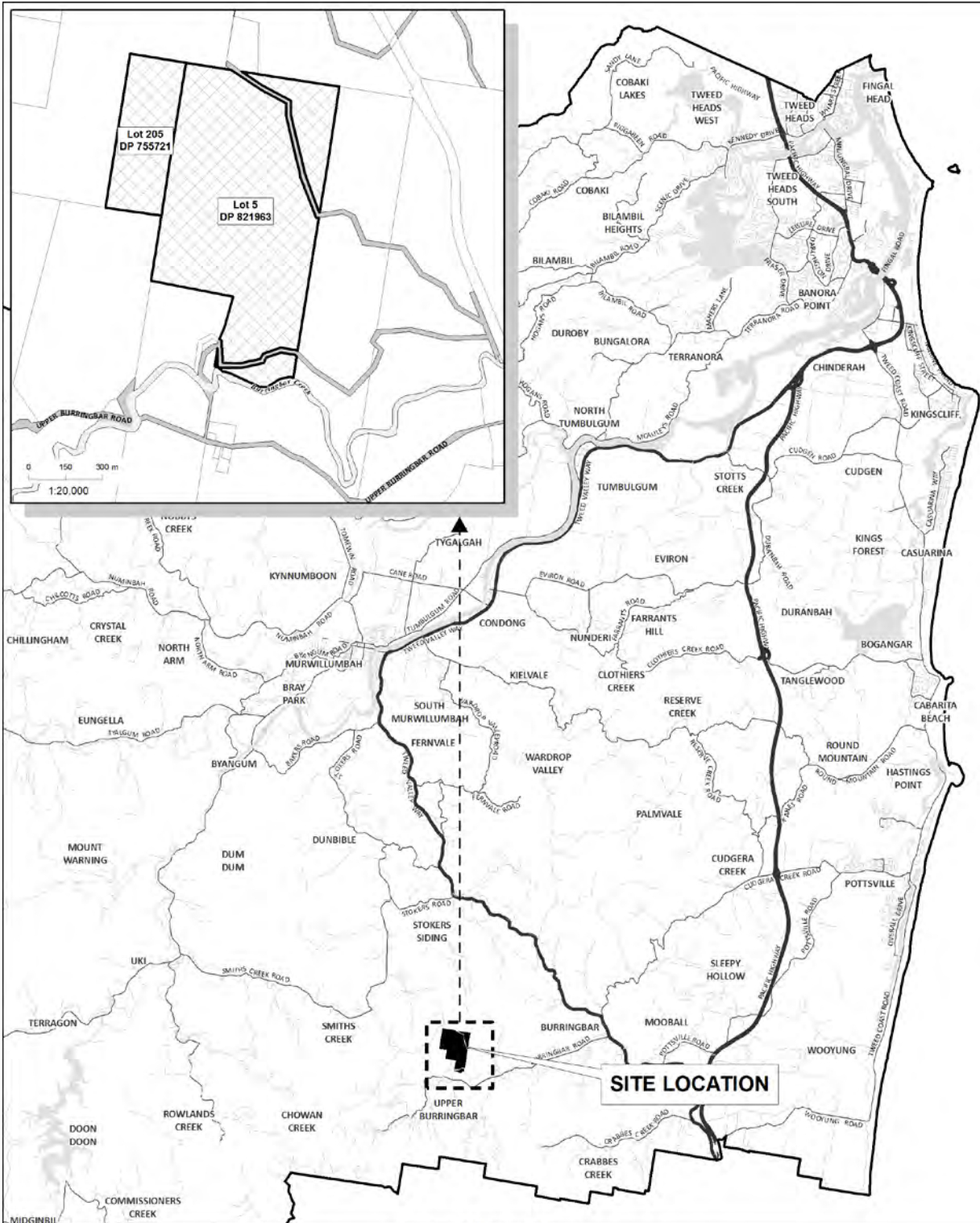
Lots 2-5 are currently vacant and Lot 6 contains an existing dwelling which is proposed to be demolished. New houses are proposed to be constructed on all allotments as per nominated house sites on the plan of subdivision (house construction subject to future consent). Two (2) existing ancillary sheds are also located on proposed Lot 6.

A SEPP 1 Objection accompanied the application as proposed Lot 6 does not meet the minimum lot size for the 7(l) – Environmental Protection (Habitat) zone. Concurrence from the Director General of the Department of Planning was also required (which was granted) as the area within the 7(l) zone is less than 90% of the required minimum lot size, being 21.36ha (Council does not have assumed concurrence).

Existing Lot 5 is benefited by a right of carriageway over adjoining Lot 4 DP 821963 which is separately owned. The right of carriageway is proposed to remain to provide access to the proposed community scheme. The owners of Lot 4 have advised that they raise no objection to a potential increase in traffic along the right of way as a result of approval of this application.

Road upgrade works are required including widening, drainage and installation of culverts.

**SITE DIAGRAM:**



**Locality Plan**

Lot 205 DP 755721; Lot 5 DP 821963  
No. 532 Upper Burringbar Road, Upper Burringbar

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavations a 'Dig before You Dig' enquiry must be made by calling 3100. The information contained on this document remains valid for 30 days only from the date of supply.

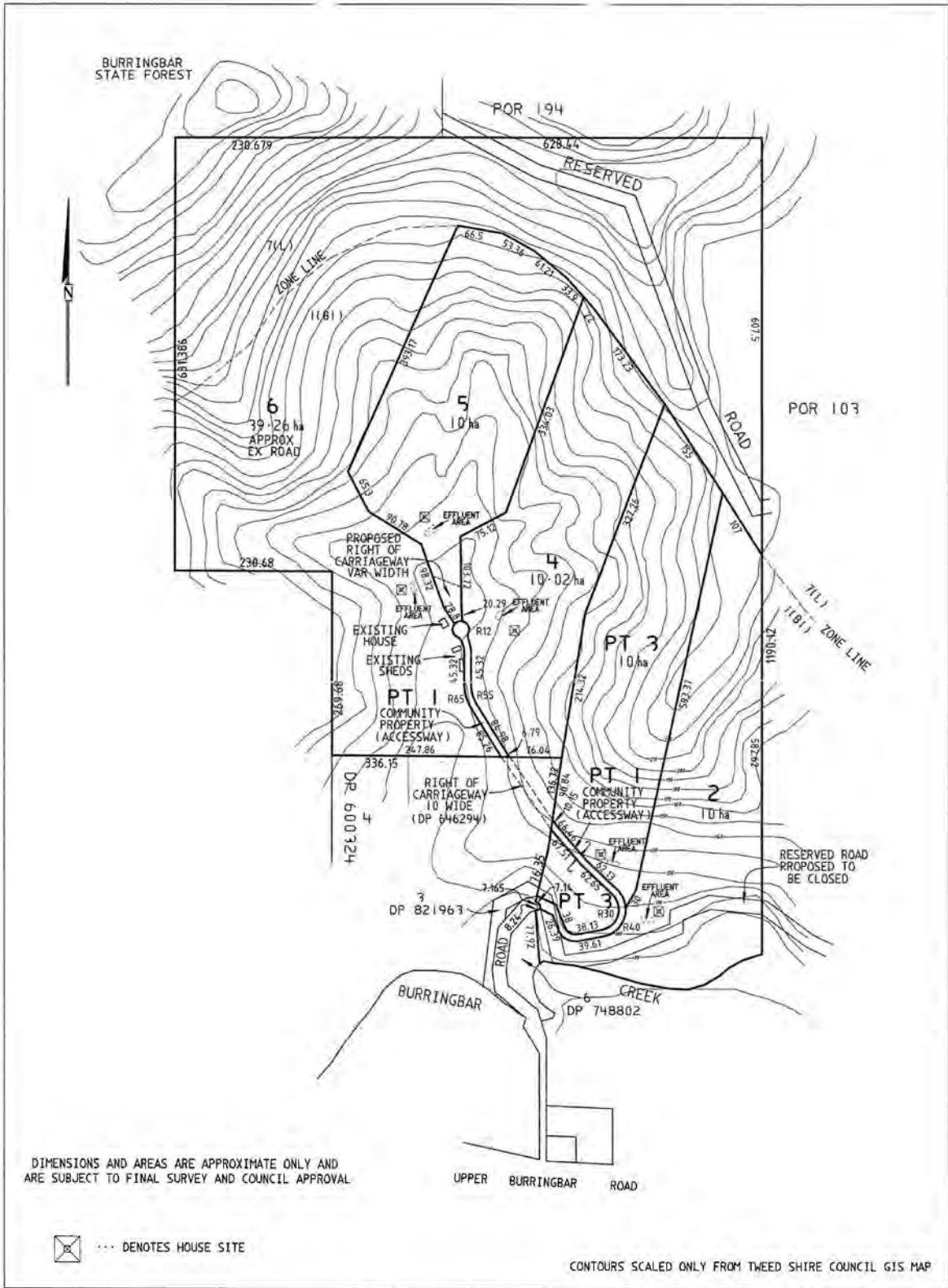
Cadastra: 03 June, 2011  
© Land and Property Management Authority (LPMA) & Tweed Shire Council.  
Boundaries shown should be considered approximate only.

0 1 2 3 4 Km  
1:150,000 @ A4 Portrait  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geospatial Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484  
PO Box 818  
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W | www.tweed.nsw.gov.au  
E | planning@tweed.nsw.gov.au

PROPOSED SUBDIVISION PLAN



DRAWING TITLE PLAN OF PROPOSED COMMUNITY TITLE SUBDIVISION OF LOT 5 DP 821963 AND LOT 205 DP 755721 AT BURRINGBAR	LEVEL DATUM	SCALE 1: 5000	<b>BROWN and HAAN</b> REGISTERED SURVEYORS & DEVELOPMENT CONSULTANTS Suite 7 Carinya, Cnr Commercial Rd & King St, Murwillumbah NSW Ph. (02) 6672 1256 Fax (02) 6672 1276 email: barb@landsurv.com.au
	DATE OF SURVEY 27-01-10	REVISION G	
CLIENT: Mr PAUL BODEY	DRAWN GMB	SHEET 1 OF 1	
	CHECKED BG	JOB No 20961	
	CAD FILE No. 20961-PROP-E		



**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 considered to be consistent with the aims of the TLEP 2000.

Clause 5 - Ecologically Sustainable Development

The subject development application is considered consistent with the four principles of ESD, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms* as it respects the minimum lot size for the 1(b1) zone whilst keeping the existing undersized portion of the 7(l) zone within a single lot.

Clause 8 - Zone objectives

The primary objective of the **1(b1) Agricultural Protection** zone is to *protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses*. The secondary objective is to *allow other development that is compatible with agricultural activities*.

The proposal is considered to be consistent with the zone objectives as the minimum lot size for all 1(b1) allotments is met and the proposed subdivision is not considered to detrimentally affect the use of the agricultural land for agricultural purposes. The smaller lots are considered to remain suitable for agricultural uses such as small scale grazing or small cropping as currently occurs over parts of the site.

The proposal is consistent with the secondary objective in that approval of the application will likely result in dwelling houses being located on the agricultural sites, which is considered to be a compatible and necessary form of development for the zone, particularly from an agricultural management perspective.

It is noted that future consent will need to be sought for dwelling houses.

The primary objectives of the **7(l) – Environmental Protection (Habitat)** zone is to *protect areas or features which have been identified as being of particular habitat significance, to preserve the diversity of habitats for flora and fauna and to protect and enhance land that acts as a wildlife corridor*.

The secondary objectives are to *protect areas of scenic value and to allow for other development that is compatible with the primary function of the zone*.



In this instance, the 7(l) zone is located wholly within proposed Lot 6 and it is worthy of note that the 7(l) portion of the site is already undersized. The proposed subdivision is not considered to result in any increased impacts on the 7(l) zone in terms of habitat significance or scenic value than already attributed to it by virtue of abutting an agricultural protection zone. It is considered that with the recommended conditions of consent, adequate protection of the 7(l) land will occur which will have the advantage of providing further environmental management works via the Habitat Restoration Plan, whilst enabling residential and agricultural use of those parts of the site zoned for such a purpose. As such, the proposed development is considered consistent with the primary and secondary objectives of the 7(l) zone.

#### Clause 15 - Essential Services

Council's reticulated potable water supply and reticulated sewer are not available in the area. Tank water for domestic use and a static provision for fire fighting will be made available.

Effluent treatment is proposed via individual EAA (Effluent Application Area) beds. Council's Environmental Health Officer has reviewed the proposed arrangement and raised no objections, subject to conditions.

#### Clause 16 - Height of Building

A consideration of building heights is not required at this time and will be undertaken with future application for any dwellings on the proposed lots. It is noted that a three storey height limit applies.

#### Clause 17 - Social Impact Assessment

The proposed development is not anticipated to generate significant social impacts, being residential in nature and of a small scale.

#### Clause 19 – Subdivision

This clause outlines that a person must not subdivide land without consent. Consent is therefore sought for the subject application.

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

This clause aims to prevent the potential for fragmentation of ownership of rural land that would adversely affect the continuance or aggregation of sustainable agricultural units or generate pressure to allow isolated residential development and provide public amenities and services in an uncoordinated and unsustainable manner. It also aims to protect the ecological and scenic values of the land and protect the quality of water supply.

Clause 20 specifies that consent may only be granted to subdivision in the 7(l) zone if the allotment to be created is at least 40ha, and at least 10ha in the 1(b1) zone.

In this instance, the land within the 7(l) zone has an existing area of 21.36ha which is not proposed to be further fragmented. A SEPP 1 Objection was submitted and concurrence sought (and received) from the Department of Planning in this regard.

The remaining land falls within the 1(b1) zone, and each lot achieves the required 10ha minimum lot size with the exception of Lot 1 (access road, which has an area of approximately 3248m<sup>2</sup>, or 0.324ha). The shortfall in area of proposed Lot 1 was incorporated into the SEPP 1 Objection and concurrence granted by the Department of Planning. It is noted that the Department of Planning have raised no objection to the lot sizes in the 1(b1) zone, though they have noted that the type of rural living proposed may conflict with the objectives of the Agricultural Protection zone. It is considered that discretion exists at the time consent is sought for dwelling houses on the lots to regulate dwelling design and siting such that the vast majority of each site is retained for agricultural purposes.

With respect to Clause 20, the proposal not considered to adversely affect the continuance of agricultural use of the subject sites or surrounding properties or generate unfavourable pressure for development. The proposal is not considered to detract from the ecological or scenic values of the land and is not located in proximity to the Tweed catchment.

Based on the above, the proposal is considered to accord with Clause 20.

Note: comments from the Department of Planning are considered further in this report.

#### Clause 28 – Development in Zone 7(l) Environmental Protection (Habitat) and on adjacent land

This clause aims to protect identified habitat areas from the adverse impacts of development and specifies that consent must not be granted for development on 7(l) land without considering effects on flora and fauna, the potential for their disturbance, fire risk, rubbish dumping and weed invasion/vegetation clearing.

The clause also requires preparation of a plan of management to mitigate impacts of the proposed development.

The following condition has been applied in this regard by Council's Ecologist:

*“Prior to the commencement of works, a Threatened Species Management Plan for Koalas, threatened rainforest flora and any other threatened species known from or found on the site is to be lodged and approved to the satisfaction of Council's Director of Planning and Regulation or delegate, in accordance with Council's draft guidelines attached to this consent. The Plan is to identify and protect any known or potential threatened species locations and habitat on the subject land and outline measures to reduce known threats or impacts to the species. The Threatened Species Management Plan is to be incorporated into the Community Management Statement and a funding mechanism established and approved by Council”.*

Clause 29 – Development adjacent to Zone 8(a) National Parks and Nature Reserves

Clause 29 aims to ensure that development of land adjacent to Zone 8 (a) does not have a significant impact on wildlife habitat.

Consent must not be granted unless effects on flora and fauna, the potential for their disturbance, fire risk, rubbish dumping and weed invasion/vegetation clearing have been considered.

In this regard, comments were sought from the NSW National Parks and Wildlife Service (NPWS). A letter was received from the Department of Environment and Climate Change (DECC) which raised no objection to the development, though pointed out that Council should ensure consistency of the proposed development with various legislation, including the threatened species provisions of the Environmental Planning and Assessment Act, the Native Vegetation Act and related State Environmental Planning Policies.

In this regard, a detailed assessment of the proposed development has been undertaken by Council's Ecologist, including the matters prescribed by Clause 29 of the Tweed Local Environmental Plan 2000. Subject to conditions and the submission of Threatened Species Management Plan, the proposed development is considered to have minimal impact on local flora and fauna.

Assessment has indicated that the proposed development is acceptable in terms of bushfire and waste management (see further comments from NSW Rural Fire Service and Council's Waste Management Coordinator).

Additionally, it is noted that Council's Ecologist has recommended the prohibition of cats and dogs within the subdivision and the provision of fauna friendly fencing. Such conditions have been applied.

The proposed development is subsequently considered to accord with Clause 29.

Clause 35 - Acid Sulfate Soils

The subject site does not exhibit Acid Sulfate Soils.

Clause 39 – Remediation of Contaminated Land

Council's Environmental Health Officer has reviewed the submitted Contamination Report and advised that all contaminants of concern were below the relevant health investigation levels. As such, remediation under Clause 39 is not required.

Clause 39A – Bushfire Prone Land

The proposed development site is bushfire prone. Due to being a 'subdivision', the application constituted 'integrated development' and a Bushfire Safety Authority from the NSW Rural Fire Service was sought. The RFS issued a bushfire safety authority on 13 August 2010 with five (5) specific General Terms of Approval (GTA's) which have been applied.

The proposed development is considered to be consistent with Clause 39A.

### **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 7(l) – Environmental Protection zone that is already undersized) that are set to minimise fragmentation of agricultural land. Further, the majority of the site is not identified as regionally significant or state significant farmland, though it is noted that a small portion of the site adjoining Burringbar Creek is identified as regionally significant non contiguous farmland. In this regard, comments were sought from Industry and Investment NSW who raised no objection to the proposal. Site inspection has indicated that the subject site and nearby lots are utilised generally as cattle grazing, with pockets of uncontrolled fruit cropping on the subject site. The Department of Primary Industry's Living and Working in Rural Areas (2007) suggests a buffer of 50m between residential development and stock grazing. There is no specified buffer from small cropping, except bananas which are not grown in the vicinity of the site. A 300m buffer is also recommended between regionally significant farmland and residential development.

Inspection of the plans and Council's aerial photography has indicated that the proposed dwelling sites are in excess of 100m from any adjoining properties except for the proposed dwelling on proposed Lot 3 which is only 70m to the adjoining property. However the 50m buffer is well exceeded.

With regard to regionally significant farmland, the nearest dwellings to the farmland, being the proposed dwelling on Lots 2 and 3 are located approximately 70m (Lot 2) and 150m (Lot 3) from the identified regionally significant farmland. NSW Industry and Investment (Primary Industries Division) were contacted with regard to the occurrence of regionally significant farmland on the site. NSW Industry and Investment raised no objections to the proposed development, noting that they are no longer providing specific advice on agricultural issues relating to development applications unless they are for intensive animal agriculture.

Industry and Investment (Primary Industries Division) have also produced a guideline titled 'Issues for Community Title in Agricultural Areas'. This guideline outlines a number of assessment criteria for community title developments on agricultural land and is addressed in detail further in this report. It is noted that the application is generally consistent with the assessment criteria of the guideline.

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, pasture land or regionally significant farmland. The subject application is consistent with Clause 12 of the NCREP.

#### Clause 15: Wetlands or Fishery Habitats

The subject site is intersected by Burringbar Creek and as such, Clause 15 of the NCREP is relevant. It is noted that Industry and Investment NSW (Fisheries Ecosystems Branch) have indicated that Burringbar Creek is a key fish habitat, as is a 3<sup>rd</sup> order stream which bisects adjoining Lot 4 (and is not affected by the subject proposal).

With regard to the provisions of Clause 15, the proposed development (which requires works to upgrade an existing creek crossing over Burringbar Creek) is not considered to adversely affect the quality or quantity of water flows within Burringbar Creek. In fact, Council's Ecologist has advised that the proposed culverts will have the effect of improving the flow of water for fish movement, though there may be some minor habitat disturbance in the construction phase (movement of rock overhangs etc). It is noted however that any displaced material has the ability to be reused and habitat recreated.

The creek does not form part of any existing commercial fishery operations and is not located in proximity to any aquatic reserves or foreshore areas. A plan of management has been conditioned which shall address the conservation of existing vegetation along the creek and conditions relating to erosion and sediment control have been applied to minimise the entry of soil and sediment into the creek during the upgrade phase of the road.

Industry and Investment NSW (NSW Fisheries) have reviewed the application and provided general terms of approval, including the requirement for the applicant to obtain a permit under s198-202 of the *Fisheries Management Act* 1994 for dredge and reclamation activities prior to any work commencing.

The proposed development is considered to be consistent with Clause 15.

#### Clause 43: Residential development

The proposed subdivision is accessed via an existing track which requires upgrading to meet current road design standards as well as Rural Fire Service regulations. A detailed assessment has been undertaken which demonstrates that the proposed development should not have an adverse impact on the environment and will not result in an unacceptable increase in traffic to and from the site. The proposal's integration into the road network and proposed road widths are considered acceptable. Conditions regarding sediment and erosion control have been applied.

As such, the proposed subdivision is considered to be consistent with Clause 43.

#### Clause 81: Development adjacent to the ocean or a waterway

Clause 81 relates to the provision of foreshore access.

The proposed development does not interfere with any foreshore access due to the waterway being a small creek through private properties, nor is there a foreshore management plan for the subject area. There are no buildings proposed as part of this application.

The proposed development does not contravene Clause 81.

#### SEPP No. 1 - Development Standards

SEPP 1 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.

A SEPP 1 Objection was submitted to Clause 20 of the Tweed Local Environmental Plan, as land within both zones (7(l) and 1(b1) falls short of the minimum lot size as follows:

- Lot 1 (community property/access way) is zoned 1(b1) Agricultural Protection with a 10ha minimum lot size. The area of proposed Lot 1 is approximately 0.3248ha.
- Lot 6 is zoned both 1(b1) Agricultural Protection and 7(l) Environmental Protection – Habitat (minimum lot size of 40ha). The 1(b1) portion of the site exceeds 10ha and as such a dwelling entitlement will remain. The 7(l) portion of the site is only 21.36ha.

The applicant has supplied the following justification for the SEPP 1 Objection (italicised):

*“The proposal is consistent with 1(b1) zone objectives since the community lots 2-5 have an area in excess of 10ha and Lot 6 has a 1(b1) component of more than 10ha. Lot 1 is less than 10ha however it is not a saleable lot being association property shared by all other lots and required by the Land and Property Management Authority to be shown as Lot 1 in the Community Scheme.*

*The proposal is consistent with the 7(l) zone objectives as the environmental protection zone component is not fragmented.*

*Development Standard to be Varied  
Clause 20 of the Tweed Local Environmental Plan 2000*

*The standard is unreasonable as the total component of 7(l) land within the parent property is substandard anyway, being approximately 22.8ha excluding road. The proposal is not inconsistent with the standard. The pattern of existing subdivision is irregular in this locality of uneven topography”.*

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(b) and 7(l) zone are achieved notwithstanding the undersized allotments (one to be created purely for property access in the 1(b) zone and the allotment encompassing the 7(l) zoned land which is presently undersized).

The objection is considered to be well founded, as proposed Lot 6 (containing the 7(l) land is already well below the required 40ha minimum lot size and proposed Lot 1 (access way) is required to be nominated as a stand alone 'Lot' by the Land and Property Management Authority.

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 (proposed Lot 6 received its dwelling entitlement from the balance of the 1(b) land, not the 7(l)), 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 No. 44 - Koala Habitat Protection

Council's Ecologist has advised that the site contains known koala habitat and as such has applied conditions relating the submission and approval of a Threatened Species Management Plan as follows:

*"Prior to the commencement of works, a Threatened Species Management Plan for Koalas, threatened rainforest flora and any other threatened species known from or found on the site is to be lodged and approved to the satisfaction of Council's Director of Planning and Regulation or delegate, in accordance with Council's draft guidelines attached to this consent. The Plan is to identify and protect any known or potential threatened species locations and habitat on the subject land and outline measures to reduce known threats or impacts to the species. The Threatened Species Management Plan is to be incorporated into the Community Management Statement and a funding mechanism established and approved by Council".*

Detailed conditions have also been applied to prohibit the removal of any primary koala food trees as well as a prohibition on dogs and cats.

In combination, these conditions are considered to ensure consistency with the provisions of SEPP 44.

#### 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 suitably zoned parts of the subject site to continue 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 minimum lot sizes for the agricultural protection zone are maintained. The proposal is consistent with Clause 10(3)(b).

Given the proposal is for subdivision only (with dwelling construction subject to future consent), 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. NSW Industry and Investment (Primary Industries Division) have raised no objection to the proposal. The proposal is consistent with Clause 10(3)(c).

Adjoining sites exhibit the same zoning mix as the subject site and the proposed development is considered to be compatible with adjoining land uses. Clause 10(3)(d) is considered satisfied.

A Community Management Statement for the development is required to be submitted which will require assessment by Council officers. An acceptable plan and commencement of management actions in accordance with that plan should serve to ameliorate any potential for land use conflict, though given the similarity of land uses between the proposed development and surrounding sites, conflict is not anticipated. 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 and RU2 – Rural Landscape under the draft Tweed Local Environmental Plan 2010, with a corresponding minimum lot size of 10ha (RU1) and 40ha (RU2). 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

The proposed community title subdivision generally complies with the requirements of Section A5 of the DCP. With regard to the relevant provisions regulating lot size all allotments (except proposed Lot 6) are compliant meeting the 10ha minimum lot size and easily providing sufficient width and length to accommodate a standard 10m by 15m building envelope. Proposed Lot 6 meets the minimum lot size provisions for the 1(b1) zone and has received concurrence to vary the standard 40ha control for the 7(l) Environmental Protection zone.

With regard to physical constraints on the site, it is noted that the approach road is flood liable (which is proposed to be upgraded as part of the proposed works) to provide immunity to the Q10 flood event. All proposed allotments are elevated above RL 100 AHD with no flood threat existing.

The site is bushfire prone and a Bushfire Hazard Assessment was submitted (prepared by FPA Australia) and reviewed by the New South Wales Rural Fire Service under the integrated development provisions of the Act. The Rural Fire Service issued a bushfire safety authority under Section 100B of the Rural Fires Act and such conditions have been applied.

Council's Ecologist has reviewed ecological matters and Council's Environmental Health Officer has provided comments on the suitability of the proposed locations for onsite effluent treatment. Both officers have deemed the application to be acceptable and applied conditions of consent.

With regard to rural watercourses and drainage, being a rural environment, stormwater discharge will remain as predominantly sheet flow, with surface run-off finding its way to the natural water-course below Lots 4, 5 & 6. A table drain is proposed on the eastern side of the public accessway, with drainage along the driveway managed via reinforced concrete pipes beneath the road, with discharge running into the natural watercourse below.

Compliant road access is provided.

The proposal is considered to be consistent with DCP A5.

A11-Public Notification of Development Proposals

The application was notified in accordance with DCP A11 for fourteen (14) days from 28 June to 12 July 2010. During this period, four (4) submissions were received. The matters raised in the submissions are addressed further in this report.

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

Clause 92(b) Applications for demolition

No demolition is proposed by this application. It is noted that the existing dwelling on Lot 6 is proposed to be demolished in the future. Separate approval for demolition will be sought at a later date.

**(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 subdivision is considered to be generally benign with negligible adverse impacts on the context and setting of the Upper Burringbar area, subject to the recommended conditions.

Access, Transport and Traffic

*Road upgrade (public and private)*

As per Council's Design Specification D1, a 4.5m full width seal access is required where a development services between 3 and 5 properties. As such, Council will accept a 4.5m trafficable pavement within a 6.5m formation, plus passing bays approximately every 200 metres to provide a 6.0m sealed pavement for the private road portion within the subject property (as advised by Council's Development Assessment Engineer). This road will terminate in a cul-de-sac at the entry to Lots 4, 5 and 6.

Similarly, Council's Development Assessment Engineer has advised that Council will accept a 4.5m trafficable pavement within a 6.5m formation, plus widening for passing bays providing a 6.0m sealed pavement (where advised) for the public road portion servicing the development.

It is noted that the engineering drawings show the cul-de-sac head with only a 12m diameter which is below Council's standards. A condition has been applied specifying construction of the cul-de-sac head to 18m in line with Council's standards.

Sections of the upgraded public and private roads servicing the development will be required to provide kerb and gutter, including the cul-de-sac head. Individual driveways are proposed providing a 3 metre wide, 2 coat bitumen seal which is consistent with Council's Driveway standards.

*Intersections*

Council's Development Assessment Engineer has advised that the intersection of Upper Burringbar Road and the laneway servicing the development will need to be upgraded to provide a Type AUR Right Turn Treatment in accordance with Austroads 2005, unless agreed otherwise by Council. An AUR intersection has been proposed in the submission.

### *Creek Crossings*

There are four culvert crossings proposed, one to replace the existing bridge within the road reserve over Burringbar Creek at Chainage 200-220, another at around chainage 340 and two at the beginning of driveways to proposed Lots 5 and 6.

The crossing at Chainage 200-220 is proposed from 6 x 3.3 wide x 2.4 high box culverts to replace the old bridge over Burringbar Creek.

The crossing at Chainage 340 is proposed of 6 x 1.2m wide x 0.6m high box culverts. The third crossing at Chainage 60 is proposed of 3 x 900mm pipes at the beginning of entry to Lot 5 and 6 driveways.

The fourth crossing is at Chainage 6.09 and is proposed of 2 x 900mm pipes at beginning to Lot 6 driveway.

The existing creek crossing (bridge) is required to provide flood immunity to the Q10 flood event as per Council's specifications. Appropriate conditions have been applied, including the requirement for the submission of a Hydraulic Report at Construction Certificate stage to confirm the sizing of the proposed culverts.

No objections have been raised to the proposed culverts by Council's Development Assessment Engineer.

### Flora and Fauna

Council's Ecologist has reviewed the proposed development in considerable detail and applied detailed conditions of consent relating to the protection of threatened flora and fauna species on the site.

### Sediment & Erosion Control

Access driveways to proposed dwelling sites are to be sealed minimising the loss of aggregate to adjacent waterways. Standard conditions have been applied with regard to standard erosion and sediment control devices during the construction phase.

### Draft Community Management Statement

A Community Management Statement (CMS) (assumed Draft) has been submitted with the DA. A condition has been applied requiring a final CMS to be submitted and approved by Council prior to the issuing of the Subdivision Certificate.

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

### Potable Water Supply

Domestic water supply is proposed via individual rain water tanks.

### Onsite Sewage Management

The applicant has provided an On-site Sewage Management Systems (OSMS) report prepared by Duncan Dey dated 30 November 2009. The report includes an OSMS site and soil assessment for each separate allotment with recommendations for suitable wastewater treatment method and OSMS land application area locations. Effluent is to be treated to secondary standard prior to discharge to appropriately sized Evapo-Transpiration / Absorption (ETA) beds. Proposed lot 6 is to have additional disinfection of treated effluent prior to discharge due to proximity of the proposed effluent Land Application Area (LAA) to the creek.

The applicant has confirmed in writing that the existing dwelling on proposed Lot 6 will be demolished. The OSMS servicing the existing dwelling and packing shed will not be required and decommissioning of the existing systems should therefore be undertaken prior to issue of subdivision certificate. An appropriate condition has been applied.

It is considered the proposed allotments provide sufficient area and suitable locations for on-site sewage management of domestic wastewater as recommended in the OSMS report prepared by Duncan Dey dated 30 November 2009.

No objections were raised by Council's Environmental Health Officer to the above, subject to the imposition of the following condition:

*"Prior to the issue of subdivision certificate the applicant shall decommission the existing on-site sewage system including the septic tank and effluent disposal area servicing the existing dwelling on proposed Lot 6 in accordance with the guideline Advisory Note 3 dated may 2006 prepared by NSW Health. Following the decommissioning the applicant shall provide to Council a certification statement from a NSW licensed plumber confirming the decommissioning has been completed in accordance with Advisory note 3".*

### Flooding

Council's Development Assessment Engineer has advised that all proposed allotments are elevated above RL 100 AHD with no flood threat existing. The proposed creek crossing (culverts) will be required to provide immunity to the Q10 storm event (sizing to be confirmed at Construction Certificate stage).

### Contaminated Land

A Preliminary Contaminated Land Assessment was prepared by HMC Environmental Consulting (HMC 2010.003) dated February 2010.

Council's Environmental Health Officer has reviewed the report and conducted a site inspection and has advised the following:

*"The report identifies an existing dwelling, two sheds and an aboveground fuel tank located within 100m from the proposed dwelling site on proposed Lot 6. The report indicates the sheds are currently used for the storage of farm machinery, banana packing and are likely to have been used for the storage of chemicals. A site inspection undertaken on the 12 July 2010 revealed there are significant buffer distances between the existing structures and the proposed dwelling sites. The proposed dwelling site on proposed Lot 6 is separated by a creek to the existing structures. Potential contamination from existing structures is not anticipated to impact upon the proposed dwelling sites considering the significant buffer distances that exist."*

No further concerns with regard to contaminated land are raised, with the conclusion that the site is not contaminated land.

#### Stormwater

Being a rural environment, stormwater discharge will remain as predominantly sheet flow, with surface run-off finding its way to the natural water-course below Lots 4, 5 & 6. No easement provisions are proposed or required.

#### Regionally significant farmland and significant non contiguous farmland

A small portion of proposed Lot 1 is identified as regionally significant non contiguous farmland. The Department of Primary Industries have previously advised that they raise no concerns in this regard for applications other than intensive animal agriculture, which the subject application is not.

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

During the notification period, four (4) written submissions were received which raised issues as follows. All issues are considered appropriately addressed via the recommended conditions of consent and none are considered to warrant refusal of the application.

<b>Matters raised in submission</b>	<b>Planning comment</b>
<p>It is impossible for vehicles to safely enter and exit the lane leading to the property. Vehicles travelling east on Upper Burringbar Road have only 25m to react to vehicles entering or exiting the lane. Increased vehicle flow would be dangerous.</p>	<p>The plans show upgrades to the existing intersection to comply with Austroads 2005. This includes the formalisation of a passing bay directly opposite the intersection and the installation of regulatory signage (give way sign) and linemarking. The longitudinal section also shows lowering of the existing road at the intersection to achieve improved sight distance. Such measures are considered to be a significant improvement to the current road conditions which should serve to improve safety when entering and exiting the site. It is noted that matters such as speeding vehicles are not within Council's jurisdiction and are a Police matter. As such, this reason does not warrant refusal of the application.</p>
<p>Any changes to the existing bridge could adversely affect the platypus population living in the creek.</p>	<p>A Fisheries permit is required for any new bridge or culvert structure which must be constructed so as to avoid impacts on the creek and maintain fish passage. This matter has been conditioned.</p>
<p>Widening of the road will require the removal of endangered trees.</p>	<p>Macadamia tetraphylla (Rough Shelled Bush Nut) is located in the vicinity of the public road though Council's Ecologist has indicated it is likely within the riparian zone (along the creek). The recommended condition for the Threatened Species Management Plan incorporates threatened rainforest flora and as such, consideration of the trees (dependant upon their location) is required as part of that plan. As such, this does not form a reason for refusal of the application.</p>



<b>Matters raised in submission</b>	<b>Planning comment</b>
<p>Upgrade of the road and bridge will restrict access to the waterhole and existing pump which is the only means to get water to the house.</p>	<p>The Water Management Act 2000 provides that an owner or occupier of a landholding is entitled to take water from a river, estuary or lake which fronts their land or from an aquifer which is underlying their land for domestic consumption and stock watering without the need for an access licence. Should the land not front a river, estuary or lake, then a licence under the WMA is required (which is the case at the site in question). As such, this is a matter beyond Council's control and does not form a reason for refusal of the application. It is not known whether an appropriate licence to pump from the creek exists however this is not a matter for Council's concern under Section 79C of the Environmental Planning and Assessment Act.</p>
<p>Water levels in the creek will be depleted if pumping from the creek is proposed for the new dwellings.</p>	<p>Dwelling sites only are sought under the current application and the application notes that water tanks are proposed for potential future domestic use. Appropriate licences would be required if supply from the creek was proposed. As such, this matter does not warrant refusal of the application.</p>
<p>Rates will increase</p>	<p>There is no evidence to suggest that approval of a subdivision in this location will increase rates. This is not a matter for Council's concern under Section 79C of the Environmental Planning and Assessment Act.</p>
<p>Widening of the road will move it closer to our property</p>	<p>The road is located within a designated road reserve. Minor widening is proposed to achieve compliance with Austroads standards and improve safety, wholly contained within the existing reserve alignment. This does not form a reason for refusal of the application.</p>

<b>Matters raised in submission</b>	<b>Planning comment</b>
<p>At the road junction there is a blind spot and a serious accident is inevitable with increased traffic.</p>	<p>The plans show upgrades to the existing intersection to comply with Austroads 2005. This includes the formalisation of a passing bay directly opposite the intersection and the installation of regulatory signage (give way sign) and linemarking. The longitudinal section also shows lowering of the existing road at the intersection to achieve improved sight distance. Such measures are considered to be a significant improvement to the current road conditions which should serve to improve safety when entering and exiting the site. This matter does not warrant refusal of the application.</p>
<p>Traffic noise will increase</p>	<p>The road has sufficient capacity to cater for a small increase in additional traffic as a result of approval of this development (inclusive of the proposed upgrades). It is noted that Council's standard condition relating to all work associated with the approval being carried out so as not to impact the neighbourhood in terms of noise (and other matters) has been applied. It is not considered that traffic noise will be significant given the rural nature of the locality and the relatively minor nature of the proposed subdivision. As such, this is not considered to warrant refusal of the application.</p>
<p>Waste water and sewage could find its way into Burringbar Creek</p>	<p>Council's Environmental Health Officer has reviewed the proposed OSSM treatment land application areas (LAA's) and advised that they are appropriate with regard to proximity to the creek. It is noted that proposed Lot 6 is to have additional disinfection of treated effluent prior to discharge due to the proximity of the LAA to the creek (approximately 300m). As such this does not warrant a reason for refusal of the application.</p>

<b>Matters raised in submission</b>	<b>Planning comment</b>
More housing may create an increased bushfire risk.	There is no evidence to suggest that increased housing in this location could increase bushfire risk. It is noted that the Rural Fire Service have provided General Terms of Approval under Section 100B of the Rural Fires Act for the subdivision and further bushfire assessment for individual dwellings on the site will occur at the time consent is sought for such. Therefore this is not considered to form a reason for refusal of the application.
A koala management plan must be incorporated into this DA	Conditions have been applied in this regard by Council's Ecologist.
Council must show consistency between determinations and the same conditions applied to DA08/0240 should be applied to DA10/0360.	Similar conditions to DA08/0240 have been applied for this application by Council's Ecologist.
The existing platypus population in Burringbar Creek must be protected. A declared area (fencing, planting of natives to protect and stabilise land and creek bank) must be set aside.	Platypus will be protected and their habitat enhanced through the requirement for a Threatened and Significant Protected Species Management Plan which will be tied to the Community Management Statement and funded by the Community Association.
There is no mention of platypus sightings in the environmental report	Platypus have been considered within Council's environmental assessment and appropriate conditions imposed to ensure protection.
Runoff from above should not pollute the dam at number 534	There should be no increase in runoff from the subject site due to considerable land area available for infiltration and the installation of drainage along the proposed upgraded road and internal driveway. This does not form a reason for refusal of the application. In any case, conditions about an ongoing water quality program have been applied.

Accordingly, the recommended conditions of consent are considered to appropriately address all relevant matters raised above.

**(e) Public interest**

Subject to the recommended conditions, the proposed development is generally in the public interest, being consistent with the prescribed zoning and Council's Subdivision Manual. Environmental impacts are considered to be appropriately ameliorated via the proposed conditions of consent and the site is considered suitable for the development. As such, the proposed subdivision is considered to be in the public interest.

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is therefore considered that the site is suitable for the development and warrants approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**16 [PR-CM] Development Application DA10/0342.04 for an Amendment to Development Consent DA10/0342 for Dwelling Additions and Retaining Wall at Lot 19 DP 737064, No. 54 Parkes Lane, Terranora**

**ORIGIN:**

**Building and Environmental Health**

**FILE NO: DA10/0342 Pt1**

**SUMMARY OF REPORT:**

At its meeting of 19 October 2010 Council granted conditional development consent to Development Application DA10/0342 for a proposed two storey outbuilding connected with the existing dwelling and the use of an illegally constructed retaining wall.

The applicant has since lodged an application to modify this consent under the provisions of section 96 of the Environmental Planning & Assessment Act 1979.

The approved application involved the construction of a two storey outbuilding consisting of a 144m<sup>2</sup> garage on the ground floor with a 53.6m<sup>2</sup> first floor component comprising a rumpus room and bathroom. A 32m<sup>2</sup> first floor deck was located at the northern end of the building and two other smaller decks linked the outbuilding to the existing swimming pool deck.

Two small Bali huts were also approved on the decking and swimming pool surrounds.

This approval also included the conversion of the existing double garage of the dwelling into a bedroom and the use of an illegally constructed 1.40m high retaining wall located inside part of the rear property boundary.

The current Section 96 proposal to modify the outbuilding structure involves additional habitable rooms on the first floor for family use whilst improving the overall appearance of the building.

The application to modify the consent was notified to adjoining property owners and three written objections were received.

The objector's main concerns related to the size of the building, possible dual occupancy, possible business use, privacy issues and suitability in this location.

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

On balance of the assessment of the relevant planning matters, the nature of the allotment, and the circumstances of the case it is considered that the proposed application to modify the consent is suitable for approval subject to the attached conditions.

**RECOMMENDATION:**

That Development Application DA10/0342.04 for an amendment to Development Consent DA10/0342 for dwelling additions and retaining wall at Lot 19 DP 737064, No. 54 Parkes Lane, Terranora be approved subject to the original conditions of consent and the following new/altered conditions:

1. Delete Condition No. 1 which reads:

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, subject to a revised plan being submitted which alters the layout of the proposed bathroom on the mezzanine floor of the proposed outbuilding to limit the facilities within, to correspond with the proposed adjoining rumpus room use, to the satisfaction of the Director Planning and Regulation.

and replace with Condition No. 1A which reads:

- 1A. 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.

2. Delete Condition No. 4 which reads:

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

and replace with Condition No. 4A which reads:

- 4A. A detailed plan of landscaping is to be submitted and approved by the PCA prior to the issue of a Construction Certificate. Such plan is to detail particular species and densities of plants located within the southern, eastern and northern setbacks of the development which upon reaching maturity will minimise impact from the development onto surrounding properties. Planting along the eastern side of the additions shall be located on top of the existing retaining wall to maximise the screening effect.

3. Insert new Condition No. 45.1 which reads:

- 45.1 Prior to the issue of an occupation certificate or occupation of the dwelling house additions, screens which will restrict direct visual contact with adjoining premises shall be installed to the outside of windows to the eastern wall of the media room, rumpus room and office.

4. Delete Condition No. 47 which reads:

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

and replace with Condition No. 47A which reads:

- 47A. The garage is not to be used for any habitable commercial or industrial purpose.**
- 5. Delete Condition No. 48 which reads:**
- 48. The garage/rumpus must not be used for human habitation or occupation.**
- and replace with Condition No. 48A which reads:**
- 48A. The garage/rumpus must not be used for separate human habitation or occupation.**
- 6. Include the following new condition under the USE heading which reads:**
- 50. The proposed dwelling additions shall be used for single dwelling purposes only in conjunction with the existing dwelling.**

**REPORT:**

**Applicant:** Mr WF Morley and Mrs P Morley  
**Owner:** Mr Wade F Morley & Mrs Priscilla Morley  
**Location:** Lot 19 DP 737064, No. 54 Parkes Lane, Terranora  
**Zoning:** 1(c) Rural Living  
**Cost:** Nil

**BACKGROUND:**

The property is zoned 1(c) Rural Residential under the Tweed Local Environmental Plan 2000 and is located on the eastern side of Parkes Lane Terranora. The property is irregular in shape, contains an existing two storey dwelling house with attached double garage and in-ground concrete swimming pool.

The property falls to the rear having a grade of approximately 25 percent.

The Applicant stated in their original application that the proposed additions will improve functionality and improve living & storage space in association with the existing dwelling.

The proposed habitable additions will be used in conjunction with the existing dwelling and will continue to be used as a single dwelling only.

There will be a bathroom in the first floor additions however no additional kitchen or laundry facilities are proposed.

The modifications for which the applicant seeks approval are as follows:

- *The garage/studio building has been repositioned. The rear setback has been reduced from 7m to 4.5m. The setback from the northern boundary reduced from 16m to 15.27m and the setback from the southern boundary increased from 11m to 16m.*
- *The size of the garage/studio building has been reduced from 18mx8m (144m<sup>2</sup>) to 15.19mx7.4m (112.4m<sup>2</sup>).*
- *Roof shape changed from pitched to skillion.*
- *Internal stairs slightly repositioned.*
- *Upper floor layout modified. Deck removed from northern end of first floor with media, office pottery and storerooms added and size of rumpus room reduced.*
- *External decks modified and roof over verandah changed from flat roof to pitched roof.*
- *Bali hut removed.*
- *Additional landscaping provided to eastern side of retaining wall to act as a screen.*



The first floor additions will form a pavilion type extension to the dwelling located adjacent to the swimming pool and outdoor recreation area. Access to the existing house from the additions will be freely available via a series of stepped timber decks which will provide a physical connection between the two areas and facilitate use of both areas.

The modified design of the garage/rumpus room building is considered to be an improvement on the original consent, has been designed to better address the slope of the site and will provide a more contemporary external presentation.

The external appearance of the modified design is more representative of an extended dwelling addition than a garage or outbuilding.

Deletion of the deck at the northern end of the building will alleviate any fears of loss of privacy from adjoining allotments from this area.

It is considered that the additions will be generally consistent with the established and desired built form and character of the rural living locality.

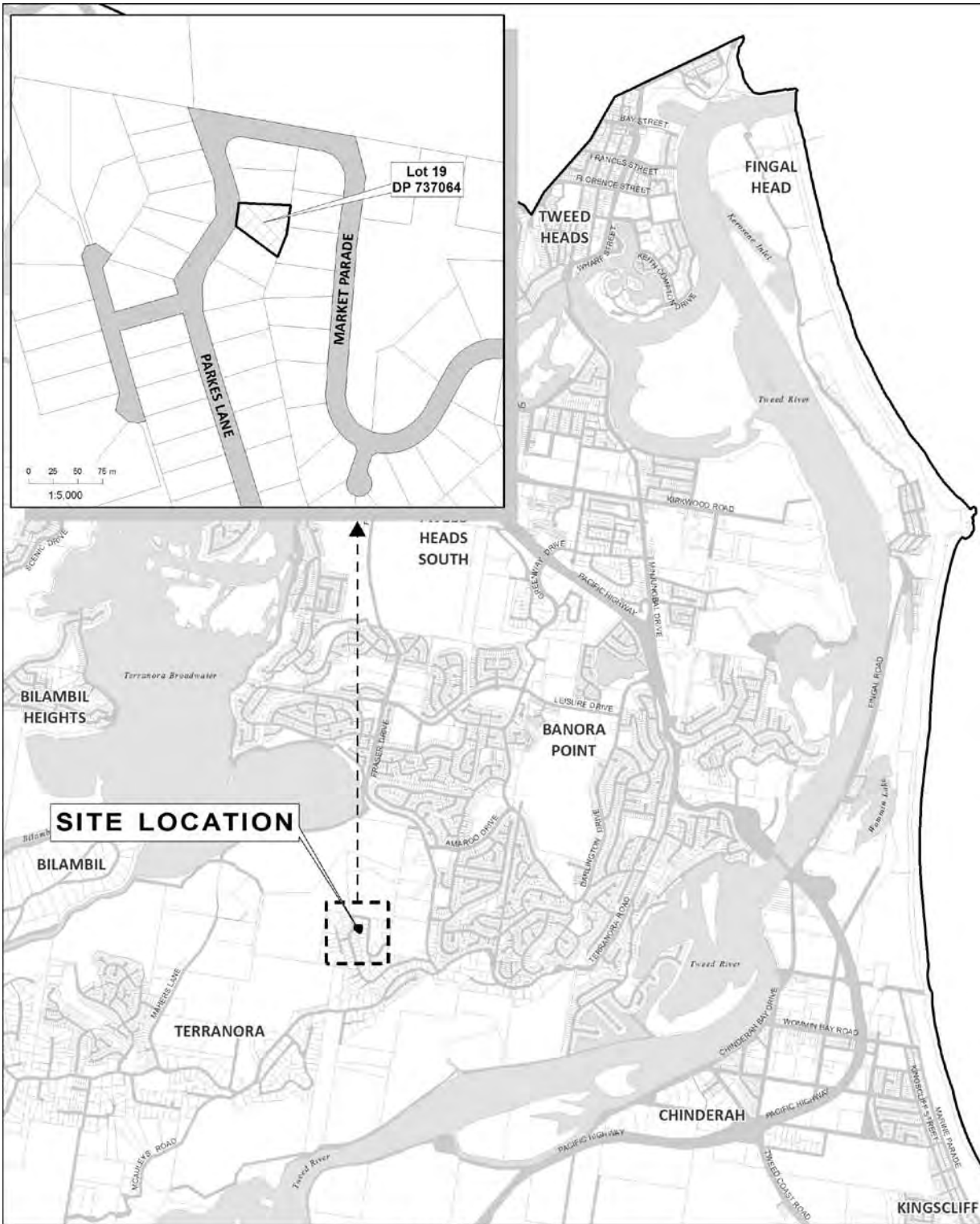
Notwithstanding that the addition will be relatively large it is considered that the slope of the allotment, improved design and existing and proposed landscaping will reduce the impact of the building on the streetscape.

Due to the slope of the allotment the building will not be highly visible from Parkes Lane and perusal of the allotments in Market Parade has revealed the presence of several two storey dwellings which impose a greater impact on the streetscape than the proposal.

Whilst the additions will be visible from Market Parade its impact on the streetscape will be minimised due to its spatial separation from the street, visual screening created by existing dwellings and landscaping and proposed landscaping along the eastern side of the building.

Roof water from the garage/studio will be disposed into an existing rainwater drainage easement which benefits the property.

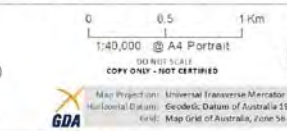
**SITE DIAGRAM:**



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

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

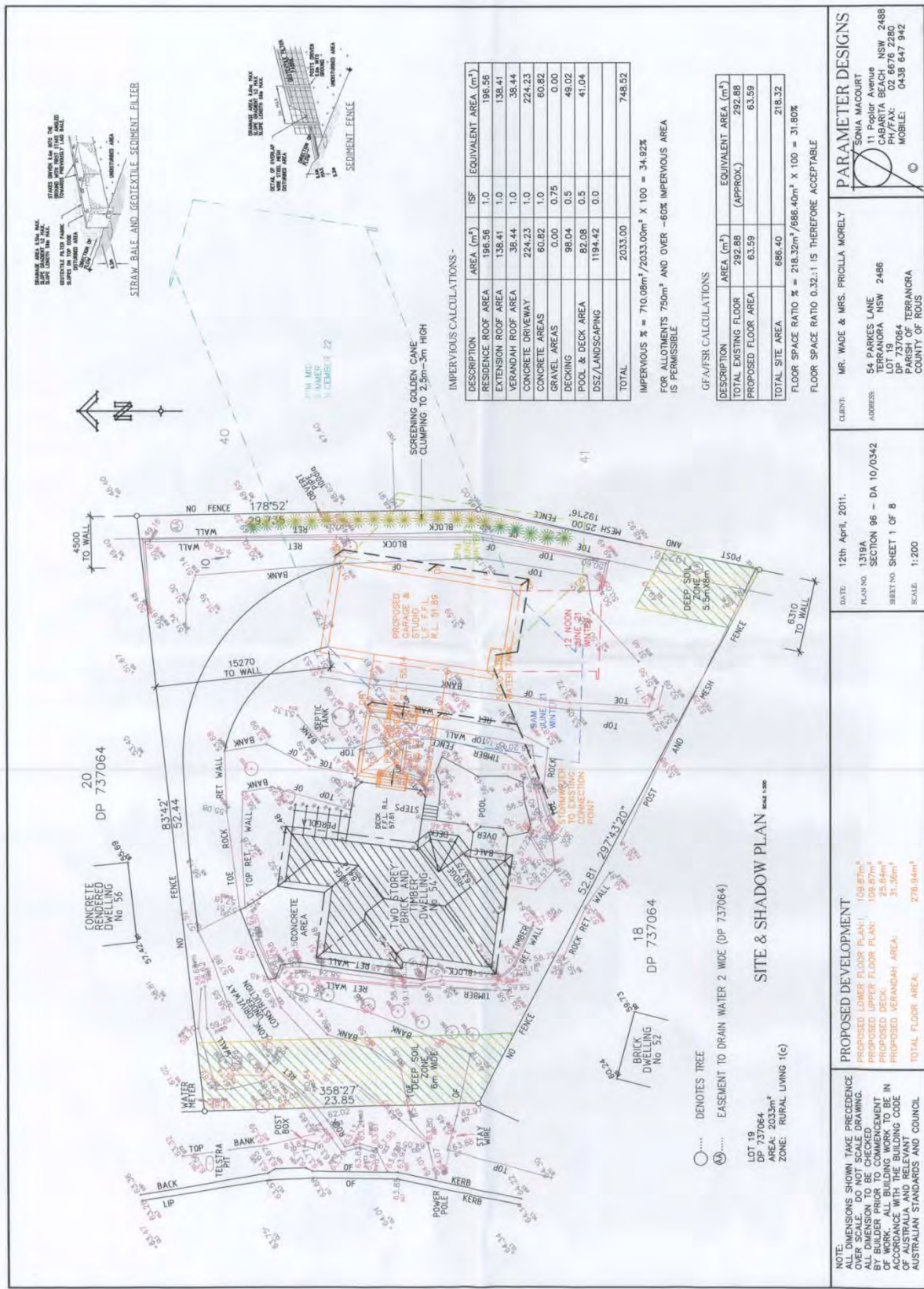
Cadastre: 30 June, 2011  
 © Land and Property Management Authority (LPMA) & Tweed Shire Council.  
 Boundaries shown should be considered approximate only.



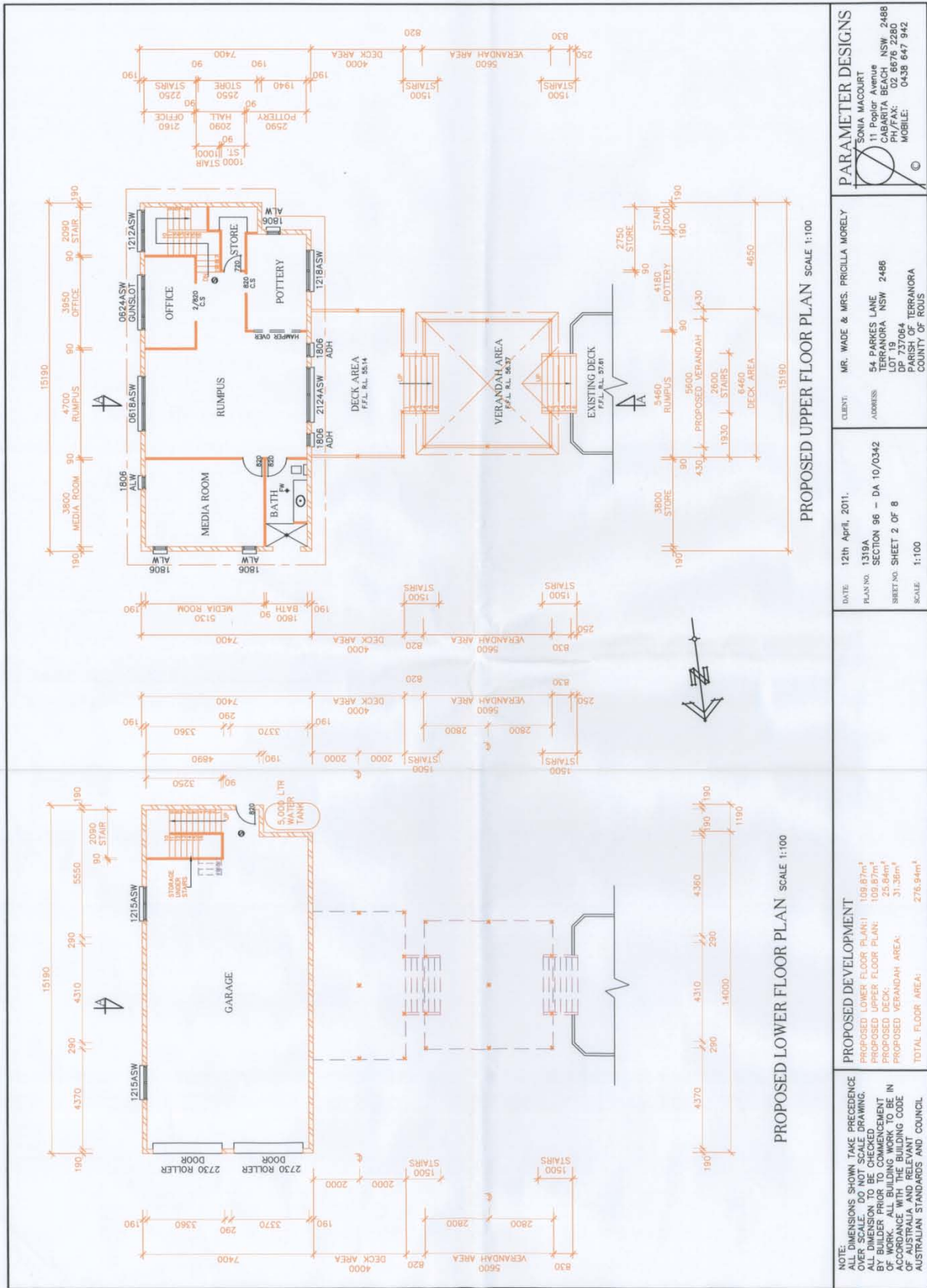
Civic and Cultural Centre  
 3 Tumbiung Road  
 Murrumbidgee NSW 2484  
 PO Box 816  
 Murrumbidgee NSW 2484  
 T | (02) 6670 2400 | 1300 292 872  
 F | (02) 6670 2429  
 W | www.tweed.nsw.gov.au  
 E | planning@tweed.nsw.gov.au



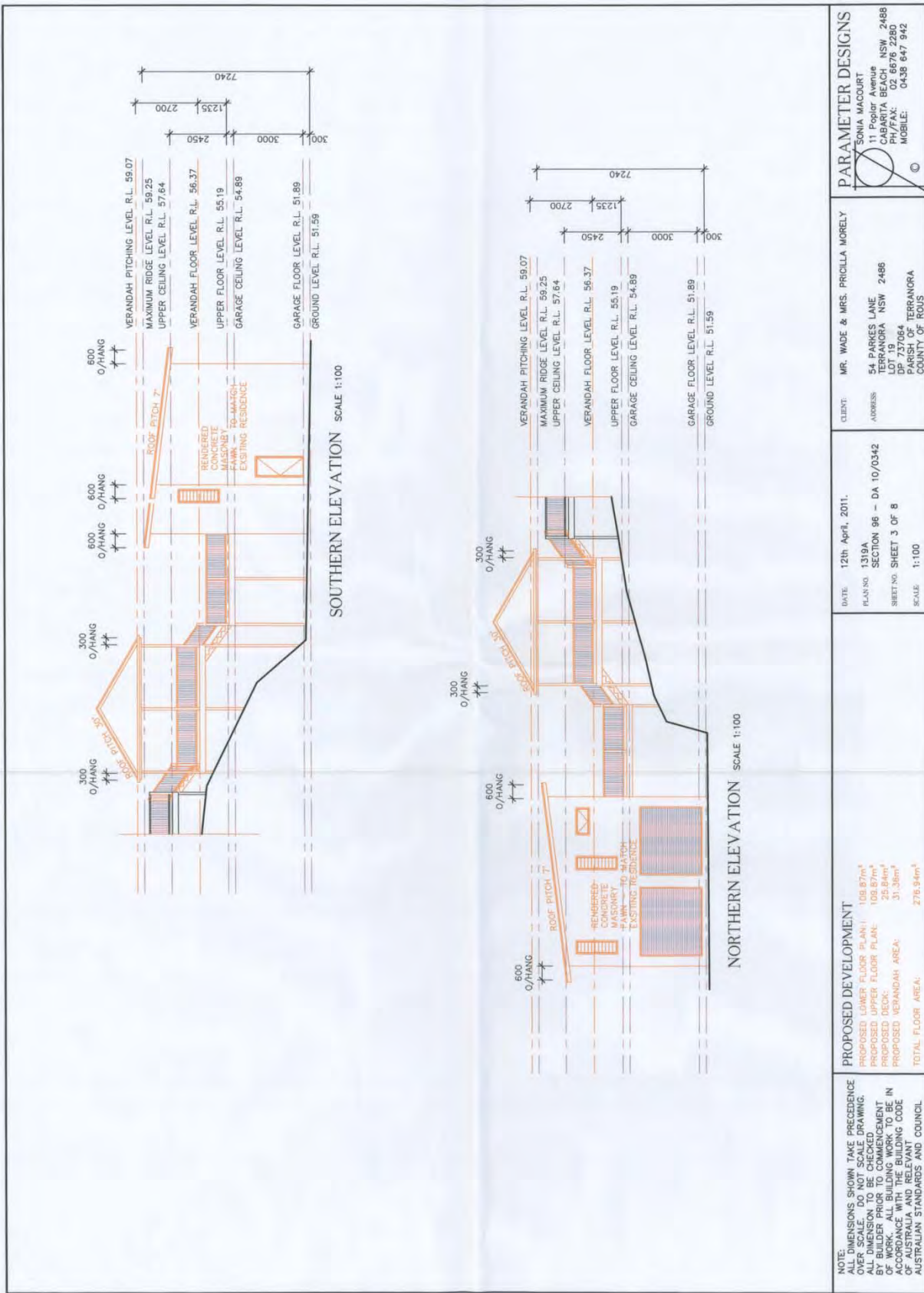
DEVELOPMENT PLANS:



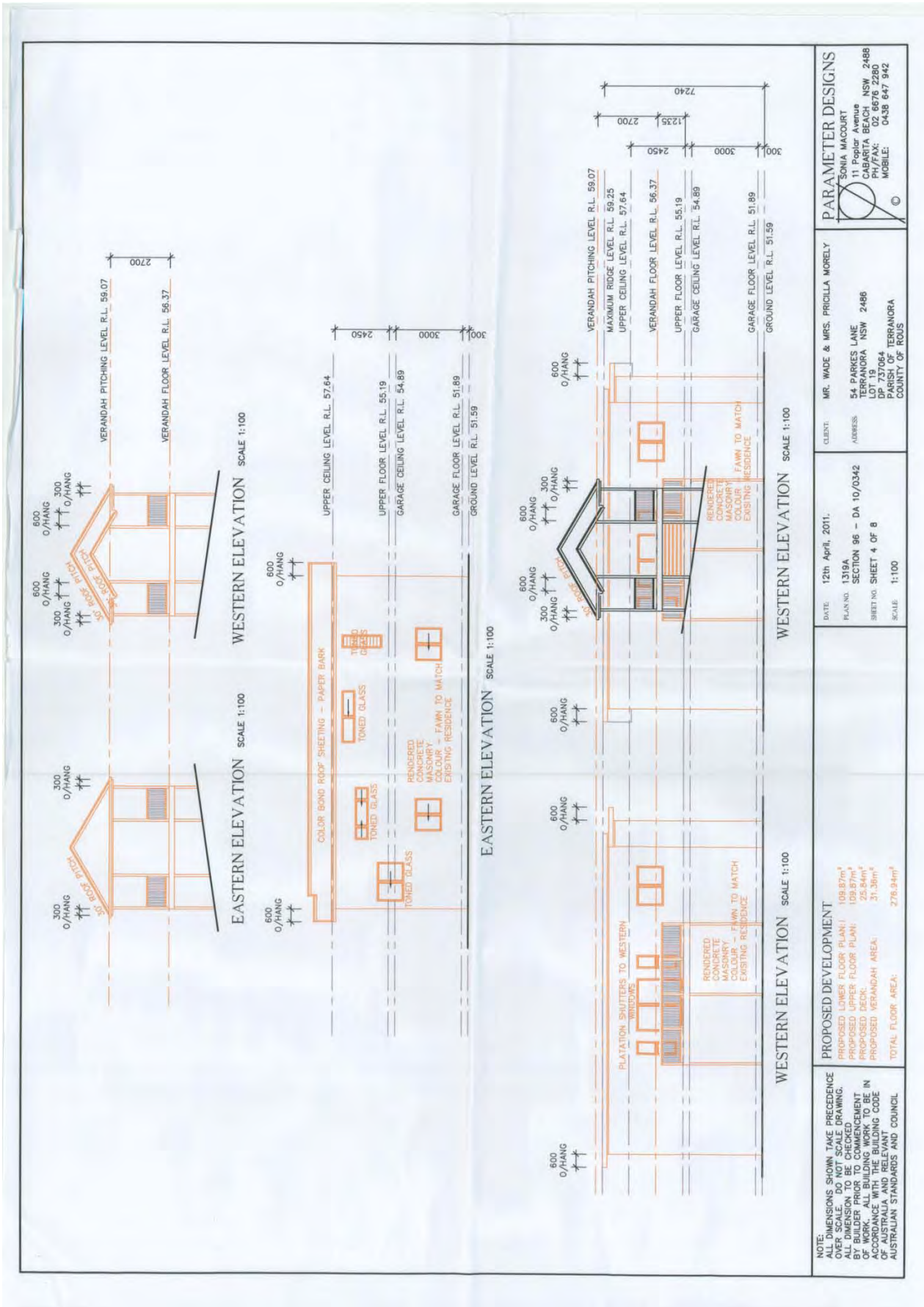




<p><b>PARAMETER DESIGNS</b></p> <p>SONIA MACCOURT 11 Poplar Avenue CABARITA BEACH NSW 2488 PH/FAX: 02 6676 2280 MOBILE: 0438 647 942</p>	<p>CLIENT: MR. WADE &amp; MRS. PRICILLA MORELY</p> <p>ADDRESS: 54 PARKES LANE TERRANORA NSW 2486 DP 737064 PARISH OF TERRANORA COUNTY OF ROUS</p>
<p>DATE: 12th April, 2011.</p> <p>PLAN NO. 1319A</p> <p>SECTION 96 - DA 10/0342</p> <p>SHEET NO. SHEET 2 OF 8</p> <p>SCALE: 1:100</p>	<p>PROPOSED DEVELOPMENT</p> <p>PROPOSED LOWER FLOOR PLAN: 100.87m<sup>2</sup></p> <p>PROPOSED UPPER FLOOR PLAN: 109.87m<sup>2</sup></p> <p>PROPOSED DECK: 25.64m<sup>2</sup></p> <p>PROPOSED VERANDAH AREA: 31.36m<sup>2</sup></p> <p>TOTAL FLOOR AREA: 276.94m<sup>2</sup></p>







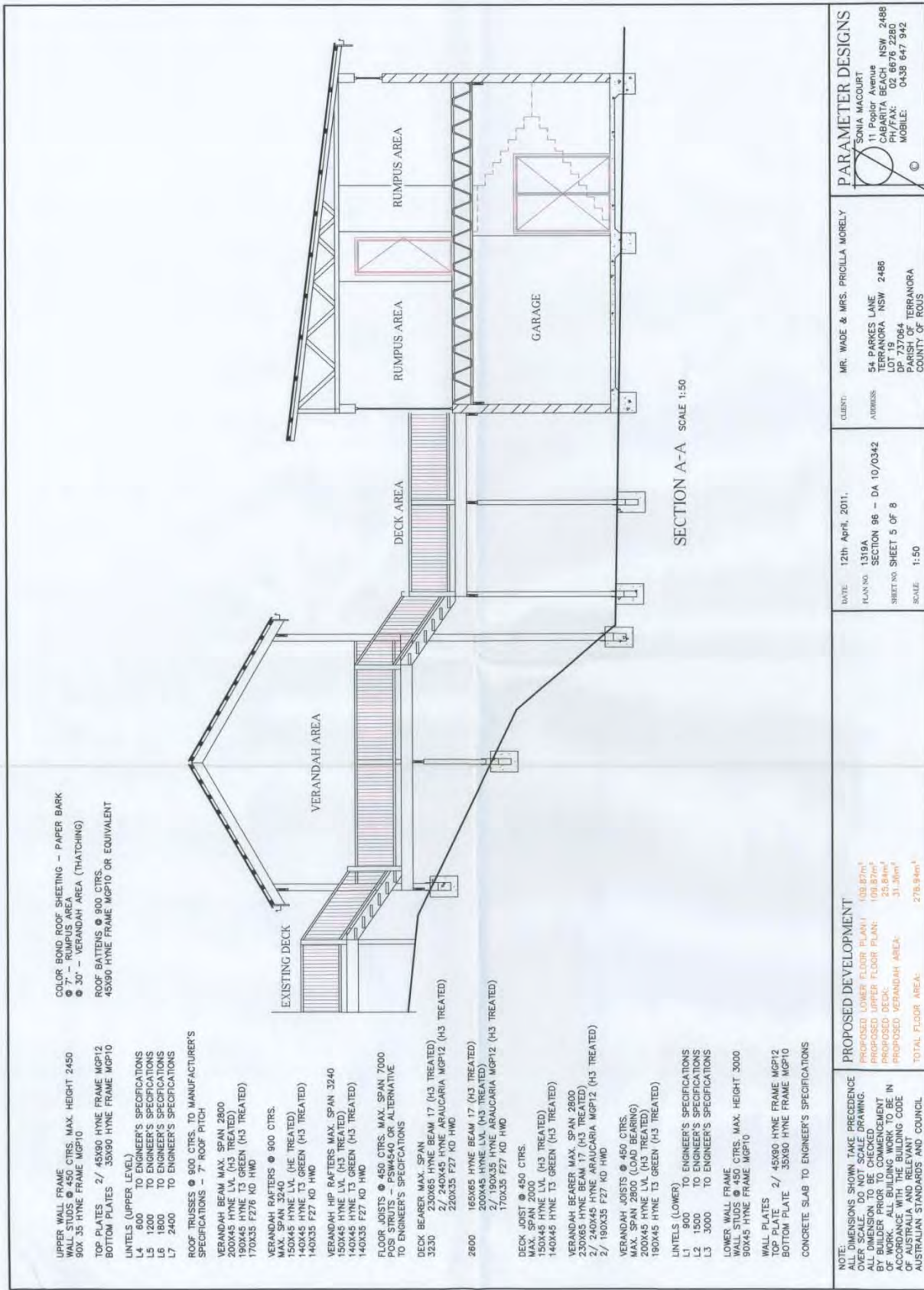
NOTE:  
ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING.  
ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK.  
DRAWING TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL

PROPOSED DEVELOPMENT  
PROPOSED LOWER FLOOR PLAN: 109.87m<sup>2</sup>  
PROPOSED UPPER FLOOR PLAN: 109.87m<sup>2</sup>  
PROPOSED DECK: 25.84m<sup>2</sup>  
PROPOSED VERANDAH AREA: 31.30m<sup>2</sup>  
TOTAL FLOOR AREA: 276.94m<sup>2</sup>

DATE: 12th April, 2011.  
PLAN NO. 1319A  
SECTION 96 - DA 10/0342  
SHEET NO. SHEET 4 OF 8  
SCALE: 1:100

CLIENT: MR. WADE & MRS. PRIGILLA MORELY  
ADDRESS: 54 PARKES LANE  
TERRANORA NSW 2486  
LOT 19  
DP 737064  
PARISH OF TERRANORA  
COUNTY OF ROSS

PARAMETER DESIGNS  
SONIA MACCORT  
11 Poplar Avenue  
Coffs Harbour NSW 2460  
PH/FAX: 02 6675 2280  
MOBILE: 0438 647 942



COLOR BOND ROOF SHEETING - PAPER BARK  
 ● 7" - RUMPUS AREA  
 ● 30" - VERANDAH AREA  
 ROOF BATTENS ● 900 CTRS.  
 45X90 HYNE FRAME MGP10 OR EQUIVALENT

UPPER WALL FRAME  
 WALL STUDS ● 450 CTRS. MAX. HEIGHT 2450  
 90X35 HYNE FRAME MGP10  
 TOP PLATES 2/ 45X90 HYNE FRAME MGP12  
 BOTTOM PLATES 35X90 HYNE FRAME MGP10  
 LINTELS (UPPER LEVEL)  
 L4 600 TO ENGINEER'S SPECIFICATIONS  
 L5 1200 TO ENGINEER'S SPECIFICATIONS  
 L6 1800 TO ENGINEER'S SPECIFICATIONS  
 L7 2400 TO ENGINEER'S SPECIFICATIONS

ROOF TRUSSES ● 900 CTRS. TO MANUFACTURER'S SPECIFICATIONS - 7° ROOF PITCH  
 VERANDAH BEAM MAX. SPAN 2800  
 2/ 240X45 HYNE ARAUCARIA MGP12 (H3 TREATED)  
 180X45 HYNE T3 GREEN (H3 TREATED)  
 170X35 F276 KD HWD

VERANDAH RAFTERS ● 900 CTRS.  
 150X45 HYNE LVL (H3 TREATED)  
 140X45 HYNE T3 GREEN (H3 TREATED)  
 140X35 F27 KD HWD  
 VERANDAH HIP RAFTERS MAX. SPAN 3240  
 2/ 240X45 HYNE ARAUCARIA MGP12 (H3 TREATED)  
 140X45 HYNE T3 GREEN (H3 TREATED)  
 140X35 F27 KD HWD

FLOOR JOISTS ● 450 CTRS. MAX. SPAN 7000  
 200X45 HYNE LVL (H3 TREATED) OR ALTERNATIVE TO ENGINEER'S SPECIFICATIONS  
 DECK BEARER MAX. SPAN  
 2/ 240X45 HYNE ARAUCARIA MGP12 (H3 TREATED)  
 220X35 F27 KD HWD

2800  
 165X65 HYNE BEAM 17 (H3 TREATED)  
 200X45 HYNE LVL (H3 TREATED)  
 2/ 190X35 HYNE ARAUCARIA MGP12 (H3 TREATED)  
 170X35 F27 KD HWD

DECK JOIST ● 450 CTRS.  
 MAX. SPAN 2000  
 150X45 HYNE LVL (H3 TREATED)  
 140X45 HYNE T3 GREEN (H3 TREATED)  
 VERANDAH BEARER MAX. SPAN 2800  
 230X65 HYNE BEAM 17 (H3 TREATED)  
 2/ 240X45 HYNE ARAUCARIA MGP12 (H3 TREATED)  
 2/ 190X35 F27 KD HWD

VERANDAH JOISTS ● 450 CTRS.  
 200X45 HYNE LVL (H3 TREATED) OR ALTERNATIVE TO ENGINEER'S SPECIFICATIONS  
 200X45 HYNE T3 GREEN (H3 TREATED)  
 180X45 HYNE T3 GREEN (H3 TREATED)

LINTELS (LOWER)  
 L1 800 TO ENGINEER'S SPECIFICATIONS  
 L2 1500 TO ENGINEER'S SPECIFICATIONS  
 L3 3000 TO ENGINEER'S SPECIFICATIONS  
 LOWER WALL FRAME  
 WALL STUDS ● 450 CTRS. MAX. HEIGHT 3000  
 90X45 HYNE FRAME MGP10

WALL PLATES  
 TOP PLATE 2/ 45X90 HYNE FRAME MGP12  
 BOTTOM PLATE 35X90 HYNE FRAME MGP10  
 CONCRETE SLAB TO ENGINEER'S SPECIFICATIONS

SECTION A-A SCALE 1:50

<p><b>PARAMETER DESIGNS</b>                  SONIA MACCOURT                  11 Poplar Avenue                  CABARITA BEACH NSW 2488                  PH/FAX: 02 8676 2280                  MOBILE: 0438 647 942</p>	<p>CLIENT: MR. WADE &amp; MRS. FRICILLA MORELY                  ADDRESS: 54 PARKES LANE TERRANORA NSW 2486                  LOT 19 SUBDIVISION 1084 PARISH OF TERRANORA COUNTY OF ROUS</p>	<p>DATE: 12th April, 2011.                  PLANING: 1318A                  SECTION 98 - DA 10/0342                  SHEET NO. SHEET 5 OF 8                  SCALE: 1:50</p>	<p>PROPOSED LOWER FLOOR PLAN: 108.87m<sup>2</sup>                  PROPOSED UPPER FLOOR PLAN: 108.87m<sup>2</sup>                  PROPOSED DECK: 25.84m<sup>2</sup>                  PROPOSED VERANDAH AREA: 31.30m<sup>2</sup>                  TOTAL FLOOR AREA: 278.94m<sup>2</sup></p>
<p>NOTE: DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSIONS TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL</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 modifications will not be inconsistent with the aims & objectives of the plan

Clause 5 - Ecologically Sustainable Development

The proposed modification is in keeping with ecologically sustainable development principles and is in line with community expectations for the site having regard to the zoning provisions, development control plan provisions and the limitations of the site.

Clause 8 - Zone objectives

The modification is not inconsistent with the objectives of the zone in that it will not detract from the rural residential character of the locality.

Large dwelling houses already exist in this locality and the proposed building can be considered as an extended addition to the dwelling which due to its scale and relationship to the slope of the site will satisfy the design outcomes compatible with the objectives of the zone.

Clause 15 - Essential Services

The essential services which are currently available to the site will be adequate for the proposed modification.

Clause 16 - Height of Building

The modification will increase the height of the building from 6.6m to 7.24m.

The additional height will still satisfy the provisions of DCP A1 which permits a maximum height of 9m for dwelling houses.

As the first floor of the building contains habitable rooms the height which applies to dwelling houses is considered to be appropriate in this situation.

Shadow diagrams have been supplied which identify that the shadow cast during the winter solstice will not have a significant impact on affected properties.

Clause 17 - Social Impact Assessment

Normal domestic impacts are anticipated from the proposed modification. Additional windows are proposed along the eastern wall of the addition to service the new habitable rooms on the first floor.



A new condition of consent will be included to provide screens to the windows of the media room, rumpus room & office to protect the privacy of the adjoining allotments.

Conditions have already been imposed on the original consent which prohibits the garage being used for commercial or industrial purposes.

Clause 35 - Acid Sulfate Soils

The proposed modifications will have no increased impact on acid sulphate soils.

Other Specific Clauses

There are no other specific clauses which are applicable to this application.

**State Environmental Planning Policies**

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

Clause 12: Impact on agricultural activities

The modification will have no impact on nearby agricultural activities.

Clause 15: Wetlands or Fishery Habitats

The modification will have no impact on wetlands or fishery habitats.

Clause 29A: Natural areas and water catchment

The modification will have no impact on natural areas or water catchment. Conditions have been imposed on the original consent to prevent sediment runoff from the site during construction.

SEPP No. 1 - Development Standards

The proposal does not seek to vary any planning instrument.

SEPP No 71 – Coastal Protection

The site is affected by SEPP 71 however proposed modification will not be inconsistent with aims & objectives of plan.

SEPP (Building Sustainability Index: BASIX) 2004

A new Basix certificate has been submitted for the modified first floor layout.

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

The draft Tweed LEP 2010 was considered during the assessment of this proposal – the proposed modification is not inconsistent with the aims & objectives of this plan

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Chapter1 Building Types

The proposal satisfies the criteria for a dwelling house addition due to the residential nature of the building, ie garage on ground floor and habitable rooms on first floor.

The objectives of the control under this chapter relate to the relationship of the building to the character of the local area and it is considered that the proposal generally satisfies these objectives:

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

The proposal does not address the street due to the slope of the allotment downhill from the street and the location of the additions to the rear of the dwelling. The streetscape objective therefore cannot be achieved regardless of the building design.

Chapter 2 – Site & Building Design Controls

**Design Control 1 – Public Domain Amenity - Streetscape**

The proposal is considered to satisfy the following objectives of the control:

- To ensure the landform and topographic setting along the street is respected.
- To ensure new development is compatible with the positive characteristics of the existing streetscape.
- To ensure the development enhances the character of the existing streetscape.
- To encourage dwellings to be well designed.
- To ensure streets provide a high level of pedestrian amenity, access and safety.
- To ensure garages do not dominate the street.

The modified development by definition is a two storey dwelling addition which is within an existing rural residential area. The adjoining properties consist of single and two storey dwelling houses with related residential structures. The existing vegetation on the surrounding properties will assist in screening the dwelling house from Market Parade. Notwithstanding a condition will be included requiring that the setback areas around the outbuilding are landscaped as indicated on the submitted site plan with trees/shrubs of suitable characteristics which will lessen the impact of the development upon the surrounding properties. The increased height and modified location of the development will not have a significant on the public domain.

The increased height of the building will have no impact on public views or vistas.

### **Design Control 2 – Site Configuration**

Deep Soil Zones - the proposed modification will have no impact on the nominated deep soil zone.

Impermeable Site Area - the proposed modification will result in a reduced building envelope and therefore will have a positive impact on the site's ability to infiltrate rainwater.

External Living Areas – the former deck at the northern end of the first floor of the addition has been deleted which will eliminate any privacy issues from this area.

The proposed modification includes a reconfiguration of the decks between the additions and the dwelling. These decks are located in excess of 15m from side boundaries and are therefore unlikely to have a significant impact on adjoining properties.

### Landscaping

The original approval included landscaping along the base of an existing retaining wall on the eastern side of the additions to soften the appearance of the building.

As this retaining wall is 1.40m in height it is considered that landscaping will have limited effectiveness in screening the building and would be better located on top of the retaining wall.

This issue was raised in one of the objections to the proposal.

A new condition of consent will therefore be imposed to provide established landscaping on top of the retaining wall along the eastern side of the additions.

Topography, Cut & Fill - The building will be located on an existing retained building platform. The proposed modification will require no additional earthworks.

### **Design Control 3 – setbacks**

Front setback - the proposed modification will have no impact on the front building setback.

Side setbacks – the side setbacks have been modified as follows:

- Northern boundary - reduced from 16m to 15.27m
- Southern setback - increased from 11m to 16m

Rear Setback - reduced from 7m to min. 4.5m. Due to the irregular nature of the rear boundary the eastern wall of the addition will actually exceed 5m for about half its length.

The proposed setbacks fully comply with the objectives of the DCP and therefore require no further assessment.

#### **Design Control 4 - Car Parking & Access**

The proposed modification will have no adverse impact on the provision of car parking on the allotment.

#### **Design Control 5 - Height**

The modification includes an increase in the height of the building from 6.6m to 7.24m to facilitate the inclusion of habitable rooms to the first floor and change in roof design from pitched to skillion.

The building will be located between 4.5m and 5m from the rear boundary which satisfies the control.

Shadow diagrams have been provided in support of the application which identify that during the winter solstice the shadow cast on the adjoining allotments will be minor and have no adverse impact.

The increased height is not considered to be out of character in the locality due to the existence of several large two storey dwellings.

#### **Design Control 6 - Building Amenity**

The proposed modification is considered unlikely to have an adverse impact on sunlight access, visual privacy, acoustic privacy, view sharing and natural ventilation.

Sunlight Access - the modified first floor will include a rumpus room which will have a north easterly aspect, the decks between the dwelling and the dwelling addition will have a northerly aspect which will encourage the use of this area all year round in accordance with the objectives of the control.

Visual Privacy - due to the size of the rural residential allotment, the location of the additions on site and the physical separation to surrounding dwelling houses overlooking of adjoining properties will be negligible.

The modification to the consent has deleted the deck from the northern end of the first floor and included windows in the eastern wall of the first floor which now will house habitable rooms.

Due to the possibility of privacy issues from these windows it is recommended that a condition of consent be imposed to provide screens to the windows to the eastern wall of the media room, rumpus room & office.

Acoustic privacy – the previous consent was conditioned to prohibit the garage being used for commercial or industrial purposes and the proposed modification will not change this.

The first floor additions are consistent with normal residential use and as the setback to the rear boundary satisfies the control of the DCP no further consideration is necessary.

View Sharing - the increased height of the additions will have no adverse impact on view sharing from adjoining properties.

Natural Ventilation – the proposed modification will result in habitable rooms being provided on the first floor of the additions. These rooms have been provided with operable windows and therefore satisfy the control.

Building Orientation – The proposed modification to the approved building design will have no impact on the building orientation.

Building Separation - notwithstanding the modified location of the additions on the site they will still satisfy the objectives of the control in relation to ensuring privacy between living areas of dwellings on adjoining allotments.

### **Design Control 7 – External Building Elements**

No new external building elements are proposed as part of this application.

### **Design Control 8 – Building Performance**

A Basix certificate has been provided in support of the application.

### **Design Control 9 – Outbuildings.**

Due to the modification to the first floor of the building to provide habitable rooms the building is now considered to be an addition to the dwelling in lieu of an outbuilding due to the physical connection of the additions to the existing dwelling.

The garage beneath the dwelling addition is consistent with a two storey dwelling addition.

### **Design Control 10- swimming pools**

The swimming pool is existing and no change is proposed.

### **Design control 11 – tennis court**

No tennis court is proposed.

## Design control 12 – Floor Space ratio

The floor space ratio of the modified design will be 0.32:1 which satisfies the control.

### A11-Public Notification of Development Proposals

Adjoining property owners were notified of the proposed modification and in response three written objections have been received.

A general précis of the objections and a response to each objection is as follows:

- *Size of building excessive and will have an adverse impact on streetscape when viewed from Market Parade*

**Response** – the footprint of the dwelling has been reduced in size but the height increased by 640mm.

The floor space ratio and impermeable area of the site easily satisfy the respective controls and are therefore permissible.

The height of the building also satisfies the control and when the distance from boundaries, future landscaping and size of the allotment are taken into consideration the proposed modification is considered to be acceptable.

The impact of the building on the streetscape of Market Parade is not considered to be relevant due to the spatial separation of the building from the street, screening provided by existing dwellings and existing and future landscaping.

- *No other such buildings exceed single storey*

**Response** - the proposed modification to provide habitable rooms to the first floor and the physical connection of the additions to the existing dwelling via a series of stepped decks renders the building being assessed as an addition to a dwelling house rather than an outbuilding.

Two storey dwelling additions are permitted in this area.

Other two storey dwellings exist in this area.

- *Building capable of being used as a dual occupancy.*

**Response** – the first floor of the dwelling house additions will contain a media room, rumpus room, office, pottery room, storeroom & bathroom.

No bar, kitchen or laundry are proposed in the additions which would be required for the additions to be considered as a dual occupancy.

The design of the additions is not conducive to separate residential use.

The additional rooms are required by the property owners for their particular family and hobby needs.

A condition of consent will be imposed to ensure that the dwelling house additions will not be used as a separate residence.

- *Use of office for business purposes*

**Response** – the Applicant is a Plumber and therefore the office located remotely from the main dwelling would be a reasonable use.

The use of a room in a dwelling for an office associated with the owners business would be exempt development under the provisions of the State SEPP (Exempt & Complying Development Code) 2008

A condition of consent will be imposed to prevent the building being used for any commercial or industrial purpose.

- *Use of garage for storage of commercial quantities of plumbing supplies*

**Response** - a condition of consent will be imposed to prevent this.

- *Adverse effect on amenity of surrounding area*

**Response** - the modifications to the approved building entails a 640mm increase in height and a 34m<sup>2</sup> reduction in the building footprint.

The impact of the building was assessed with the original building application and the proposed modifications are not considered to be likely to have any significant adverse impact on the amenity of the surrounding area.

- *The application to modify the consent should be refused and the original consent should stand.*

**Response** - the applicant is within their rights to submit an application to modify the consent and such application must be considered on its relative merits. The modified design is considered to be an improvement on the original design in appearance and privacy impact.

- *Additional height will overshadow adjoining property in winter.*

**Response** – the Applicant has submitted shadow diagrams in support of their application which identify that shadows during the winter solstice will protrude less than 2m into the rear yard of the adjoining allotment and will not overshadow the dwelling or associated outdoor recreation areas on this allotment.

- *Loss of privacy from first floor windows.*

**Response** – The first floor level of the dwelling house addition will now include several rooms such as media room, rumpus room, office, store, pottery room and bathroom.

Windows are proposed in the eastern wall of the first floor which may impact on the privacy of the adjoining allotments.

A condition of consent will be imposed to install privacy screens to the eastern windows prior to occupation of the building.

- *Setbacks from eastern & northern boundaries reduced resulting in greater impact on neighbouring allotments.*

**Response** – the setback to the northern boundary will be reduced from 16m to 15.27 m which is minor and of little consequence. The setback to the eastern boundary will be reduced from 7m to 4.5m minimum which may have a greater impact on the adjoining property however DCP A1 permits buildings to observe a 5.0 rear setback. The additions will observe a rear setback of 5m for almost half the length of the wall and when the of adjoining allotments and distance of the dwellings from the additions is taken into consideration as well as required landscaping and window screens the reduced setback is considered to be satisfactory.

- *The overall height of the building in addition to the retaining wall is excessive.*

**Response** - the existing retaining wall is about 1.40m high and the proposed dwelling additions will be 7.24m high. The height of the dwelling additions satisfies the maximum building height in DCP A1 of 9m.

The retaining wall is located about 2m from the rear property boundary and the additions will be located between 2.5m & 4m from the wall.

The building will therefore have a tiered appearance when viewed from the east and in conjunction with the required landscaping the overall appearance of the building will be softened.

- *Proposal is out of proportion to other dwellings in the area.*

**Response** - There are several large two storey dwellings in Market Parade therefore the building is not considered to be out of character with the local area. Due to the spatial separation of the building from Market Parade its impact on this street would not be significant.

- *Proposed landscaping inadequate*

**Response** – the proposed landscaping at the base of the retaining wall is considered to be inadequate as the retaining wall is 1.4 m high and any vegetation placed in this location would be unlikely to effectively screen the building. It is recommended that landscaping be required on top of the retaining wall where it would be more effective.

A condition of consent will be imposed to this effect.



- *The new driveway will be a hazard in wet weather.*

**Response** - the driveway grade is determined by the slope of the allotment and the surface integrity can be overcome by surface finishes.

- *Retaining wall & fill may not be adequate to support structure.*

**Response** - details from a practising structural engineer for the footings and slab will be required prior to the issue of a construction certificate.

A condition of consent will be imposed to this effect.

- *The proposal will devalue property values.*

**Response** - this claim is subjective and cannot be quantified.

- *Two storey shed should not be allowed.*

**Response** - the building is considered to be a two storey addition to a dwelling house and therefore is permissible in this locality.

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

Clause 92(a) Government Coastal Policy

The proposal is not inconsistent with the aims & objectives of the policy

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

Tweed Shire Coastline Management Plan 2005

No impact likely.

Tweed Coast Estuaries Management Plan 2004

No impact likely.

Coastal zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)

No impact likely.

**(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

Proposal is generally consistent with the original approval. The changes to building size, height etc are not such that the integrity of the original consent is compromised,

Access, Transport and Traffic

No change from original approval.

Flora and Fauna

No impact envisaged.

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

Surrounding Landuses/Development

Consistent with adjoining land uses.

Flora and Fauna

No impact likely

Topography

Existing building platform

Site Orientation

Generally northern orientation

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

Yes, see objections & response above.

**(e) Public interest**

No adverse public interest issues anticipated as a result of the modifications.

**OPTIONS:**

1. Approve the application
2. Refuse the application

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land & Environment Court which would incur a financial cost to Council in defence.

**POLICY IMPLICATIONS:**

Each application is considered on its merits therefore no policy implications would be compromised.

**CONCLUSION:**

On consideration of the circumstances and after assessment of the relevant planning matters, it is considered that the proposed application to modify the consent is suitable for approval subject to conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**17 [PR-CM] Development Application DA10/0844 for a Greyhound Racing Facility at Lot 1 DP 1069561 Wardrop Valley Road; Lot 519 DP 1132400, Lundberg Drive, South Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0844 Pt1**

**SUMMARY OF REPORT:**

This report details the issues in relation to the development application for proposed Greyhound Racing Facility at Part of Lot 519 on DP 1132400 (proposed Lot 1000) and part of Lot 1 DP 1069561 (Council land). The proposed Greyhound Racing Facility includes greyhound track, club house, judging box, car parking and kennel for dogs. The proposed Greyhound Racing Facility is to be built for the Tweed Heads Coursing Club who are currently located at Border Park Raceway.

The proposed track will be a sandy loam track with three starting positions and a finish line. A barrier will be installed along the inside and outside of the track to ensure the dogs are contained within the racing track. The other proposed facilities for the greyhound facility include a club house (with bookmakers, TAB, lounge, dining, kitchen, offices, toilets, bar and staff amenities), judges box (above club house on first floor), kennel facility for the dogs and car parking areas (public and trainers).

The club currently races every Saturday with trials run up to three times a week in the mornings. The club anticipates that Greyhound Racing NSW will grant them Wednesday afternoon for their weekly race meeting. The club also intends to maintain trials at least 3 mornings a week for 2 hours at a time on average. No lights are proposed for the greyhound facility as all racing and trials will be conducted during the day with no night racing proposed.

In terms of staffing, during a race meeting the total number of staff on site would be 18 and two full time staff during the week when not running. The staff include a judge (with assistant), on course vet, starter, TAB staff, security officer, kitchen and bar staff. The average number of greyhounds per race meeting is 80 dogs, based on 10 races with 8 dogs in each race. The current attendance numbers for racing on Saturdays at Border Park ranges from 50 – 100 persons. The proposed racing schedule of Wednesday day time is in line with the Club's positioning for the television telecast rights and gambling takings. The proposed facility will not actively distract people from attending the race meetings, but large public attendance is not envisaged for the site.

Council requested further information based mainly on engineering issues on 15 March 2011. The applicant provided a response to the geotechnical issues on 14 June 2011. The information submitted did not entirely satisfy Council's concerns, however, it is recommended that the remaining engineering issues can be addressed via a deferred commencement condition.

Three deferred commencement conditions are recommended to address the following:

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- geotechnical issues
- legal point of discharge by the construction of a wetland to treat for stormwater from the site
- road access to the proposed facility.

The Development Application was advertised in the Tweed Link for a period of fourteen (14) days from Wednesday 19 January 2011 to Thursday 3 February 2011.

Council received 67 submissions during the exhibition period, and 15 after the advertised period, all objecting to the application. A petition containing 1,219 signatures was also received from the group Friends of the Pound, also objecting to the proposal. It should be noted that a substantial proportion of both the written submissions and the petition signatories were received from people residing outside of the Tweed LGA, both within Australia and overseas. The main issue raised in the objections was the animal welfare concerns of the operation of the greyhound industry (breeding and destroying of Greyhounds). It is to be noted that the application is for a Greyhound racing facility, which provides racing and training facilities only, the development does not propose breeding facilities or house dogs over night. The Greyhound facility is to operate in accordance with the (but not limited to), the Greyhound Racing Act 2009 and the Office of Liquor, Gaming and Racing. The operation of the Greyhound Racing industry is not a relevant consideration for Council pursuant to section 79C of the Environmental Planning and Assessment Act, 1979.

In accordance with current legislative and policy requirement, the proposed development is permissible with development consent and is considered suitable for the site, with likely impacts on the natural and built environments to be suitably mitigated by recommended conditions.

#### **RECOMMENDATION:**

**That Development Application DA10/0844 for a Greyhound Racing Facility at Lot 1 DP 1069561 Wardrop Valley Road; Lot 519 DP 1132400, Lundberg Drive, South Murwillumbah 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 12 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. Geotechnical**

Geotechnical engineering certification is to be provided for proposed Lot 1000 and surrounding allotments (proposed Lots 901, 902, 903, 904 and Lot 1101 - drainage reserve) to certify that settlement has terminated and these lots are capable of being developed without the need for special construction techniques or foundation types.

The certification is to ensure the greyhound racing facility and associated service and road infrastructure can be developed without special construction techniques. Settlement plate information is to be provided with the geotechnical certification to validate settlement has stopped.

**B. Stormwater treatment**

A legal point of discharge is to be provided for the proposed greyhound facility. The drainage reserve or wetland (proposed Lot 1101) is to be constructed in accordance with the approved construction certificate and conditions of consent for DA02/1685 (Industrial subdivision) and Council's development and design specifications. An inspection with Council officers is required to 'sign off' on the proposed drainage reserve prior to commencement of the consent.

**C. Road Infrastructure**

The extension of Thornbill Drive is required to be completed in accordance with the approved construction certificate and conditions of consent for DA02/1685 (Industrial subdivision) and Council's development and design specifications. An inspection with Council officers is required to 'sign off' on the proposed road infrastructure, prior to commencement of the consent.

**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 and Plan Nos BDYM10C prepared by P Hurcombe and dated 19/11/2010, Plan Nos T101378 prepared by Kelley Covey and dated 09/12/2010, Plan Nos DA.0000, DA.1001, DA.2100, DA.2101, DA.3101, DA.3102, DA.3201 prepared by Sparc and dated 20/12/2010, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

- 3. 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 development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

5. For events larger than 160 people in attendance, a Traffic Management Plan is to be submitted to Council's General Manager or Delegate for approval prior to the event. Such a plan would detail additional car parking facilities and other transport measures that will be provided so that the event does not adversely impact upon the local area.

[GENNS01]

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

6. The developer shall provide 109 parking spaces (comprising 96 spaces for the general public and staff and 12 car/trailer spaces for greyhound trailers) including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCC0065]

7. **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 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:**

32.07 Trips @ \$1166 per Trips \$37,394

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

S94 Plan No. 4

Sector9\_4

[PCC0215/PSC0175]



**8. 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]

**9. 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 DSP2:	3.772 ET @ \$11571 per ET	\$43645.80
Sewer Murwillumbah:	6.146 ET @ \$5560 per ET	\$34171.80

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

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

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

[PCC0265/PSC0165]

10. 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]

11. 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.

[PCC0485]

12. 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]

13. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

- (a) All building materials used below Council's design flood level must not be susceptible to water damage.
- (b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (c) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

14. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[PCC0735]

15. 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 undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: -

(a) Vehicular access

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]

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

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

(b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.

(c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

(d) Specific Requirements to be detailed within the Construction certificate application include:

- (i) Shake down area along the haul route immediately before the intersection with the road reserve.
- (ii) Water Sensitive Urban Design principles are encouraged for the proposed greyhound track.

[PCC1105]

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

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

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

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

[PCC1145]

18. 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]

19. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

20. Prior to issue of construction certificate the applicant is to submit an 'Application for Plan Approval Fit-out Details', with appropriate fees, and to be granted Council approval for the fit-out of the premises.

[PCCNS01]

21. The car parking driveway entrance is to be redesigned in accordance with AS2890.1 – Part 1: Off street car parking. The carparking driveway entrance as shown has poor delineation from Thornbill Drive with unnecessary vehicle conflict points, as three carparking aisles converge at one location. The re-design of the car park entrance is to address the above design issues.

[PCCNS02]

**PRIOR TO COMMENCEMENT OF WORK**

- 22. 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]

- 23. 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]

- 24. 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]

25. 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]

26. 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]

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

[PCW1065]

#### **DURING CONSTRUCTION**

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

[DUR0005]

29. 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]

30. 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]
31. 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]
32. 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]
33. During filling operations,
- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
  - All fill and cut batters shall be contained wholly within the subject land.
  - All topsoil to be respread and the battered areas around the track are to be grassed and landscaped within 2 weeks of the fill being placed.  
[DUR0755]
34. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.  
[DUR0815]
35. 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]
36. 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]
37. 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]

38. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material eg. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 meters.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

39. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

40. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.

[DUR1515]

41. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

42. During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation.

[DUR1575]

43. 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]



44. 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]
45. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.  
[DUR1905]
46. 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]
47. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.  
[DUR1955]
48. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".  
[DUR2195]
49. 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]
50. 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]
51. 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]

52. 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]

53. 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]

54. 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]

55. 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]

56. 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]

57. Construction of the facility shall be undertaken in accordance with Section 6.0 of the Environmental Noise Impact Report prepared by CRG Traffic & Acoustics Pty Ltd dated November 2010 (crgref: 10343a report)

[DURNS01]

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

58. 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]

59. A noise management plan including recommendations from Section 6.0 of the Environmental Noise Impact Report prepared by CRG Traffic & Acoustics dated November 2011 (creref: 10343a report) shall be prepared and submitted to the satisfaction of the General Manager or his delegate which details how noise from onsite activities will be managed and controlled, so as to prevent the generation or emission of intrusive noise. Such a management plan shall be submitted and approved prior to the issue of the occupation certificate.

[POC0125]

60. 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]
61. 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]
62. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.  
[POC0475]
63. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.  
[POC0615]
64. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au) or alternatively by contacting the NSW Food Authority on 1300650124.  
[POC0625]
65. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.  
[POC0635]
66. 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]
67. 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]
68. 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]
69. 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]

70. Prior to issue of an occupation certificate, certification from an appropriately qualified acoustic consultant shall be submitted detailing that the construction of the facility has been undertaken in accordance with Section 6.0 of the Environmental Noise Impact Report prepared by CRG Traffic & Acoustics Pty Ltd dated November 2010 (crgref: 10343a report).

[POCNS01]

## USE

71. 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]

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

[USE0175]

73. Hours of operation of the business are restricted to the following hours unless otherwise approved by the Director Planning and Regulation:

- \* 7:00am to 6:00pm seven days per week.
- \* All deliveries and pickups relating to the business are to occur within the approved hours.

[USE0185]

74. Lighting to illuminate the greyhound racing track is not permitted. All externally mounted 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]

75. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact Report prepared by CRG Traffic & Acoustics Pty Ltd dated November 2010 (crgref: 10343a report) and approved noise management plan.

[USE0305]

76. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

77. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements.

[USE0845]

78. All wastes shall be collected, stored and disposed of in accordance with the Waste Management Plan prepared by Mark Rigby & Associates Pty Ltd dated December 2010 approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.  
[USE0875]
79. The premises shall be maintained in a clean and tidy manner.  
[USE0965]
80. Clinical veterinarian wastes shall be separated from the general waste stream and disposed via a clinical waste collection and disposal service. Suitable arrangements shall be made for the collection and disposal of clinical wastes to the satisfaction of the General Manager or his delegate.  
[USE0995]
81. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.  
[USE1035]
82. All activities shall be carried out in accordance with the requirements of the NSW Office of Liquor, Gaming and Racing (OLGR).  
[USE1085]
83. Approval is granted for one (1) race meeting per week and three (3) trials per week only, with any departures being subject to the approval of the Director Planning and Regulation. The proposed three trials per week should be confirmed prior to the issue of an occupation certificate.  
[USENS02]

**REPORT:**

**Applicant:** Landsolve Pty Ltd  
**Owner:** Tweed Central Pty Ltd  
**Location:** Lot 1 DP 1069561 Wardrop Valley Road; Lot 519 DP 1132400, Lundberg Drive, South Murwillumbah  
**Zoning:** 4(a) Industrial and 1(a) Rural  
**Cost:** \$5,600,000

**BACKGROUND:**

The land is described as proposed Lot 1000 and has an area of 4.95ha. The site is part of Lot 519 DP1132400, Lundberg Drive, South Murwillumbah and is included within stages 7 – 11 of the existing approved layout plan for Tweed Valley Enterprise Park. The application also includes part of Council land described as Lot 1 DP 1069561.

The proposed Lot 1000 (4.95ha) is proposed for a Greyhound Racing Facility. A Section 96 application has been lodged at the same time to amend the existing Development Consent DA02/1685 to amend the approved layout to allow for the proposed Greyhound Racing Facility site. This application is to be determined under delegation.

The site has been extensively filled to approximately RL9.0m AHD in accordance with the approved construction certificate for the industrial estate. Currently the site is devoid of vegetation being recently filled and adjacent lands to the south are low lying and swampy. The perimeter of the site is to be vegetated in accordance with the vegetation management plan, however a landscape plan has been submitted with this application.

The proposed development is located off Thornbill Drive. The road is yet to be completely constructed. Thornbill Drive is an industrial collector road with upright kerb and guttering in good condition. The road has been partially constructed with road subbase to the proposed greyhound site, although sealing, kerb and guttering will be required. A deferred commencement requiring the completion and sign off of Thornbill Drive is required to provide adequate access to the proposed facility.

The development application also states that Council had previously agreed to dedicate an area of land to the rear of current lots 1000 and 1001 in return for road connection from the estate to adjacent Council land (Lot 1 DP 1069561).

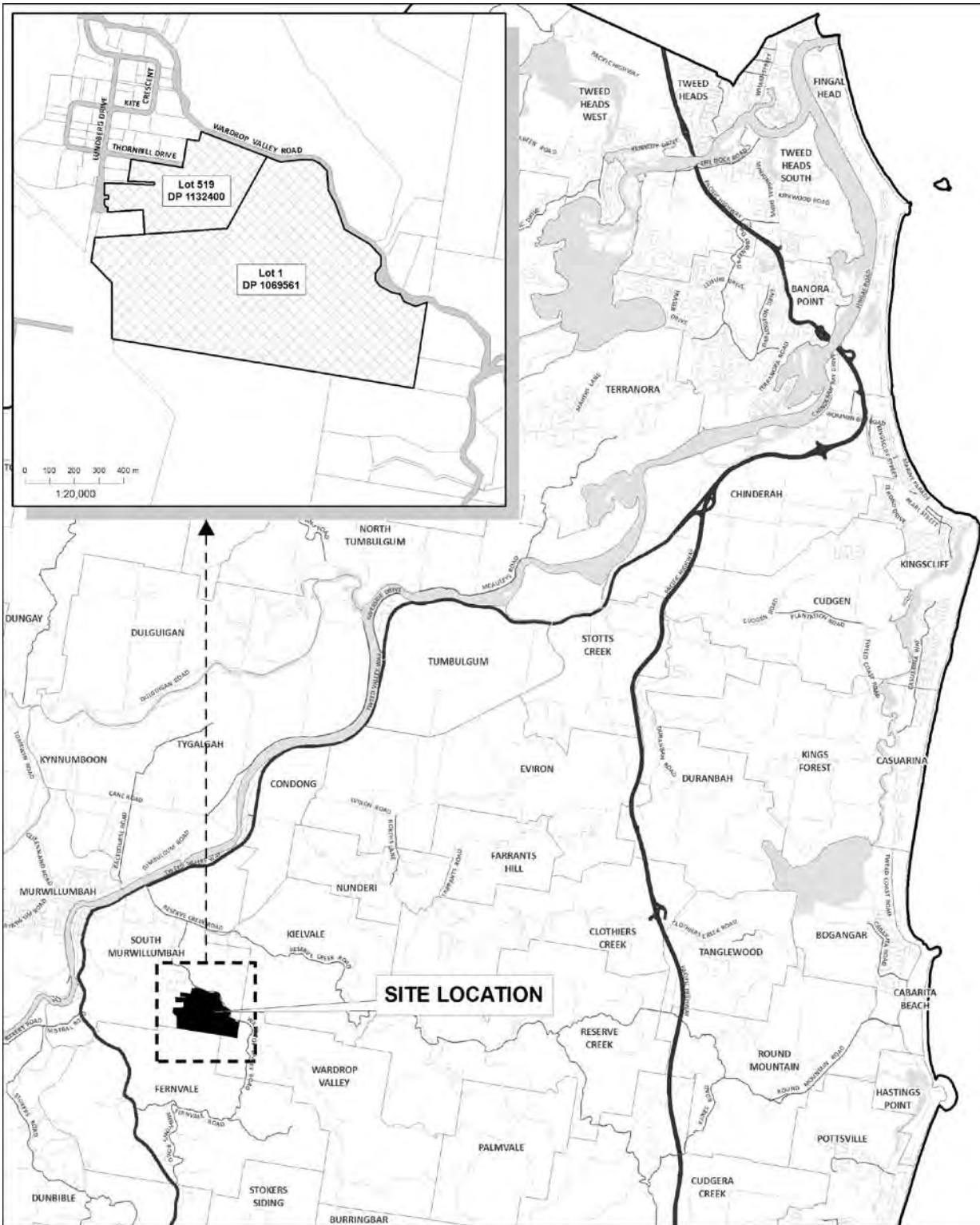
Council resolved on the 5 September 2006 that:

- "1. Council approves the boundary adjustment at Wardrop Valley between Lot 1 in DP 1069561 owned by Council and 2 in DP 1069561, owned by Les & Jim Dickinson;*
- 2. Council resolves that the transaction falls within "special circumstances" in relation to Council's Disposal of Land Policy;*
- 3. All necessary documentation be executed under the Common Seal of Council."*

A Section 96 application (DA02/1685.24) has been lodged to amend Development Consent DA02/1685 with an amended consent plan detailing both the through road connection from Thornbill Drive and the land to be dedicated from Tweed Shire Council. A condition of consent has been applied to DA02/1685.24 to address the boundary adjustment in which 0.162ha of land within Lot 1 DP 1069561 will be dedicated into the industrial estate upon the linen plan being issued for the future stages of the estate in return for through road connection from Thornbill Drive.

Council requested further information based mainly on engineering (geotechnical) issues on 15 March 2011. The applicant provided a response to the engineering issues on 14 June 2011. The information submitted did not entirely satisfy Council's engineering concerns, however, it is recommended that the geotechnical issues can be addressed via a deferred commencement condition.

**SITE DIAGRAM:**



**Locality Plan**

Lot 1 DP 1069561 Wardrop Valley Road;  
 Lot 519 DP 1132400, Lundberg Drive, South Murwillumbah

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a "Call Before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre: 05 April, 2011  
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 Boundaries shown should be considered approximate only.

0 1 2 km  
 1:100,000 @ A4 Portrait  
 DO NOT SCALE  
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Map Projection: Universal Transverse Mercator  
 Meritonal Datum: Geoidic Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56



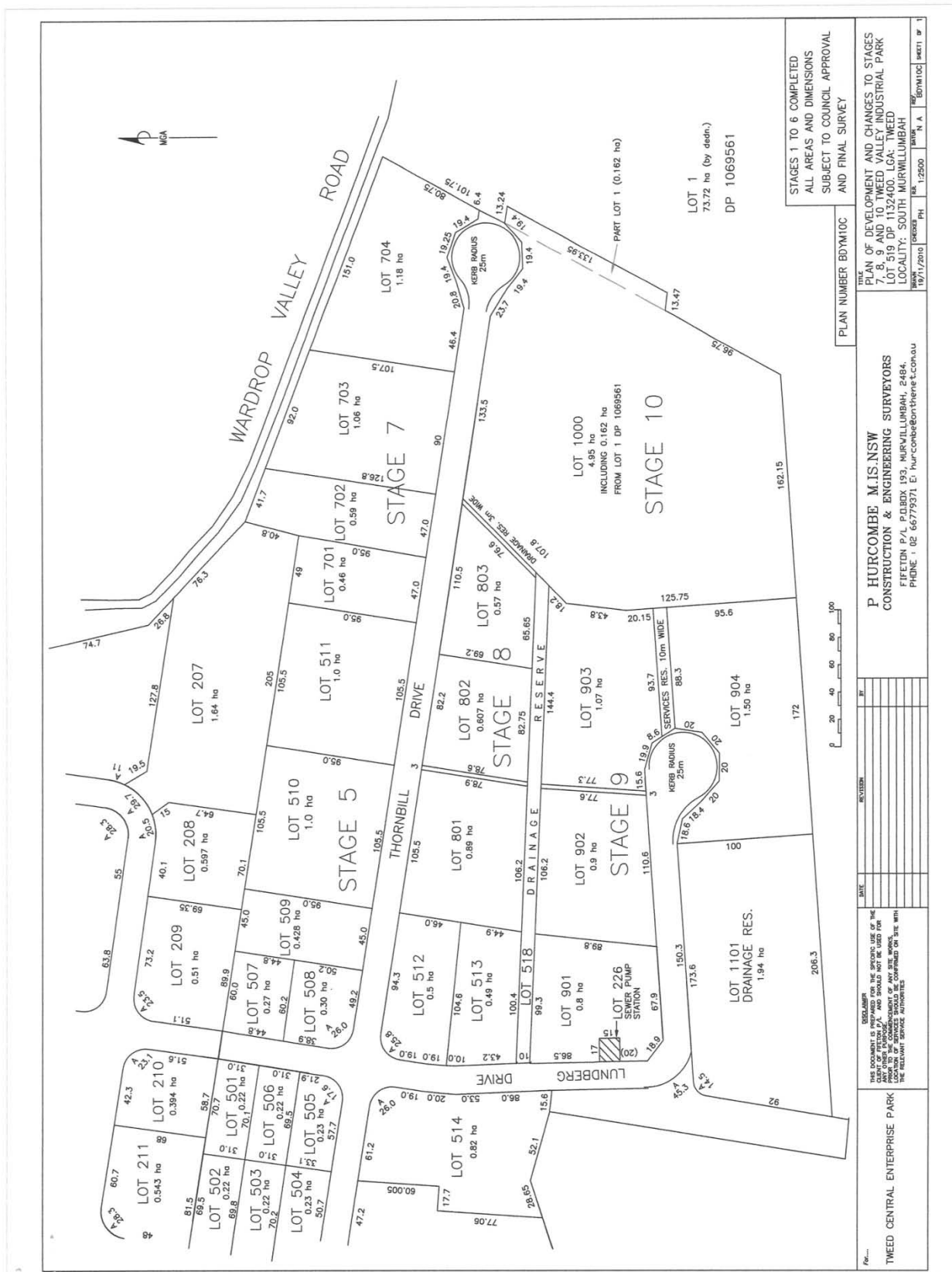
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DEVELOPMENT PLANS:



**Drawing schedule**

- DA.0000 Cover Page
- DA.1001 Site plan
- DA.2100 Floor Plan - Clubhouse & Judges Box
- DA.2101 Floor Plan - Kennels
- DA.3101 Elevations - Clubhouse & Judges Box
- DA.3102 Elevations - Kennels
- DA.3201 Sections
- DA.7001 Perspective

**development data**

- address lot 1000 industry central estate
- total site area 4.95ha
- building areas schedule**
- club house = 555m<sup>2</sup>
- judges box = 55m<sup>2</sup>
- kennels = 338m<sup>2</sup>
- machinery = 117m<sup>2</sup>
- plot ratio**
- building area/site area = 2.24%
- carparks provided = 87



**Proposed coursing club location**

Industry Central Estate

**locality plan**



source: www.neamap.com (not to scale)



issue	date	revision
G	20-12-10	issued (DA submission)
F	20-12-10	revised (DA submission)
E	18-12-10	DA submission
D	08-12-10	change in roof form
C	07-09-10	minor changes
B	23-07-10	locate building

job no.	issue
1029	issue
DA.0000	G

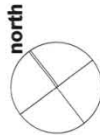
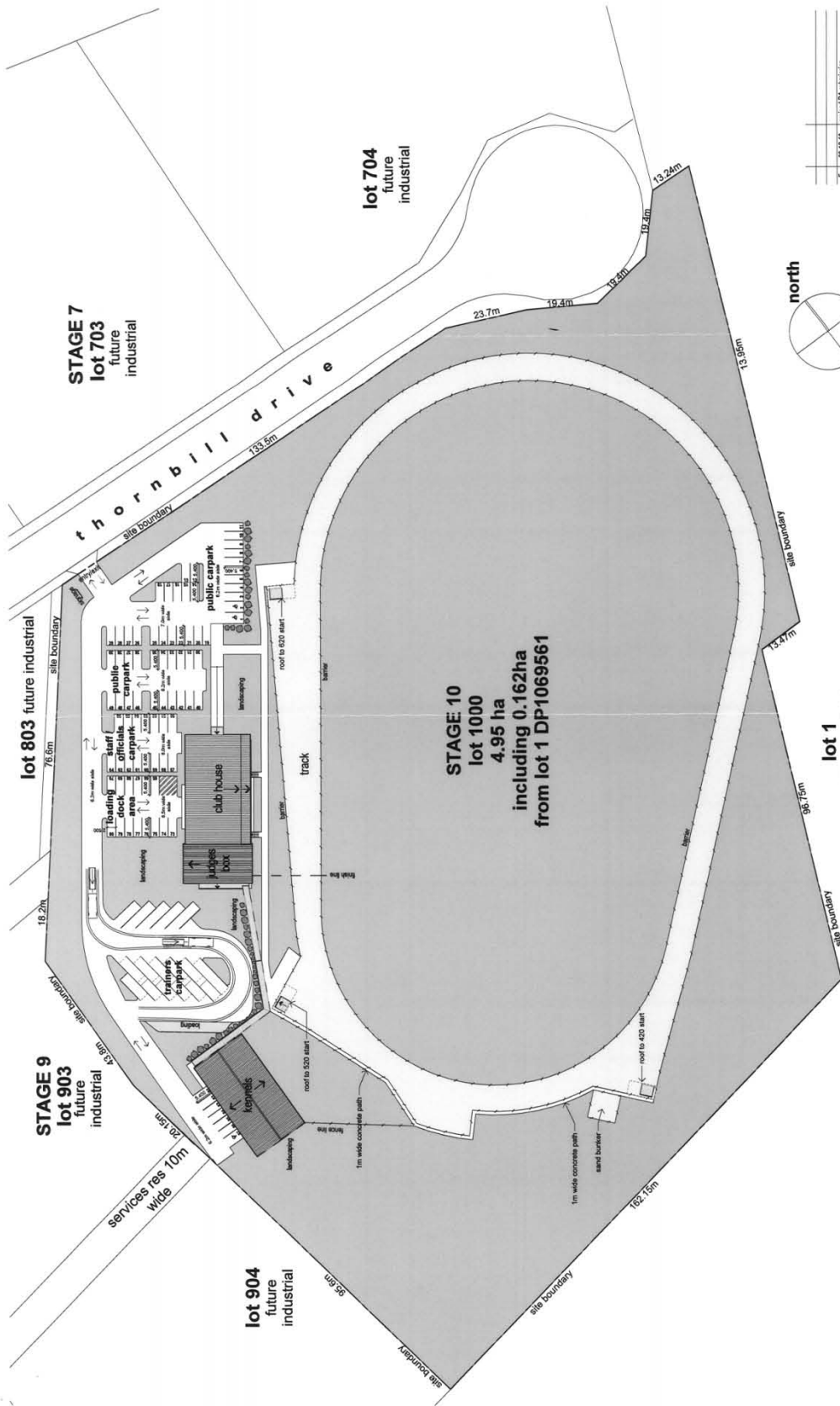
drawing title Cover Page  
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project tweed heads coursing club  
 address industry central estate  
 client landsolve

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 windsor, Q. 4030

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ISSUE	DATE	REVISION
F	18-11-09	revised DA submission
E	16-11-09	DA submission
D	06-11-09	change in roof form
C	19-11-09	issue to consultants
B	29-09-09	relocate building

job no. **1029**  
 drawing no. **DA-1001**  
 issue **F**

scale 1:1000  
 date 20/12/2010  
 drawn **rtw**

**drawing title: Site plan**

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**project: tweed heads coursing club**  
**address: industry central estate**  
**client: landsolve**

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 e info@tparc.net.au









01 Ground Floor Plan - Kennels  
SCALE 1:200

- Notes:
- All doors and windows of the Kennel Building be rated to achieve a minimum R<sub>w</sub> 27
  - A solid wall be constructed between the kennel cage area and the machinery roof and the kennel cage area and the roller end of the building to achieve a minimum rating of R<sub>w</sub> 40
  - A louver door be installed between the Kennel cage area and the Vet / Stewards end of the building to achieve a minimum rating of R<sub>w</sub> 27
  - Kennel Building roof/ceiling should be constructed to achieve a minimum R<sub>w</sub> rating of 45
  - Kennel Building roof/ceiling should be constructed to achieve a minimum R<sub>w</sub> rating of 43

ISSUE	DATE	REVISION
B	20/12/10	Revised DA submission

0 1m 2m 5m 10m  
scale  
1:200  
date  
20/12/2010  
drawn  
mhw  
job no.  
**1029**  
drawing no.  
DA-2101  
issue  
B

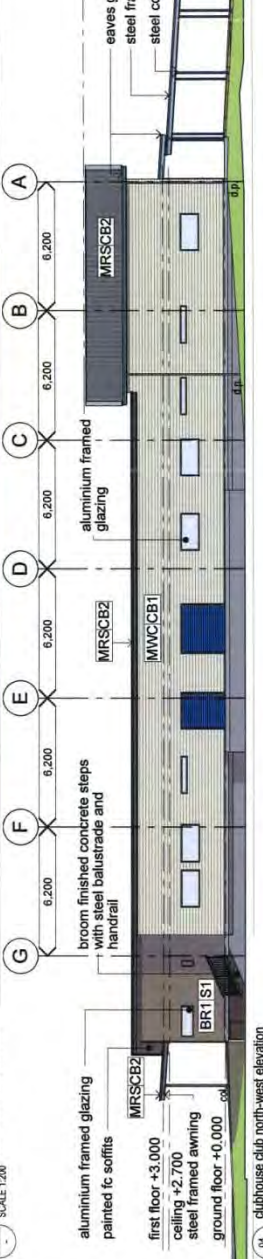
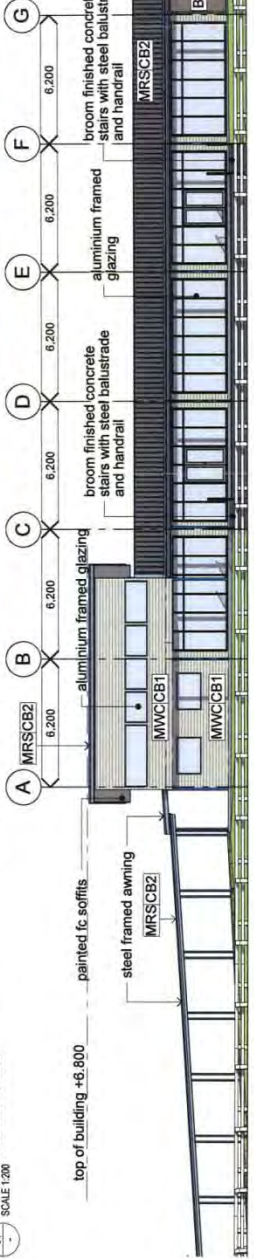
drawing title **Floor Plan - Kennels**  
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asn 15 512 888 031

- legend**
- EG eaves gutter
  - MRS Colorbond metal
  - RC roofing with anticon
  - MWC ridge capping
  - BR1 metal wall cladding
  - brick or blockwork wall
- finishes**
- CB1 Colorbond colour 1
  - CB2 Colorbond colour 2
  - CB3 Colorbond colour 3
  - S1 sealant type 1



job no.	1029
drawing no.	DA 3101 D
issue	drawn
date	mmw
revision	
rev	date
D	20-12-10
C	20-12-10
B	20-12-10
A	13-06-10



drawing title Elevations - Clubhouse & Judges Box

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external perspective

issue	date	revision
D	16-12-10	DA submission
C	05-12-10	change in roof form
B	01/11/10	preliminary perspectives

job no.	1029
drawing no.	DA,7001
issue	D

**drawing title Perspective**  
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**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 facility is consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The scale of the proposed development does not contravene the four principles of ecological sustainable development. The development results in:

- a) no irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

Clause 8 - Zone objectives

The land to which this application relates is zoned 4(a) Industrial under the provisions of this plan.

The objectives of this zone are as follows:

*“Primary Objective:*

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

*Secondary Objective:*

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

The proposed facility is defined as a ‘recreation facility’ and is permissible with consent. The proposed Greyhound Racing facility obtains the objects of the zone as the industrial nature of the existing estate will be retained, the proposed Greyhound Racing Facility will facilitate economic activity and employment generation to the local area, and the facility is considered suitable for the site and surrounding landuses.

Clause 15 - Essential Services

The site is able to be adequately serviced with water and sewerage facilities. Appropriate conditions are recommended.



### Clause 16 - Height of Building

The site is affected by a three storey height limit, with the development proposing a two storey development with a maximum building height of approximately 6.8 metres. The proposed facility would be appropriate in terms of height and scale in an industrial estate.

### Clause 17 - Social Impact Assessment

Section A13 of Council's DCP identifies the development types which must be accompanied by a Socio-Economic Impact Statement. However, the development is not greater than 1,000m<sup>2</sup> GFA as listed within clause A13.5 (club/recreation facility greater than 1,000m<sup>2</sup>) and the development is not listed as designated development as identified under section 77A of the Environmental Planning and Assessment Act 1979.

Social impacts created during the construction phase can be adequately mitigated by recommended conditions limiting hours of construction and implementing measures to minimize dust, water, air and noise pollution will mitigate these impacts.

The applicant states the following positive social and economic impacts associated with the proposal are:

- Approximately 100 direct full time equivalent employment positions will be created during the construction phase of the facility, which will extend over a period of 1 year. Indirect employment opportunities generated are estimated at 230, based on the multiplier of 2.3.
- Construction costs for the Greyhound Racing Facility are estimated at \$5,600,000.00.
- In terms of the greyhound racing facility during race meetings 18 employment positions would be created, 2 full time permanent employment positions also created during the week and 1 permanent caretaker. Indirectly approximately 160 employment positions will be created through the dog trainers, vets, greyhound suppliers, dog products, transport, tote and racing industry, catering, local suppliers, etc. This would create economic benefits for the local economy in the order of \$8 million per annum.
- The greyhound racing facility will provide an additional recreation facility to the local community and will be freely accessible to the general public.
- The club will install security cameras throughout the facility and also engage a security officer for race meets.
- The club supports a number of sporting clubs and charities. The 2 major fund raising races are held for the Tweed Heads Hospital and Coolangatta Surf Life Saving Club.
- Direct economic contribution of greyhound racing in the Richmond Tweed region is estimated by Access Economics to be \$9.5 million.
- Total employment attributable to greyhound racing in the Richmond Tweed region is 108 full time equivalents.
- The operator of the racing facility (THCC) will continue to implement responsible gambling and serving of alcohol practices (as per the liquor licence) and comply with relevant Greyhound Racing NSW requirements and

statutory requirements of the Department of Communities (office of liquor, gaming and racing). All staff members serving alcohol at the club will have the appropriate qualifications in the responsible serving of alcohol. To the knowledge of the existing operations manager the club has never had a complaint against its liquor licence. A copy of the clubs Liquor Licence is included within the development application.

- Under the required Greyhound Racing License the club will have to implement a responsible gambling system, which includes signs and material to inform person where to get help. A copy of the clubs Certificate of Registration of a Greyhound Racing Club is included within the development application.

The proposed development is considered to generate social and economic benefits to the local economy during the construction and operational stages.

#### Clause 34 Flooding

The site is identified as being prone to flooding with a designed flood level of is RL 5.6m AHD, however, due to extensive earthworks raising the site to an approximate RL 9.0m AHD the area which the proposed facility is to be located is no longer prone to flooding. Flooding is not a constraint for the proposed development.

#### Clause 35 - Acid Sulfate Soils

The application was reviewed by Council's Environmental Health Services Unit in relation to acid sulphate soils. It is concluded that acid sulfate soils were adequately assessed and managed during assessment and construction of the approved subdivision (DA02/1685). No further impacts or consideration are required.

#### Clause 39A Bushfire protection

A portion of the site is identified as being prone to bushfire and within bushfire buffer zones, however, the location of the proposed facility is not located within the bushfire or bushfire buffer zones. The site has also been cleared of vegetation and there is no significant vegetation stands adjacent to the sites.

It is therefore submitted that the proposal is not likely to be affected by bushfire and does not raise any significant issues having regard to the nature of the proposed land use (greyhound racing facility).

#### Clause 47 – Advertising Signs

No advertising signs are proposed as part of this application. The application states that future applications will be lodged for advertising signs for the greyhound racing facility.

**State Environmental Planning Policies**

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

**Clause 12: Impact on agricultural activities**

The subject allotment is part of an industrial subdivision that has been approved adjoining agricultural land. The adjoining land is mapped as being of regional significance (prime crop of pasture land).

The outlined proposed Greyhound racing facility will not restrict the future or current use of the surrounding rural land.

**Clause 47: Principles for Commercial and Industrial Development**

The proposal occurs within an existing 4(a) Industrial zone with all relevant services available to the site. The subject site is adequately located within the existing local and regional road networks. The proposal is therefore considered to comply with the objectives of clause 47 of the NCREP.

**Clause 82: Sporting fields or specialised recreation facilities**

An acceptable level of public access is available to the proposed Greyhound racing facility, within the existing road network.

**SEPP No. 64 – Advertising and Signage**

No advertising signs are proposed as part of this application. The application states that future applications will be lodged for advertising signs for the greyhound racing facility.

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

**Draft Tweed Local Environmental Plan 2010**

The site is located within the IN1 General Industrial Zone. The proposed Greyhound Racing Facility would be defined as Recreation Facilities (Major) and as such is listed as prohibited development.

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

**Tweed Development Control Plan**

**A2-Site Access and Parking Code**

The Club plans to hold a race meeting every Wednesday afternoon and trials at least 3 mornings per week for 2 hours. The proponents expect that an average of 80 greyhounds will race during each meeting. Each race meeting would be operated by approximately 18 staff. Two staff members would operate the facility during the week when racing events are not being held. Current public attendance numbers range between 50 and 100.

The proposed development provides a total of 98 on site car parking spaces comprising of 79 spaces for the general public and staff officials, 12 car / trailer combinations for greyhound trainers and 7 spaces located adjacent to the greyhound kennel facility to be located at the southern end of the site. Access to the site will be gained via a single driveway in Thornbill Drive. Area is available on site for additional parking if required.

The proposed car parking complies with Council's car parking requirements.

Council's Traffic Engineer assessed the application and did not raise any objections subject to conditions.

Council's Traffic Engineer's comments are provided below:

- *“Even though only a conceptual design at the moment, the carparking driveway entrance as shown has very poor entry delineation from Thornbill Drive with unnecessary vehicle conflict points as there are three carpark aisles meeting at one location. Carparking is to be designed in accordance with AS 2890.1.*
- *Thornbill Drive at the development frontage shall have a carriageway width sufficient to enable a vehicle to pass a right turning vehicle into the racing facility's driveway without encroaching over the carriageway centreline (i.e. a 13 metre carriageway width).*
- *The anticipated usage of the greyhound racing facility should be conditioned within any consent (i.e. one race meeting per week and three trials per week) with any departures being subject to the approval of the Director Planning and Regulation. The proposed three trials per week should be confirmed with the applicant.*
- *A Traffic Management Plan prepared by a competent traffic consultant should be submitted to the Director Planning and Regulation for approval where more than 160 persons are expected to be in attendance.*
- *Discontinuing Lundberg Drive with a cul-de-sac is less desirable from a road connectivity perspective than the original subdivision layout, however a road reserve link will still be provided at the allotment boundary with the balance of Lot 1 DP 1069561 to the east.*
- *TRCP applies - to be averaged over a seven day week.”*

Appropriate conditions are recommended to address the comments above.

#### A3-Development of Flood Liable Land

The site is identified as being prone to flooding with a designed flood level of is RL 5.6m AHD, however, due to extensive earthworks raising the site to an approximate RL 9.0m AHD the area which the proposed facility is to be located is no longer prone to flooding. Flooding is not a constraint for the proposed development.

#### A4-Advertising Signs Code

No advertising signs are proposed as part of this application. The application states that future applications will be lodged for advertising signs for the greyhound racing facility.

---

### A11-Public Notification of Development Proposals

The Development Application was advertised in the Tweed Link for a period of fourteen (14) days from Wednesday 19 January 2011 to Thursday 3 February 2011(public holidays excepted).

Council received 67 submissions during the exhibition period, and 15 after the advertised period, all objecting to the application. A petition containing 1,219 signatures was also received from the group Friends of the Pound, also objecting to the proposal. It should be noted that a substantial proportion of both the written submissions and the petition signatories were received from people residing outside of the Tweed LGA, both within Australia and overseas. The main issue raised in the objections was the animal welfare concerns of the operation

An assessment of the submission is provided in section (d) of this report.

### A13-Socio-Economic Impact Assessment

Section A13 of Council's DCP identifies the development types which must be accompanied by a Socio-Economic Impact Statement. However, the development is not greater than 1,000m<sup>2</sup> GFA as listed within clause A13.5 (club/recreation facility greater than 1,000m<sup>2</sup>) and the development is not listed as designated development as identified under section 77A of the Environmental Planning and Assessment Act 1979.

Social impacts created during the construction phase can be adequately mitigated by recommended conditions limiting hours of construction and implementing measures to minimize dust, water, air and noise pollution will mitigate these impacts.

The applicant states the following positive social and economic impacts associated with the proposal are:

- Approximately 100 direct full time equivalent employment positions will be created during the construction phase of the facility, which will extend over a period of 1 year. Indirect employment opportunities generated are estimated at 230, based on the multiplier of 2.3.
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- In terms of the greyhound racing facility during race meetings 18 employment positions would be created, 2 full time permanent employment positions also created during the week and 1 permanent caretaker. Indirectly approximately 160 employment positions will be created through the dog trainers, vets, greyhound suppliers, dog products, transport, tote and racing industry, catering, local suppliers, etc. This would create economic benefits for the local economy in the order of \$8 million per annum.
- The greyhound racing facility will provide an additional recreation facility to the local community and will be freely accessible to the general public.
- The club will install security cameras throughout the facility and also engage a security officer for race meets.

- The club supports a number of sporting clubs and charities. The 2 major fund raising races are held for the Tweed Heads Hospital and Coolangatta Surf Life Saving Club.
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- Total employment attributable to greyhound racing in the Richmond Tweed region is 108 full time equivalents.
- The operator of the racing facility (THCC) will continue to implement responsible gambling and serving of alcohol practices (as per the liquor licence) and comply with relevant Greyhound Racing NSW requirements and statutory requirements of the Department of Communities (office of liquor, gaming and racing). All staff members serving alcohol at the club will have the appropriate qualifications in the responsible serving of alcohol. To the knowledge of the existing operations manager the club has never had a complaint against its liquor licence. A copy of the clubs Liquor Licence is included within the development application.
- Under the required Greyhound Racing License the club will have to implement a responsible gambling system, which includes signs and material to inform person where to get help. A copy of the clubs Certificate of Registration of a Greyhound Racing Club is included within the development application.

The proposed development is considered to generate social and economic benefits to the local economy during the construction and operational stages.

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

Clause 92(a) Government Coastal Policy

Not applicable to the application.

Clause 92(b) Applications for demolition

The does not require demolition.

Clause 93 Fire Safety Considerations

Appropriate conditions are recommended.

Clause 94 Buildings to be upgraded

Not applicable to the application.

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

Not applicable to the application.

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

### Context and Setting

The site is surrounded by industrial land to the north, east and west, with rural land located to the south. The proposed development is considered appropriate in relation to the surrounding landuses.

### Access, Transport and Traffic

Due to the anticipated frequency of racing meets, training sessions and staff members, the proposed development is considered not to create an adverse impact on the local road network, with adequate access provided to the site.

The proposed development provides a total of 98 on site car parking spaces comprising of 79 spaces for the general public and staff officials, 12 car / trailer combinations for greyhound trainers and 7 spaces located adjacent to the greyhound kennel facility to be located at the southern end of the site. Access to the site will be gained via a single driveway in Thornbill Drive. It is to be noted that additional parking can be provided.

The proposed car parking complies with Council's car parking requirements.

### Flora and Fauna

The applicant submitted a Landscape Plan prepared by Scenetics (Appendix F) with the application.

The applicant states the following:

- The landscape proposal for the site will endeavour to reinforce the vegetation character of the surrounding area and provide scenic amenity, whilst being cognisant of the requirements for a development of this nature. Visibility across the track is paramount therefore the area within the track perimeter will be grassed with no trees or garden areas proposed.
- The landscape design will recognise factors such as visual impacts from Wardrop Road to the north and east, and as such will incorporate plantings of native tree and shrub species to batters along the north-east and south-east boundaries to provide screening elements.
- The proposed carpark areas will include canopy shade trees at approximately one tree per six car spaces with low shrub planting to the carpark aisle ends. Low shrubs will be incorporated around the kennel and clubhouse buildings and along pathways. Scattered trees will be planted in lawn areas to the west of the track to allow viewsheds to the rural lands and distant hills.
- The Development Consent Condition 11A (DA02/1685), requires landscaping and rehabilitation in accordance with the vegetation Strategy. The Vegetation Strategy lists only six species for this part of the subdivision, it is considered that the proposed plant palette offers a more structured and varied list of native plants and will enhance the existing vegetation communities within the surrounding area.

The submitted landscaping plan appears satisfactory, however, further detail is required in terms of plant numbers/densities.

Suitable conditions are recommended in relation to the landscape plan.

### Stormwater

Council's flooding and stormwater engineer provided the following comments on 4 March 2011 in relation to drainage for the site;

*"The application proposes to treat runoff from hardstand areas with appropriately sized Humeceptors prior to discharge to the public domain at 2 discharge points.*

*The preliminary stormwater management plan shows discharge from the kennel area car park and the race track to a drainage easement through lot 903 which ultimately leads to a yet to be constructed wetland.*

*Therefore it will be necessary to impose a condition of consent on the s96 approval (DA02/1685) requiring construction of the wetland in advance of the greyhound racing facility.*

*Water sensitive urban design principles would also be appropriate for this development."*

Suitable conditions are recommended by Council's Flooding and Stormwater Engineer.

### Flooding

The site is identified as being prone to flooding with a designed flood level of is RL 5.6m AHD, however, due to extensive earthworks raising the site to an approximate RL 9.0m AHD the area which the proposed facility is to be located is no longer prone to flooding. Flooding is not a constraint for the proposed development.

### Noise

The proposal is supported by an Environmental Noise Impact Report (ENIR) prepared by CRG Traffic & Acoustics Pty Ltd dated 17 November 2010. The facility is proposed to focus on television races with limited attendances by the public (anticipate 50-100 individuals). Racing is proposed every Wednesday afternoon with an average of 80 dogs with trials 3 mornings per week for 2 hours. No dog housing is proposed overnight. Proposed operating hours including waste and collection deliveries are limited to 7am to 6pm seven days per week.



The ENIR aims at assessing potential noise impacts upon adjacent sensitive receivers with the closest dwelling located approximately 580m from the proposal. The ENIR has been prepared in general accordance with the NSW EPA Industrial Noise Policy. The report recommends that noise impacts can be adequately managed with the implementation of acoustical treatments and management principles including; restrictions on operating hours, structural acoustical treatments incorporated into the construction of the holding kennels and restrictions on amplified PA speakers.

Suitable conditions are recommended by Council's Environmental Health Officer.

#### Wastewater

The facility will be connected to Council's sewer infrastructure.

Suitable conditions are recommended by Council's Trade Waste Officer.

#### Solid Waste

The proposal is supported by a Waste Management Plan prepared by Mark Rigby & Associates Pty Ltd dated December 2010 and is considered adequate to manage solid waste generated by the facility. Condition to be applied to ensure veterinarian medical waste is collected and disposed of by a licensed clinical waste contractor in accordance with the Protection of the Environment Operation (Waste) Regulation 2005.

Suitable conditions are recommended by Council's Environmental Health Officer.

#### Acid Sulfate Soils

The subject site is located within land identified as Class 3 and 5 acid sulfate soils. Bulk earthworks were completed during construction of the approved industrial subdivision (DA02/1685). Minor land forming will be required to level the track, road construction, stormwater management and connection to services. Acid sulfate soils were adequately assessed and managed during assessment and construction of the approved subdivision. Council's Environmental Health Officer advised that no further impacts or consideration are required.

#### Contaminated Land

Contaminated land considerations were undertaken during assessment of the industrial lot subdivision (DA02/1685). Council's Environmental Health Officer advised that no further considerations required.

#### Food

The proposed plans indicate the clubhouse will include a kitchen and bar facility. Limited construction details have been submitted. Conditions to be applied to ensure detailed fit out plans are prepared and submitted prior to issue of construction certificate.

### Lighting

Any lighting for the proposed facility may have significant impacts on adjacent residential land uses. The applicant indicates that lights to illuminate the racing track are not proposed and will be appropriately conditioned.

The likely impacts generated by the proposed facility are considered to be adequately mitigated with recommended conditions.

### Water Supply

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.

### Sewer

Council's reticulated 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.

Please note the following comments from Council's Water & Sewer Engineer;

*"This proposal for the construction of a Greyhound Racing Club on Thornbill Drive South Murwillumbah will result in changes to the approved design of the future stages of the existing industrial estate.*

*This will impact both planned water supply and sewerage.*

#### *Water Supply:*

*It was proposed that the main in Thornbill Drive would continue to the east then south and west along future roads to join the existing 250mm diameter main in Lundberg Drive. As the through road will not be constructed under this proposal, but will result in two cul-de-sacs this through main will not be possible. The proponent has proposed to construct a main from the southern cul-de-sac through a 3m wide reserve to Thornbill Drive thus providing some looping but resulting in a cul-de-sac loop at the eastern end of Thornbill Drive. A future connection from the eastern end of Thornbill Drive will be able to service a potential Council development of land immediately east of the subject site.*

*There is no objection to this proposed loop main but it is noted that the northern 3m wide reserve will also accommodate a 900 diameter stormwater drain. 3 m is not considered wide enough to accommodate both sets of infrastructure and it is requested that the northern section be widened to 5m. (This has been included as a condition of consent for DA02/1685).*

**Sewerage:**

*It had been envisaged previously that the sewer that would service the southern road would continue through to the Council owned land to provide a sewer connection. That may be able to service some of it by gravity. With the Greyhound track in this location, it would not be able to provide that connection as previously anticipated, making it almost certain that the development of the Council land would require the provision of a small pump station should Council proceed with development of that land. It is noted however that the advice minuted from DAP was that the sewer in Thornbill Drive should be aligned for easy extension into the Council site. It should also be noted that at least some of the Council land would have required a pump station regardless of the Greyhound Club proposal as the constraints of grading of the sewers would not permit the sewer to reach the Council site at a depth that could service the whole site.*

*As such, there is no objection from the perspective of sewerage.*

*A trade waste application shall be necessary for the kitchen facilities and for the kennel building.*

*The assessment of Section 64 charges will be based on the normal criteria for the club house using food preparation, bar, amenities and office space (with some discount of office space given only two staff except on race meeting days), and an allowance for the kennel building. This allowance will include the toilet, wash bay and I assume the kennel floor will be connected to sewer when it is washed out.”*

Suitable conditions are recommended in relation to water sewer.

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

Surrounding Landuses/Development

The site is located within an approved industrial subdivision, surrounded by industrial land to the west, north and east, with rural land located to the south.

Flora and Fauna

The site does not contain any flora or fauna.

Topography

The site has been filled to approximately RL9.0m in accordance with the approved construction certificate for the industrial estate. The site is mostly level, however, The falls from an RL 9.0m AHD to approximately RL3.0m AHD in the southern portion of the site. Appropriate batters and relevant conditions have been applied to the proposal.

### Earthworks/Landforming

Bulk earthworks have been generally completed for the majority of the industrial subdivision. The remainder of the subdivision is yet to be completed (stages 7-11 civil construction works).

Levels for proposed Lot 1000 range from RL 11.0m along the northern boundary of the site to RL 3m in the southern most part of the site. Earthworks will be required to ensure the track is level, plans titled 'Industrial Estate Murwillumbah' prepared by Kelley Covey and dated 9/12/10 show a 1 in 3 batter up to 5m high along the southern half of the proposed greyhound track. Council's development and construction design specifications allow for a batter up to 5m in height on Industrial land.

Other earthworks will be required to complete the construction of Thornbill Drive, completion of the wetlands or drainage reserve on proposed Lot 1101 and connection of services to the proposed greyhound track and facilities.

Heavy haulage is applicable to the development and a condition of consent requiring the batters to be topsoiled and grassed within 2 weeks of placing the fill material.

### Geotechnical Issues

The site has a known history of geotechnical concerns in terms of the suitability of the site for the proposed land use. Additional information was requested and received from the applicant to address these concerns. Due to a number of remaining concerns, it was considered appropriate to include deferred commencement conditions to address the geotechnical issues.

Geotechnical engineering certification is to be provided for proposed Lot 1000 and surrounding allotments (proposed Lots 901, 902, 903, 904 and Lot 1101 - drainage reserve) to certify that settlement has terminated and these lots are capable of being developed without the need for special construction techniques or foundation types.

The certification is to ensure the greyhound racing facility and associated service and road infrastructure can be developed without special construction techniques. Settlement plate information is to be provided with the geotechnical certification to validate that settlement has stopped.

The site is considered suitable for the proposed facility subject to recommended conditions.

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

The Development Application was advertised in the Tweed Link for a period of fourteen (14) days from Wednesday 19 January 2011 to Thursday 3 February 2011.

Council received 67 submissions during the exhibition period, and 15 after the advertised period, all objecting to the application. A petition containing 1,219 signatures was also received from the group Friends of the Pound, also objecting to the proposal. It should be noted that a substantial proportion of both the written submissions and the petition signatories were received from people residing outside of the Tweed LGA, both within Australia and overseas.

The email petition from the Friends of the Hound web site, stated the following objection:

*"We, the undersigned, **object** to the proposed Greyhound Racing Facility at Murwillumbah (DA10/0844).*

*Our concerns focus mainly on the significant welfare issues for Greyhounds due to a poorly regulated commercial racing and betting industry that exploits mass numbers of these animals and generates a mass wastage (of thousands upon thousands of healthy young dogs) every year. There is a huge focus on animal welfare around the world, with the plight of Greyhounds gaining much attention internationally, nationally and locally, with Greyhound racing facing a global decline.*

*We understand that there are also economic and social implications, with little or no benefit to the community at large, and therefore request that the proposed development of a Greyhound track at Murwillumbah be rejected.*

*We thank you for taking careful consideration of our concerns and objections."*

An assessment of the submission is tabled below:

Issue	Comment
Noise of dogs/speakers	The proposal is supported by an Environmental Noise Impact Report (ENIR) prepared by CRG Traffic & Acoustics Pty Ltd dated 17 November 2010. The report recommends that noise impacts can be adequately managed with the implementation of acoustical treatments and management principles including; restrictions on operating hours, structural acoustical treatments incorporated into the construction of the holding kennel box and restrictions on amplified PA speakers. Conditions to be applied.
Lighting	No lighting is proposed, all racing and training proposed during the day, not at night.

<b>Issue</b>	<b>Comment</b>
The Greyhound Racing Industry/Breeding and destroying of dogs/animal welfare	It is to be noted that the application is for a Greyhound racing facility, which provides racing and training facilities only, the development does not propose breeding facilities or house dogs over night. The greyhound facility is to operate in accordance with the (but not limited to), the Greyhound Racing Act 2009 and the Office of Liquor, Gaming and Racing. The operation of the Greyhound Racing industry is not a consideration for Council pursuant to section 79C of the Environmental Planning and Assessment Act, 1979. The animal welfare concerns raised are in the submissions are noted but however, are not a planning consideration for Council. Council's considerations are in relation to the landuse, not the greyhound racing industry and welfare of the dogs outside the boundaries of the site. Legislation is in force to ensure the welfare of the animals is maintained during the operation of the facility on the site.

It is to be noted that Council received

**(e) Public interest**

The proposed development is considered not to negate the public's interest, subject to recommended conditions.

**OPTIONS:**

1. Approved the application subject to recommended conditions.
2. Refuse the application and provide reasons for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development is permissible with development consent and is considered suitable for the site, with likely impacts on the natural and built environments suitably mitigated by 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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

**ORIGIN:**

Development Assessment

**FILE NO:** PF5510/1295 Pt2

**SUMMARY OF REPORT:**

Council last considered a report on the equestrian pad on 19 April 2011 and resolved as follows:

*"In respect of the compliance matters relating to Lot 7 DP826941, that Council seeks negotiations with the owners of the subject property to secure voluntary remedies as referred to in section 5.4 of this report."*

Section 5.4 referred to above is as follows:

**5.4 Other Options**

*There may be some value in seeking a voluntary undertaking from the Colby's to minimise the obstruction to flood flow. This could include:*

- (a) An undertaking to remove the electricity pole edging on the equestrian pad and replacement with an edging that has less impact on flood flow.*
- (b) An undertaking to keep the areas between the shed and the house and the shed and the equestrian pad free of obstructions (stockpiles, parked vehicles etc).*
- (c) An undertaking to not undertake any filling between the shed and the house and between the shed and the equestrian pad at any future time.*

The owners advised on 18 May 2011 they do not wish to enter into voluntary undertakings with Council.

**RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Council takes no further action and advises the owners accordingly.**

## REPORT:

On 6 June the owners were written to again requesting reconsideration of Council's request for voluntary undertakings or Council would consider commencing appropriate proceedings for construction of a shed without approval.

The owners responded via their solicitors on 8 June 2011 as follows:

*"We are instructed our clients' farm shed is exempt development (SEPP (Exempt and Complying Development Codes) 2008). However, in the event Council views the matter otherwise, we hold instructions to accept service of process."*

Air photographs indicate that the shed was constructed between 2000 and 2004 which is prior to the SEPP quoted by the owner's solicitor. Council Exempt DCP prevailed at the time and the size limit for sheds to be exempt was 100m<sup>2</sup>. The shed is approximately 150m<sup>2</sup>. The size limit in the SEPP is 200m<sup>2</sup>, accordingly it is likely that a shed similar to the existing shed would be exempt development if being constructed today.

It has been at least seven years since the construction of the shed and combined with the provisions of the SEPP that currently exempts similar sheds and given the passage of time it is unlikely that action to remove the shed would be successful.

It should also be noted that Council received legal advice indicating that success in having the equestrian pad removed would be unlikely.

The Director Engineering and Operations advises:

*"Whilst there has been no modelling of the impacts of the equestrian pad and the unapproved shed on flood behaviour, it is likely that the combined effect of these two works would have some impact on southward movement of floodwaters, which could in turn impact on localised flood levels of Dungay Creek and adjacent land. The adjacent landowners believe that these impacts are significant and have cited flood behaviour in 2008 as an example."*

*"In the absence of any voluntary reduction of flood plain obstructions by the owners of Lot 7 DP826941, the likely impacts on flood levels and the likely impacts on neighbours will remain."*

## OPTIONS:

1. Take no further action and advise the owners accordingly.
2. Instruct Council's solicitors to commence proceedings to remove the equestrian pad.

Option 1 is recommended given previous legal advice.

## LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Legal costs would be incurred if council resolved to take legal action. Consultants would also need to be engaged.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. **Confidential Attachment** - Council report of 19 April 2011 relating to Equestrian Pad Compliance Matter - Lot 7 DP 826941 No. 308 Tomewin Road Dungay (ECM 35600476)
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**19 [PR-CM] Tweed Development Control Plan Section B24 - Area E Urban Release Development Code**

**ORIGIN:**

**Planning Reform**

**FILE NO: GT1/LEP/2000/10 Pt6**

**SUMMARY OF REPORT:**

This report provides an update on the progress of the Tweed Development Control Plan, Section B24 – Area E Urban Release Development Code (“the Code”), and seeks Council’s endorsement to proceed to the statutory public exhibition.

Area E has been recognised for many years by both Tweed Shire Council and the NSW Department of Planning and Infrastructure as an important strategic site for urban land release to accommodate future housing needs through the planned supply of about 1632 lots, catering for an additional residential population of about 4,000 people.

In accordance with the Local Environmental Plan gazetted for this site in 2007, Council’s planning and engineering staff are preparing a Draft Development Control Plan (DCP) and Section 94 Plan (s. 94 Plan) to facilitate the orderly and economic development of Area E. The DCP has been prepared as a Section of the Tweed DCP 2008, titled *Area E Urban Release Development Code* (“the Code”). The Code represents the most detailed level of the strategic planning framework and seeks to guide the future development of the Area E release area through a variety of strategies and development controls.

As part of the preparation process, Council’s Planning Reform Unit (PRU) staff has worked with the landowners of Area E to undertake extensive landowner consultation, which comprised of three intensive participatory workshops hosted at Tweed Heads.

The Draft Code is now presented in four sections, three covering the whole of the release area and a final section specifically addressing the three distinct ‘precincts’ of Area E. This format is considered to enable the local community to identify with guidelines and controls customised to the unique features, characteristics and specific contextual issues of these distinct precincts.

In recognition of the intricacies, constraints and ‘uniqueness’ of Area E, and in response to the outcomes of the landowner workshops, a number of controls have been specifically tailored and provide greater detail to the generic standard requirements of the Tweed DCP s A1 Residential and Tourist Development Code. These strategies, objectives and controls are discussed within this report.

The Code has attempted to address landowners and the Council officers concerns through a detailed investigation of the sites opportunities and constraints by utilising various contemporary best practice planning processes that include:

- Constraint and Site Analysis
- Developing steep sites analysis and interpretation

- Built form and design-lead solutions to balance environmental protection, open space and the built environment.

The Draft Code is now considered to be ready for formal public exhibition, providing the general public the opportunity to review the Code and provide comment. Public exhibition of the Code would also enable the Code to best integrate into the Part 3A Major Project Application before the Department of Planning and Infrastructure.

**RECOMMENDATION:**

**That:**

- 1. The report on Tweed Development Control Plan Section B24 – Area E Urban Release Development Code be received and noted.**
- 2. Tweed Development Control Plan Section B24 – Area E Urban Release Development Code be publicly exhibited for a minimum period of 30 days, in accordance with section 74E of the *Environmental Planning Assessment Act 1979*.**
- 3. Following public exhibition the Draft Tweed Development Control Plan, Section B24 – Area E Urban Release Development Code, having regard to matters arising from the public consultation and any submissions received, a further report be submitted to Council.**

## REPORT:

Area E is a greenfield development area located in Terranora, bounded generally by Mahers Lane, Terranora Road, Fraser Drive and the Terranora Broadwater to the north.

The site was largely a composite of rural and agricultural zones prior to the Gazettal of the Tweed Local Environmental Plan 2000 – Amendment No. 10 in October 2007, which resulted in urban and environmental zones comprising:

- 5(a) Special Uses (School);
- 2(c) Urban Expansion;
- 7(a) Environmental Protection (Wetlands and Littoral Rainforests); and
- 7(d) Environmental Project/Scenic Escarpment.

The purpose of the LEP amendment was to give effect to the Tweed Urban Release Strategy 1991 which identified the land as an urban release / expansion area.

The LEP amendment was guided by the detailed site investigations that were undertaken as part of a local environmental study, which resulted in the identification and location of appropriate zones, as well as the need for specific provisions. Clause 53D was borne out of that process and was gazetted in the following terms:

### **53D Specific provisions for Terranora Urban Release Area E**

- (1) This clause applies to the land known as Terranora Urban Release Area (Area E), as shown edged heavy black and coloured on the map marked "Tweed Local Environmental Plan 2000 (Amendment No 10)".
- (2) The object of this clause is:
  - (a) to ensure a development control plan has been developed for the land to which this clause applies to avoid ad hoc development, and
  - (b) to ensure that issues relating to contaminated land are dealt with to a sufficient level to meet the requirements of *State Environmental Planning Policy No 55 - Remediation of Land*, and
  - (c) to ensure that any wetlands in the area are restored and protected and breeding habitat for salt water mosquitoes and biting midges is minimised, and
  - (d) to ensure that the management of urban stormwater is consistent with the *Tweed Urban Stormwater Quality Management Plan* adopted by Council, and
  - (e) in respect of subclause (5), to require assistance towards the provision of the following infrastructure, facilities and services to satisfy needs that arise from development on land to which this clause applies, but only if the land is developed intensively for urban purposes:
    - (i) regional transport infrastructure,
    - (ii) education facilities and services provided by the State,
    - (iii) health facilities and services provided by the State,
    - (iv) facilities and services provided by the State for the purposes of emergency services.



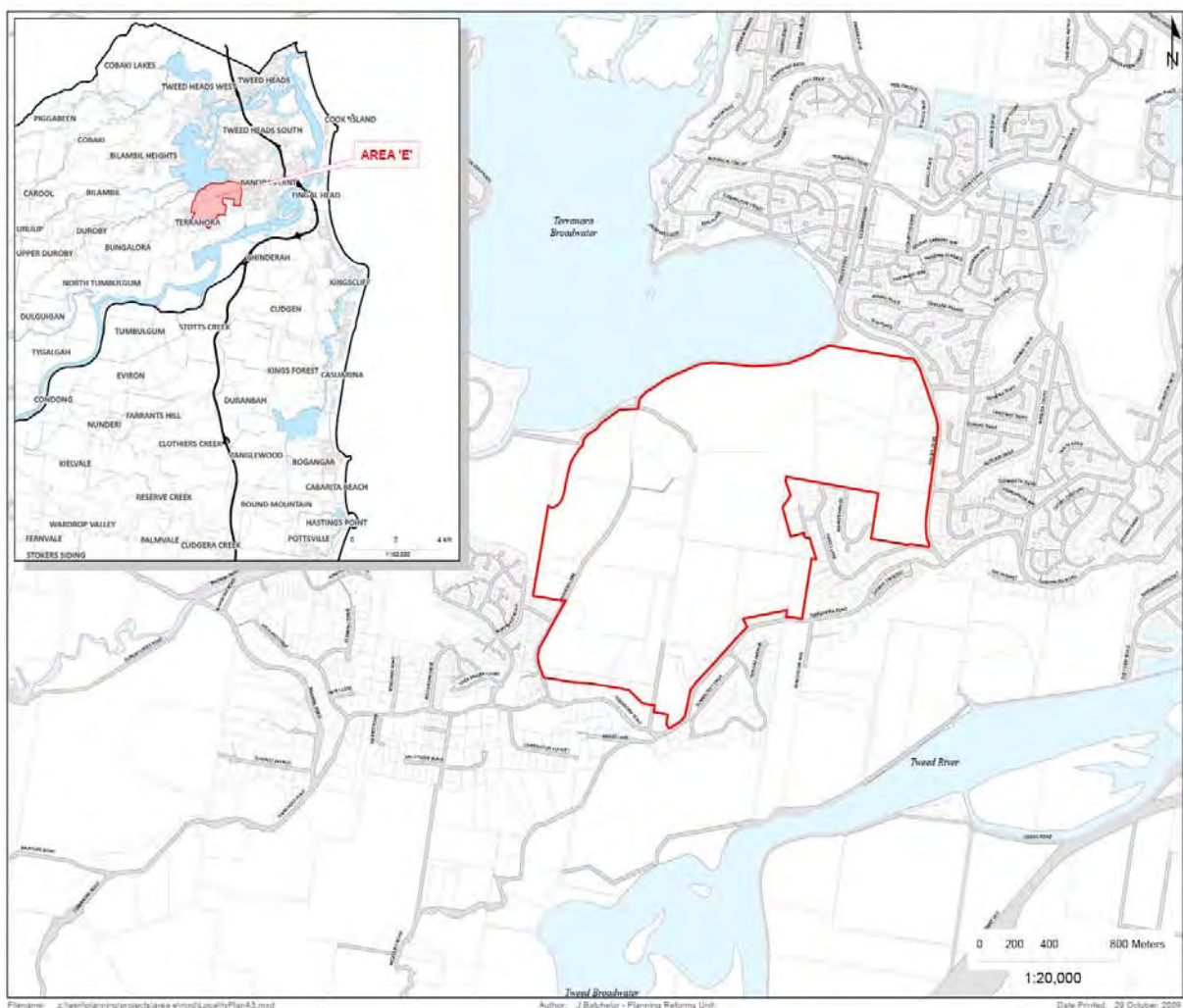
- (3) The consent authority must not consent to development on land to which this clause applies unless it is satisfied that:
- (a) a development control plan has been prepared for the land, and
  - (b) any contaminated land has been identified to the extent necessary to allow for the appropriate location of sensitive land uses, and
  - (c) any wetland on the land will be restored and managed to the consent authority's satisfaction to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges, and
  - (d) the development will generally comply with the *Tweed Urban Stormwater Quality Management Plan* as adopted by the Council on 19 April 2000.
- (4) The consent authority is not to consent to subdivision of land to which this clause applies or to other development on that land unless the consent authority is satisfied that:
- (a) any likely contaminants within the soil, surface water and groundwater as a result of previous land uses have been identified, and
  - (b) an effective testing regime has been implemented, that takes into account the hydrology of the land, to identify hotspots of contamination in accordance with any relevant guidelines issued by a government department or public authority, and
  - (c) appropriate thresholds and criteria have been used in the assessment of any potential contamination, and
  - (d) any contamination of the land does not pose a significant threat to human health or the environment, and
  - (e) if contamination has been identified, an adequate monitoring program will be implemented in relation to the contamination of the land.
- Note:** *Clause 7(1) of State Environmental Planning Policy No 55 - Remediation of Land sets out other matters that must be taken into account by a consent authority.*
- (5) Despite any other provision of this plan, the consent authority must not grant consent to the subdivision of land to which this clause applies, that is within Zone No 2(c), if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the commencement of this clause, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of infrastructure, facilities and services referred to in subclause (2)(e) in relation to that lot.
- (6) Subclause (5) does not apply:
- (a) to any lot within a special contributions area within the meaning of Division 6 of Part 4 of the Act, or
  - (b) to any lot identified in the certificate as a residue lot, or
  - (c) to any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utilities, education facilities, or any other public purpose, or
  - (d) to a subdivision for the purpose only of rectifying an encroachment on any existing allotment.
- (7) *State Environmental Planning Policy No 1 - Development Standards* does not apply to development for the purposes of subdivision on land to which this clause applies.
- (8) Nothing in this clause affects the application of *State Environmental Planning Policy No 55 - Remediation of Land* to land to which this plan applies.



Of particular relevance to the current Draft Code is Clause 53D (2)(a) and (3)(a), which require that a DCP be prepared to both avoid “ad hoc” development and prior to the consent authority consenting to the development of land the subject of this clause.

In pursuance of those provisions and the enablement of progress toward a sustainable site responsive development a locality based DCP, the Draft Area E Urban Release Code (“the Code”), has been prepared for the release area, in consultation with the landowners.

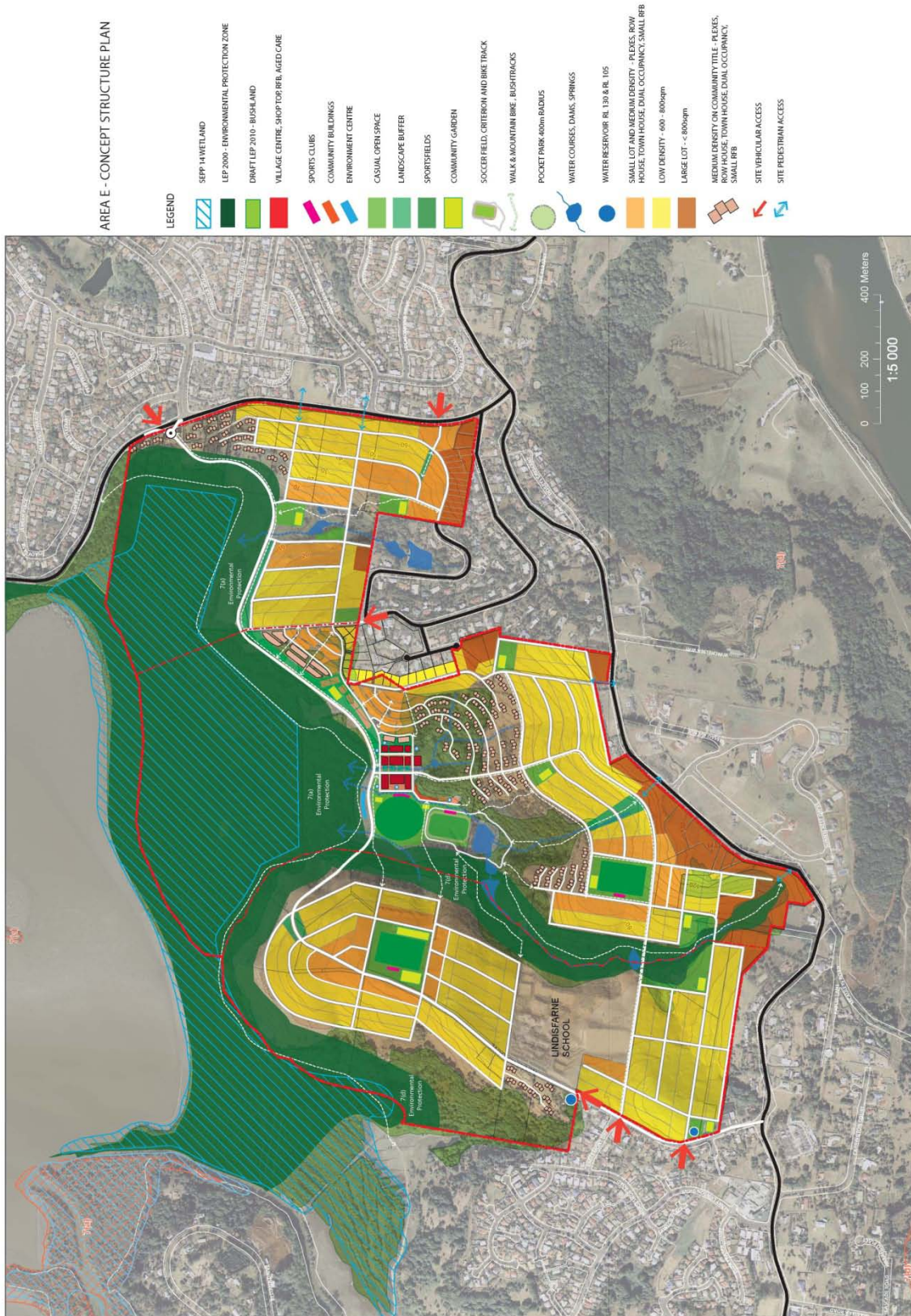
Following the detailed investigations, site planning and landowner consultations, the Draft Code has reached a stage where it is suitable for public exhibition. This is a critical stage of the drafting process, enabling broader community opinion to inform the evaluation of the concepts, strategies and approach taken in the plan and the general level of acceptance.



# KEY COMPONENTS OF THE CODE

## Indicative Structure Planning

FIGURE 1 – AREA E INDICATIVE STRUCTURE PLAN





An essential element of the Code is the articulation of best practice design concepts and strategies through a variety of detailed structure planning principles. By way of example, the Draft Code espouses:

- providing the orderly and efficient use of residential land on a highly constrained site which attains the 'vision' and strategies identified for the release area, detailed within the Code;
- an overriding landscape character strategy that fosters urban development within Area E in the form of compact settlements, interspersed within the dominating natural landscape, that respects and showcases the wetland areas, vegetated valley and escarpment, and important ridgelines;
- maintaining and respecting the landform characteristics – buildings and civil works designed to landform to minimise the impact on Tweed's iconic landscapes;
- the identification and retention of green breaks, important feature and stands of trees as well as important view fields;
- encouraging subdivision design that maximises solar orientation and access to prevailing breezes through responsive street layout and lot configuration to reduce energy consumption and to capitalise on creating desirable living environments;
- through the promotion of varied lot sizes and housing types, capitalising on medium density and integrated housing opportunities, responding to the changing demand through changes in demography and social profile;
- integrating roads with open space, pedestrian and cycleway paths to achieve maximise accessibility, connectivity and site permeability;
- to encourage proactive implementation of water sensitive urban design principles into the whole of design; and,
- ensure that a holistic approach to thorough site planning acknowledging and designing for constraints like bushfire, flood and steep land.

### **Broadwater Parkway**

Previous reports to Council in April and June 2011 identified some of the complexities of planning for the Area E site. The natural and physical constraints combined with the highly fragmented land ownership compound the difficulty for all parties in resolving the equitable distribution of costs and provision of essential services, in a way that can allow the area to be developed in an orderly and timely fashion.

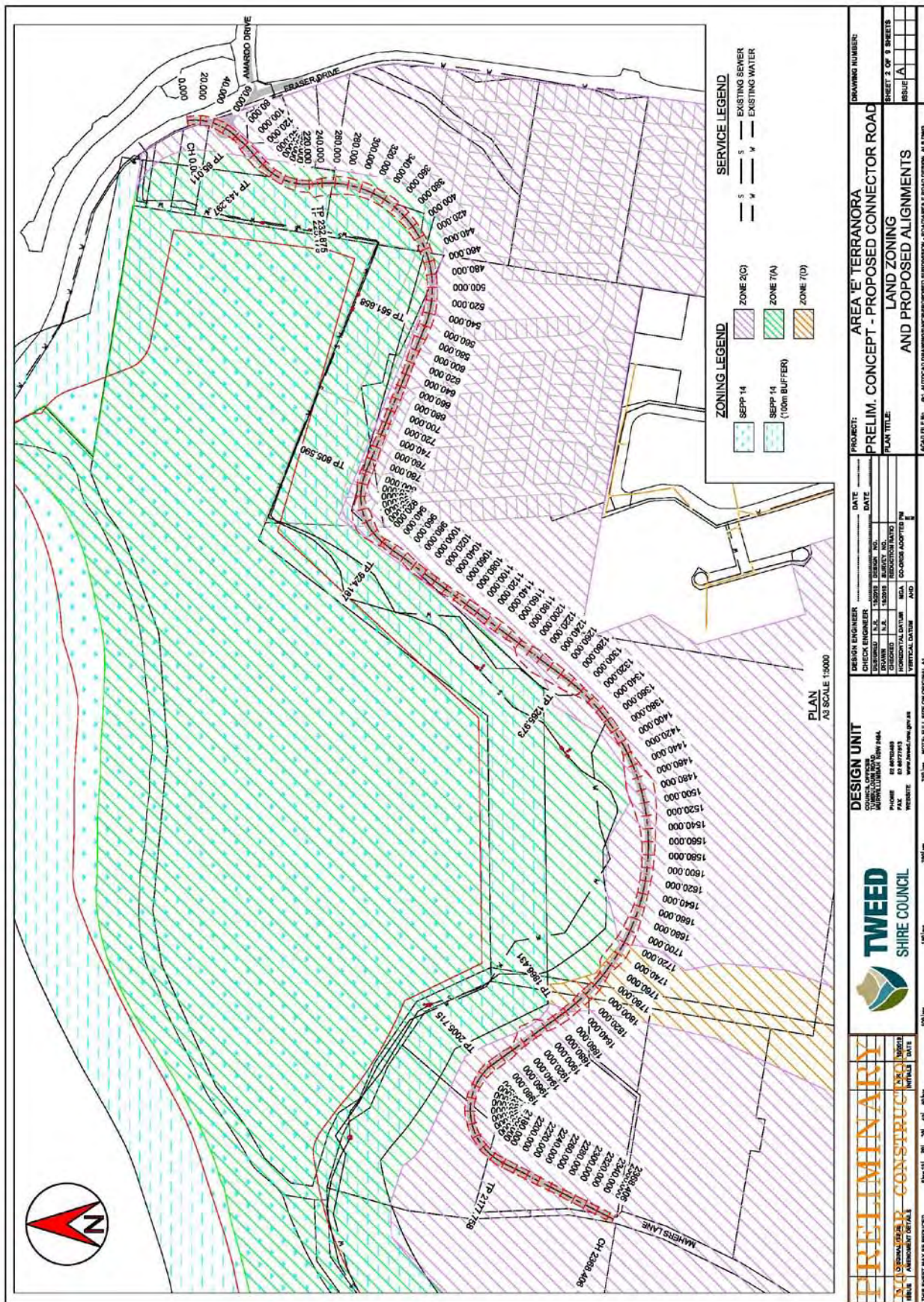
The design and construction of the Broadwater Park Way, which will provide the primary trunk road access linking Mahers Lane to Fraser Drive, has proved particularly contentious and remains as the least settled aspect of the draft planning. However, there is sufficient confidence in the preliminary investigations and proposed road alignment to allow the Draft Code to proceed. As with any development control or locality plan of this kind the detailed site and design works will need to be undertaken independently and most likely as part of a future development application. Preliminary indicative illustrations are more than sufficient for guiding this later work by providing the overarching strategic intentions.

Council staff has investigated several potential road alignments at a desktop level of assessment to enable a suitable indicative road alignment to be included in the Draft Code and was based on high level assessment of:

- the sites topography;
- the areas environmental protection zoning and corresponding buffer areas
- the impact on existing residential properties; and,
- the need for a future road to integration with the existing road network.

The indicative alignment of the future Broadwater Parkway is based on the desirability criteria of avoiding existing residential properties were possible and environmentally sensitive land. The alignment in Figure 2 below is used in the Draft Code to indicate an alignment incorporating those desired criteria.

FIGURE 2 – ALIGNMENT OF BROADWATER PARKWAY





The alignment, funding and construction of Broadwater Parkway present a significant challenge to the development of Area E. It is anticipated that the alignment of Broadwater Parkway will provide a focal point for discussion throughout the public exhibition process as landowners both within and external to the release area raise their concern with the general alignment, as has occurred through both the landowners workshops and the public exhibition of the Part 3A Major Project development lodged by Metricon with the Department of Planning and Infrastructure for a subdivision within the Area E site.

The public exhibition will provide an opportunity for the landowners and community to ventilate their concerns in an open forum, which will further feed into and contribute to the plan preparation.

In respect of the Part 3A Major Project application, the applicants have recently submitted an alternative alignment immediately north of the subject land for consideration. The identified alignment transverses within both Environmental Protection zone and the Urban Expansion zone, however Council officers have raised both engineering and environmental concerns to this alignment. Accordingly, it is not considered appropriate to deviate from the alignment shown in Figure 2.

In light of all the site constraints, the Code has progressed on the basis of the alignment displayed in Figure 2, as it is viewed as the best option considering triple bottom line sustainable development principles. It is acknowledged that this alignment will likely require the compulsory acquisition of at least one property and result in amenity impacts to nearby existing residences.

### **Development Density and Diversity**

An ongoing element of community interest in Area E has been the residential density of the release area. Area E is positioned between the suburban Banora Point with lot sizes predominately 600-850m<sup>2</sup> in size, Terranora Village, where lot sizes are typically 850m<sup>2</sup> and the rural residential area of Terranora, where lots are predominately over 2,000m<sup>2</sup>. As a result, Area E plays a role in balancing the existing residential context, whilst providing for key growth targets that are established through the Far North Coast Regional Strategy, providing smart or intelligent growth that capitalises on the opportunities to maximise a balanced residential usage that attain the objectives the Council's strategic policies.

Through the LES process, members of the Terranora community sought to ensure any rezoning of Area E include a minimum lot size of 800m<sup>2</sup>. The LES however was ultimately adopted with an average lot size for residential dwellings of 800m<sup>2</sup>, resulting in an intended residential yield of 1793 dwellings (1,550 lots for dwellings, 243 medium density units).

The site analysis work undertaken within the preparation of the Code identified a series of opportunities and constraints for urban development. This analysis resulted in the Structure Plan within the Code, which details the following residential targets and mix:

	<b>Mahers Lane Precinct</b>	<b>Central Precinct</b>	<b>Fraser Drive Precinct</b>	<b>Total</b>
Large Lot Residential (Lots >800m <sup>2</sup> )	2	20	20	42
Suburban Lot Residential (Lots between 450 – 800m <sup>2</sup> )	425	239	181	845
Small Lot and Medium Density (Lots between 250 – 450m <sup>2</sup> and medium density development at a general rate of 1 unit per 333m <sup>2</sup> of site area)	127	101	155	383
Neighbourhood Plan Housing	24	259	67	350
Shop-Top & Village Centre Residential	0	179	0	179
<b>Total</b>	<b>578</b>	<b>798</b>	<b>423</b>	<b>1799</b>

**Table 1 – Dwelling Density and Typology Targets**

The development targets established within Table 1 generate a future population yield of 3,907 people when using the latest ABS and Council adopted household occupancy rates.

Whilst the Code details a greater range of lot sizes and smaller lot development than envisaged within the LES, the dwelling targets are very similar (1793 in the LES, 1799 in the Code) as a result of the Codes more detailed analysis of the sites opportunities and constraints. The Code also provides a holistic approach to ensuring a quality urban form supporting infrastructure such as structured and casual open space, retail development, informal open space, green belts and buffers and community infrastructure.

The dwelling density and mix provided within the Code is considered to provide an appropriate response to the site's characteristics, the strategic objectives established – particularly the Far North Coast Regional Strategy 2006 and the Tweed Urban and Employment Land Release Strategy 2009, and will integrate positively into the wider residential fabric.

## **Built Form**

### *Building Height in the Village Centre*

The Code enables a variety of residential development immediately within the village centre and its surrounds. Within the heart of the Village Centre, residential development is encouraged to frame the main street within a mixed use development form. Such development would include non-residential uses at street level, with residential development above.

Within the Core of the village centre, the Code provides opportunities for approximately 20,000m<sup>2</sup> of residential GFA, across three levels, producing a target of 179 units. The three levels of residential development combine with a single level of non-residential use predominately throughout, to produce a 4 storey village centre. To maintain consistency with the provisions of the Standard Instrument Order 2006 as they relate to measuring building height, the maximum building height within this Code is 15 metres.

This control increases the permissible building height by 1.4 metres from the current Tweed Development Control Plan – Section A1 controls for mixed use development, being 13.6m

and would necessitate a Planning Proposal to amend the Tweed LEP. The additional 1.4 metres of potential building height is considered appropriate within the context of the Area E village centre for the following reasons:

- Assist in creating an active and vibrant hub with a strong mixture of landuses and accommodate types
- The village centre is located at the lowest developable point of the site and is surrounded by steeply sloping, bush-clad land. Accordingly, the additional height is not considered to impact upon views from future surrounding development within Area E as they will be positioned at a much higher elevation.
- The village centre is disconnected and is not highly visible from existing residential settlements. It is unlikely that existing development or public vantage points will capture anything other than visual glimpses of the village centre, viewed from several hundred metres away. As such, the additional 1.4 metres in potential building height will unlikely be noticeable or result in impacts.
- Any design within the village centre will need to have careful consideration to the Materials Guide and Scenic Protection and Views sections contained within the Code.

*Other variations to Section A1 – Residential and Tourist Development Code*

In addition to building height, the Code proposes alternate building setback controls to the more generic, shirewide controls contained with Section A1. A summary of the variations within the Code are detailed as follows:

Development Type	Proposed within Code			Section A1 Controls			Comments
	Minimum Lot Size	Minimum Front Setback	Minimum Side Setback	Minimum Lot Size	Minimum Front Setback	Minimum Side Setback	
Dwelling House on a medium density lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback
Dwelling House on a suburban lot	--	4m	--	--	6m	--	Garages setback >5m from front setback
Attached Dual Occupancy on a medium density lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback
Attached Dual Occupancy on a suburban lot	750m <sup>2</sup>	4m	--	900m <sup>2</sup>	6m	--	Garages setback >5m from front setback
Attached Dual Occupancy on a large lot	1200m <sup>2</sup>	--	--	900m <sup>2</sup>	--	--	
Detached Dual Occupancy on a medium density lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback
Detached Dual Occupancy on a suburban lot	750m <sup>2</sup>	4m	--	900m <sup>2</sup>	6m	--	Garages setback >5m from front



Development Type	Proposed within Code			Section A1 Controls			Comments
	Minimum Lot Size	Minimum Front Setback	Minimum Side Setback	Minimum Lot Size	Minimum Front Setback	Minimum Side Setback	
							setback
Detached Dual Occupancy on a large lot	1600m <sup>2</sup>	--	--	900m <sup>2</sup>	--	--	
Row House, Townhouse, Villa or Soho on a medium density lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback
Row House, Townhouse, Villa or Soho on a suburban lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback

**Table 2 – Variations from Tweed DCP – Section A1**

- *Minimum Lot Sizes*

The Code seeks to vary the minimum lot sizes in two predominant areas, the first being to reduce the size requirements for attached and detached dual occupancy on 'suburban lots', the second, to increase the minimum size on large lots.

Reduced lot sizes for dual occupancy development on suburban lots has been pursued through the Code to assist the development of Area E in meeting the dwelling diversity targets established within the NSW Far North Coast Regional Strategy 2006, being a 60/40 split of residential dwellings to multi-dwelling housing development. The reduced lot size is also seen to make a (albeit small) contribution toward housing affordability by increasing housing diversity and reducing land costs.

The increased lot sizes for dual occupancy development on large lots have been pursued to reflect the constrained nature of large lot sites within Area E. Predominately, large lots have been identified on steeply sloping land, land with limited or poor vehicular, pedestrian and cycleway access or land which adjoins existing large lot development. In these instances, it is not considered appropriate to enable development density at the same rate of predominately constrained land.

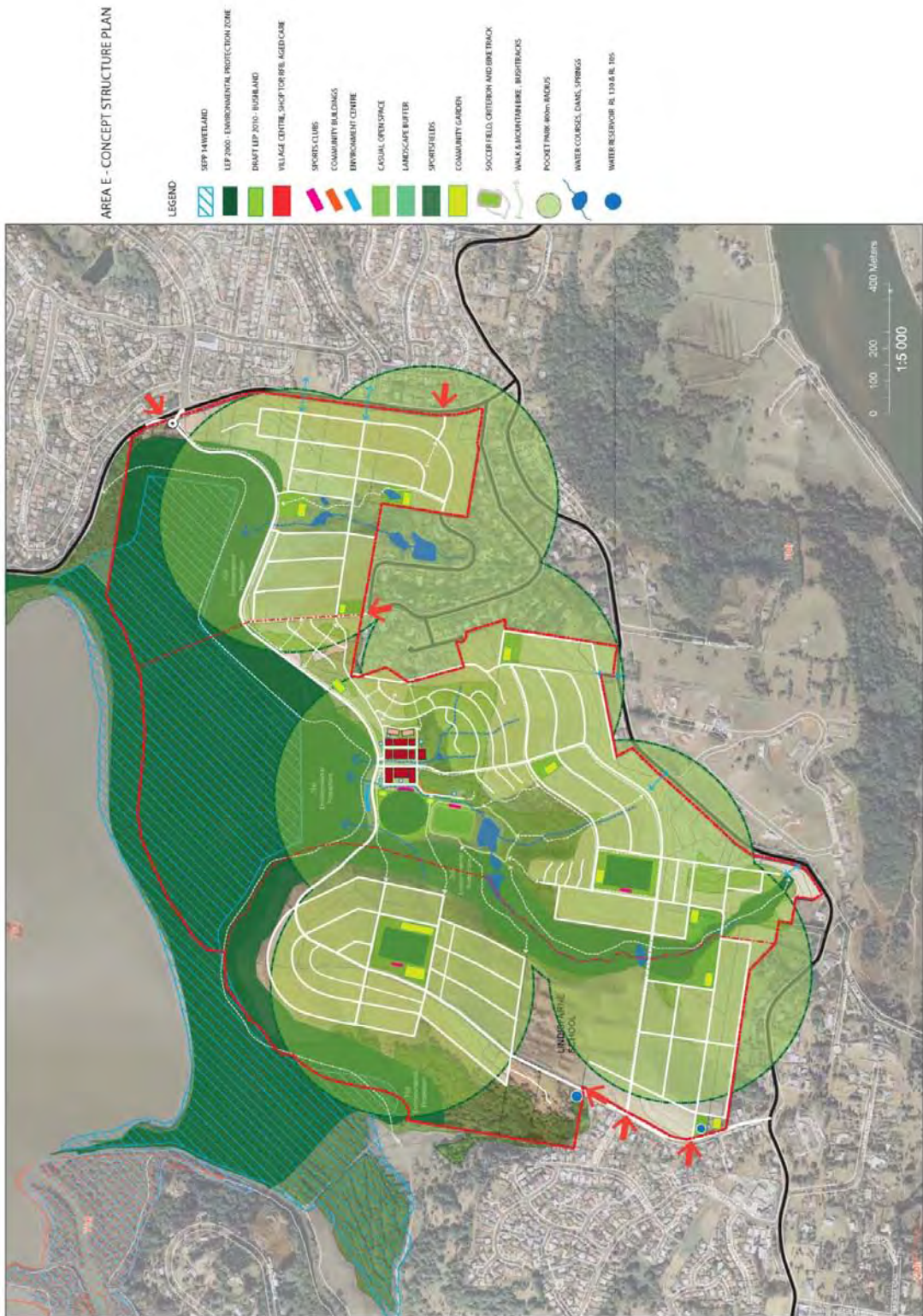
- *Front and Side Setbacks*

Reduced front and side setback provisions have been pursued within the Code to assist and create opportunities for development to best integrate with the landform of Area E. Under this scenario, the elevation level changes of the site can be absorbed within the future built form as opposed the level changes solely taking place on the boundary of each site through benching. This method often results in a more attractive streetscape; buildings that are better designed to the site's context and reduced boundary interface issues. The reduced setbacks are considered to result in a built form that can better respond to the sites topography and should be pursued through public exhibition of the Code.

## Environment & Recreation

The Code contains a number of strategies relating to environment, open space and recreation. A diagrammatic response to the strategies within the Code is provided through Figure 3.

FIGURE 3 – OPEN SPACE AND ENVIRONMENTAL LAND



A snapshot of the key objectives are as follows:

- Ensure the provision of a structured open space facility within the Area E Urban Release Area through the provision of approximately 2.39ha of structured open space within the Village Centre by way of two playing fields, 1.26ha by way of a singular full sized playing field in the central precinct (southern/southwestern area) and 1.26ha by way of a singular full sized playing field in the western precinct.
- Enable investigations into the delivery of alternate forms, uses and facilities for public open space; Examples of potential sport facilities include road and mountain biking facilities, walking/running trails, along with sport facilities that embody a smaller, or, a series of smaller footprints, or not requiring a flat surface such as BMX or skateboarding facilities.
- The proximity of the Market Parade and Glen Ayr Drive open spaces presents the opportunity to form an open space/environmental linkage.
- To ensure the protection and preservation of 'edges', biodiversity and amenity values of areas of environmental significance, including wetlands, drainage channels and remnant vegetated areas.
- Provide opportunity for community gardens and road verge gardens as a legitimate use of open space that contributes to health and well-being, positive social interaction, community development, environmental education and local food security.
- To preserve and protect land of high ecological significance from urban development.
- To encourage the embellishment of land with high environmental qualities
- To provide for the rehabilitation and enhancement of degraded habitat and ensure that comprehensive rehabilitation plans form part of any future development applications or masterplans.
- Minimise urban development at the southern end of 7(d) Environmental Protection land to large lot residential to limit disturbance, or restrict wildlife corridors that may be possible to the south.

### **Scenic Protection and Views**

The Code provides strategies and recommendations regarding scenic protection and views that seek to implement tangible outcomes through the Tweed Scenic Evaluation Study 1995. Specifically this is addressed through by maintaining the natural setting of the Broadwater with appropriately placed development. Strategies include:

- *Retain and enhance key visual character components;*
- *Realise and retain key visual character components of the site through a contemporary urban structure and built form; and*
- *Provide view sharing and maintenance of view fields*

### **Section 94 Plan**

The Code will be accompanied by a Section 94 – Developer Contributions Plan, which will cost and equitably distribute the cost of works generated by the development. A draft Section 94 Plan will be reported to Council in the upcoming months.

## MAJOR PROJECT UPDATE

Post the update contained with the June council meeting, relevant Council officers have held an additional meeting with the applicant, to discuss components of their application. Discussions and information submitted thus far suggests a modified subdivision layout that better reflects Council's bulk earthworks policies and removes infrastructure, with the exception of the future Broadwater Parkway from the environmental protect zone. With the exception of Broadwater Parkway, which is discussed earlier in this report, Council is awaiting further detail in order to provide any advice on the suitability of the amendments, other than encouraging compliance with Council's existing controls. Upon the receipt of further detailed information, further review will be undertaken by Council staff.

Whilst both Council staff and the developer are working to create a positive outcome for the site, no other items of significance have occurred since the June update.

## CONCLUSION:

The draft Code has been prepared on the basis of extensive landowner consultation and having regard to the site conditions. The project has reached a stage where the principles, ideas, and controls within the Code need to be 'tested' for their level of acceptance within the broader community.

## LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

## POLICY IMPLICATIONS:

Nil.

## UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council report of 21 June 2011 (ECM 35607922)
2. Draft Tweed Development Control Plan 2008, Section B24 – Area E Urban Release Development Code:

Part 01 (ECM 35702891)

Part 02 (ECM 35700691)

Part 03 (ECM 35702889)

Part 04 Structure Plan (ECM 35701744)

Part 04 Area Specific Mahers Lane (ECM 35702896)

Part 04 Area Specific Central Precinct (ECM 35704925)

Part 04 Area Specific Fraser Drive (ECM 35702876)

**20 [PR-CM] Tweed City Centre Vision, Local Environmental Plan and Development Control Plan**

**ORIGIN:**

**Planning Reform**

**FILE NO: GT1/LEP/2006**

**SUMMARY OF REPORT:**

This report seeks Council's endorsement for the re-exhibition of the Draft Tweed City Centre Plans.

The initial public exhibition of the Draft LEP and accompanying Vision Plan and Development Control Plan occurred between 27 January to 30 April 2010, during which 57 submissions were received.

The Draft Plans were prepared by the Department of Planning and Infrastructure's (DoPI) in conjunction with Council staff and their consultant, JBA Urban Planning.

Following a review of the submissions and amendment by the DoPI the Plans are suitable for re-exhibition.

This report addresses the key amendments to the Plans as agreed between the DoPI and Council staff. The DoPI has requested that the Plans be re-exhibited for the prescribed statutory period of 28 days and Council staff consider the request to be reasonable.

Request was made through public submission that a public hearing be held in respect of the Draft Plans. Council may, in accordance with s 68(1)(b) of the EP & A Act 1979, consider that the issues raised in a submission are of such significance that they should be the subject of a public hearing before the Council decides whether, and if so, what alterations should be made.

The two dominant issues raised comprise building height and the reliance on current planning investigations opposed to the wholesale adoption of the previous Council (not State Planning) endorsed Masterplan 2004, notwithstanding that there are similarities.

The building height issue has been largely addressed by way of proposed amendment to the Draft LEP and DCP, which reduces the previously proposed building heights to those more in-line with the current Tweed LEP, and as such does not warrant consideration by way of a public hearing. In any event it would be more practical to permit a re-exhibition and re-evaluation by the public of those amendments prior to considering the need for a hearing.

In relation to the earlier masterplan it was generally agreed by DoPI and Council staff that based on the masterplan's currency and in light of changes in available information over the preceding five years, it should not be relied upon as a single basis for informing the new planning. The evaluation of the locality and preparation of a new masterplan through the

Draft LEP and DCP, which are based on newer and broader investigations and data, particularly relating to climate change, transport infrastructure, and changes in State Policy, comprises a better practice.

This report recommends that a public hearing not be held; that the need for a public hearing, should it arise by request from the re-exhibition of the Plans, be reassessed at that stage and on the basis of the amendments proposed.

**RECOMMENDATION:**

**That:**

- 1. A public hearing under s68 of the Environmental Planning and Assessment Act 1979 not be held in relation to the issues raised by way of submission to the Draft City Centres Local Environmental Plan (2009) on grounds that the issues raised by way of submission are not of such significance that they should be the subject of a public hearing before Council decides whether and, if so, what alterations should be made.**
- 2. Council endorses the concurrent statutory re-exhibition of the Draft Tweed City Centre Vision, Local Environmental Plan (2011) and Development Control Plan in accordance with Section 66 and Section 74E of the Environmental Planning and Assessment Act 1979, for the prescribed period of 28 days.**
- 3. A report under Section 68 of Environmental Planning and Assessment Act 1979 addressing any public submission received and consequential amendments to the Draft Plans be prepared following the public exhibition.**

## **REPORT:**

Council's Planning Reforms Unit (PRU) along with their consultant, JBA Urban Planning and the NSW Department of Planning and Infrastructure's Centres and Urban Renewal Team, prepared a suite of strategic planning documents for Tweed Heads and Tweed Heads South comprising a; Draft Local Environmental (standard instrument order) Plan, Development Control Plan and Vision document. These were identified within the 4 year priority actions of the *Tweed 4/24 Strategic Plan* and as a requirement of the then NSW State Government's planning initiatives.

The drafting of the plans was completed in late 2009 and public exhibition occurred between 27 January and 30 April 2010. This represented a total exhibition period of 95 days opposed to the 28 day statutory requirement.

The exhibition Draft Plans were supplemented with explanatory material prepared by Council staff, who were also available at public workshops held at; Murwillumbah, Burringbar, Uki, Tyalgum, Pottsville, Kingscliff, and Tweed Heads, to help explain both the changes to the State planning laws and those of the Draft Plans. More than 350 people took the opportunity to visit the display and talk with staff. The information packages included; a Users' Guide, Zone Comparison Tables and a series of Fact Sheets, which generally received positive feedback from the community.

Documentation was on public exhibition for the duration of the public exhibition period and could also be accessed on-line via Council's web site 24 hours a day. In addition, CDs were prepared for those with computer access but limited internet access and hard copies were provided to the more remote or without computer access, on request. In all about 150 CDs and 100 information packs were requested.

To further encourage public participation submissions were also accepted by email as well as the more traditional methods, which attracted more than 450 submissions as a combined total for both the Draft Tweed LEP 2010 (Shirewide LEP) and the City Centre Draft Plans.

### **Key Issues raised in Relation to the City Centres LEP**

The following table identifies the main issues raised and a brief description of the proposed action/amendment.



Issue	No. of submissions	Action
Objection to the proposed increase in building heights	33	Maximum building height provisions reviewed and a general reduction of permissible heights made.
Impact on airport operations	1	Reduction in building height to reflect airport requests, inclusion of additional clause relating to airport operations
The lack of new infrastructure provision to support the increase in population	12	Post exhibition, building heights across the study area have been reduced, limiting an upper (theoretical maximum) population growth of about 1,000 – 1,500 people above the current planning provisions under the Tweed LEP 2000. This level of growth can be accommodated within existing infrastructure.
Limited objection to specific zone changes	3	Zone changes have occurred post exhibition within the Razorback precinct as requested within the submissions
Dissatisfaction as to the method of public exhibition	5	As detailed within this report, the public consultation of the draft plans was extensive and significantly exceeded both the statutory requirements and Council's general practice.
Objection to the special area controls detailed within the DCP.	4	Senior urban designers from DoPI's urban renewal team have reviewed the proposed special area controls and provided comment that the prescribed controls were considered satisfactory, subject to amendment of those relating to Tweed City Shopping Centre, which have been effected.
Objection to specific building height and floor space ratio controls	3	Senior urban designers from DoPI's urban renewal team have reviewed the proposed fsrs and provided comment that the prescribed controls was considered satisfactory, except in relation to the Tweed Heads Bowls Club where amendments have been made.

### Proposed Amendments to the Plan

Several areas of the Plan have been amended as a result of the public submissions, these are addressed below.



Zoning Amendments

*Environmental Protection*

Post further review by Council's Natural Resource Management Unit and submissions received from NSW Department of Environmental, Climate Change and Water (DECCW), zoning changes have been made to redefine the boundary areas land zoned environmental protection, which has generally led to an increase in protected land.

These amendments generally occurred in the following areas:

- Vegetated areas adjoining Eden Street and Tweed Terrace on Flagstaff Hill.

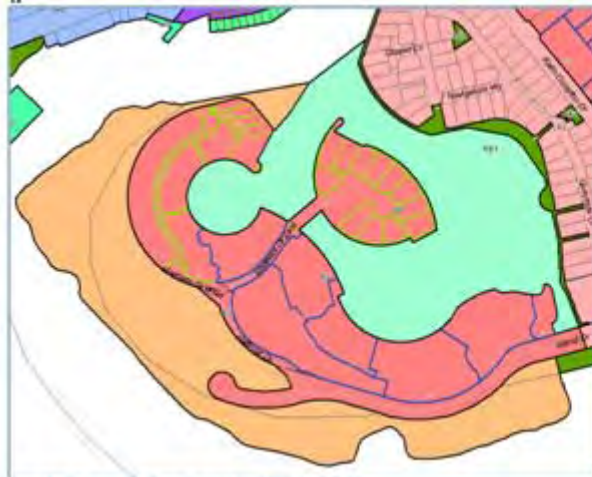


Draft Tweed City Centre LEP 2011



Tweed LEP 2000

- Vegetated areas to the immediate South of 'The Anchorage Islands'



Draft Tweed City Centre LEP 2011



Tweed LEP 2000

- Razorback Ridge Reserve

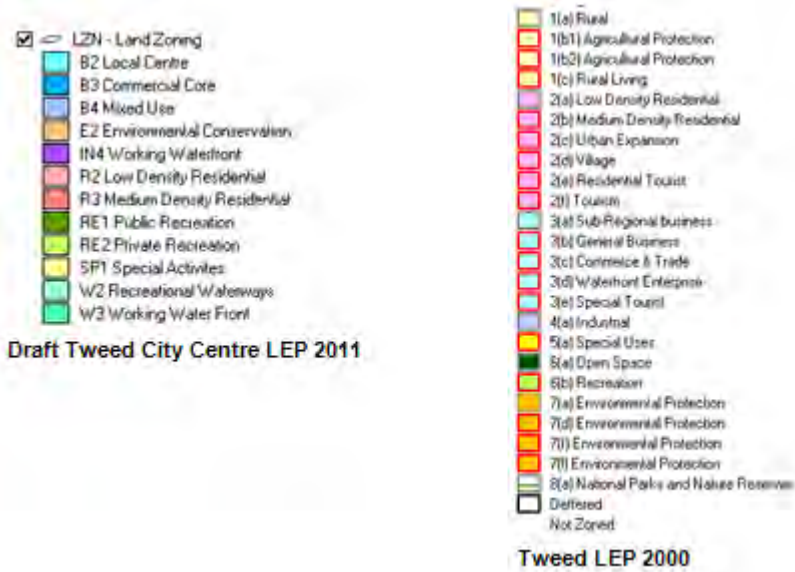


Draft Tweed City Centre LEP 2011



Tweed LEP 2000

Zoning Schedule



*Zoning of residential land on Razorback Hill*

Submissions were received objecting a change in zoning of properties from 2(b) Medium Density zoning to R2 Low Density Residential under the exhibited Draft Plan. On review of the character analysis and Draft DCP provisions for the area the DoPI have recommended retaining the existing medium density zoning. Council staff agree with the recommendation.

The Draft LEP zone map has been amended to reflect the zoning under the Tweed LEP 2000.



Draft Tweed City Centre LEP (2011)



Tweed LEP 2000



## Zoning Schedule

Draft Tweed City Centre LEP (2011)	Tweed LEP 2000
<input checked="" type="checkbox"/> LZN - Land Zoning	1(a) Rural
B2 Local Centre	1(b1) Agricultural Protection
B3 Commercial Core	1(b2) Agricultural Protection
B4 Mixed Use	1(c) Rural Living
E2 Environmental Conservation	2(a) Low Density Residential
IN4 Working Waterfront	2(b) Medium Density Residential
R2 Low Density Residential	2(c) Urban Expansion
R3 Medium Density Residential	2(d) Village
RE1 Public Recreation	2(e) Residential Tourist
RE2 Private Recreation	2(f) Tourism
SP1 Special Activities	3(a) Sub-Regional Business
W2 Recreational Waterways	3(b) General Business
W3 Working Water Front	3(c) Commerce & Trade
	3(d) Waterfront Enterprise
	3(e) Special Tourist
	4(a) Industrial
	5(a) Special User
	6(a) Open Space
	6(b) Recreation
	7(a) Environmental Protection
	7(d) Environmental Protection
	7(i) Environmental Protection
	7(j) Environmental Protection
	8(a) National Parks and Nature Reserves
	Not Zoned

## Height of Buildings

The exhibited building heights were widely discussed during the exhibition period and within the submissions received. Figure 1 (also provided with Attachment 2) represents the Height of Buildings Map contained within the draft Plan.

A summary of the building height changes includes:

- No increase in building heights across the locality (with the exception of the Tweed Heads Bowls Club site, specifically discussed further in this report)
- Reduction in permitted building heights for elevated land on Flagstaff Hill.
- Reduction in permitted building heights west of Stuart Street and north of Bay Street.
- Reduction in building height along Thomson Street.
- Maximum building height before any prescribed permitted 'bonuses' of 49.5m AHD.

Essentially, the proposed amendments pare back the increases in building height sought under the exhibited plan meaning that the draft plan more closely resembles the current zoning under Tweed LEP 2000. What remains is a more limited opportunity to increase height and density through a suite of bonus provisions pertaining to a very limited number of identified key sites.

The current vision of Tweed through the Tweed LEP 2000 with its relatively lower scale city form, when compared to the neighbouring Gold Coast, will remain fundamentally the same, which assist in retaining Tweed's distinctiveness when compared to the neighbouring Coolangatta. This was identified as an important public issue through the public submissions received.

Opportunities are still available within the Plan to obtain a greater building height than 49.5m AHD by virtue of cl. 6.9 – Design Excellence (local). This provision is designed to encourage a greater level of design excellence to establish landmark buildings on key sites within the Tweed City Centre. One of the criteria for triggering cl. 6.9 is that development must have a capital value of more than \$2m, be located on an identified key site and/or achieve a height in excess of 35m. This would trigger the need for an architectural design competition.

The clause enables the consent authority to grant up to 10% more building height and floor space ratio than those otherwise prescribed. The identified mapped 'Key Sites' include:

- Lot 703 of DP 877250 Coral Street
- Lot 1 of DP 777183, Wharf Street (Twin Towns Services Club)
- State and Council land bordered by Stuart Street, Stuart Lane and Bay Street
- Centro/Tweed Mall Shopping Centre
- 'Civic Precinct' comprising Council offices, Southern Cross University, Tweed Heads Bowls Club and Saint Cuthbert's Anglican Church
- All parcels on 'Monastery Hill'
- Lot 30 of DP 1084807 - The 'Von Bibra' site
- Lot 1 of DP1014402 - The former 'Scott's Fruit Market' site;

The general reduction of building height also reduces the potential population growth likely to be accommodated over and above that under the Tweed LEP 2000.

Whilst the Plan states a target of 7,000 more people, this target is derived from previous ABS statistics relating to existing population numbers. Accordingly, this target relates to a growth of 7,000 people to the existing (current) population. A desktop review by Council staff has concluded that this target results in an upper population growth limit of between 1,000 – 1,500 people - above that achievable under the Tweed LEP 2000. The previously exhibited Plan provided substantially higher population growth potential than the revised Plans.

The reduction, although disappointing from the view of generating a more walkable and public transport oriented city with a capacity to generate new investment, nevertheless goes some way to meeting the targets and expectations for the City Centre as outlined within the NSW Far North Coast Regional Strategy 2006.

FIGURE 1 – HEIGHT OF BUILDINGS MAP



## **Tweed Heads Bowls Club**

A submission was received from the Tweed Heads Bowls Club which detailed their preference to review building heights for their site. The submission also canvasses their preference for an independent feasibility study for their land, as foreshadowed in the Draft Vision document.

The site is located within the Civic/Campus Precinct and has an approximate existing ground level of less than 3m AHD. Chapter 8 of the Draft Vision document identifies that:

*'In the interim of the finalisation of the Council's Tweed Valley Floodplain Risk Management Study to determine the extent and impacts of climate change sea level rise planning benchmarks, the increased development densities are proposed only on the elevated city centre land over 3.5m AHD.'*

Accordingly, the development standards identified within the draft LEP (i.e. zoning, height of buildings, FSR etc.) were based upon a general translation of the current controls into the standard template, and it was not seen to be an opportunity for circumventing or 'fast-tracking' any changes outside of the ordinary planning process.

The exhibited Height of Buildings Map nominated a 10 metre maximum height for the site. The issues raised by the Club was that it did not accurately reflect the existing development and therefore was aligned to the Tweed LEP as it would otherwise lead to a prohibited use, that is, buildings in excess of 10m. Council staff agree that this is a sound basis for making a further amendment.

The amended Height of Buildings Map, which is based on the standard set of heights used throughout the Tweed, reflects a permissible height of 13.6m.

While the Club's preference to uplift the development potential of the site it is noted, any changes in the planning scheme to facilitate a change would need to be made independent of the Draft City Centres LEP. It would also need to occur following the completion of the Draft Tweed Valley Floodplain Risk Management Study, which arose from the Council's Flood Risk Management Policy of December 2007; this latter Policy prohibits any increase in development potential in the interim.

## **Inclusion of additional clauses**

Gold Coast Airport Limited (GCAL) as a key stakeholder were consulted and subsequently raised several issues with the Standard Instrument (local environmental plans) Order 2006 and the proposed building heights under the Draft LEP.

The Obstacles Limitation Surface (OLS) relating to Gold Coast Airport is 49.5m AHD across the entire Tweed City Centres study area. Buildings can encroach into this controlled airspace with the approval of GCAL and the Minister for Australian Department of Infrastructure, Transport, Regional Development and Local Government.

GCAL raised specific concern that the draft LEP did not highlight or identify the need for this approval, requesting the inclusion of a local clause relating to avoidance of obstacles within the prescribed airspace.

Following extensive consultation with the State Government GCAL was successful in bringing about amendment to the standard instrument and model clauses. In response to their issues the DoPI has responded by amending the building heights in the Draft LEP to affect a maximum height of 49.5m AHD, consistent with the OLS.

As detailed above, there remains a limited potential to increase height on key sites. GCAL have not raised an issue with this on the basis that the relevant airspace encroachment approvals will need to be sought and that the LEP does not advocate the higher limit as of right.

### **Refinement of existing provisions**

#### *Amendments to the Standard Instrument Order 2006*

On 25 February 2011, the *Standard Instrument (Local Environmental Plans) Amendment Order 2011* (the amendment) was made. The objective of the order was to improve the efficiency of delivering LEPs through better clarifying the intentions of the zones, to update clauses and improve the land-use terms and how they relate to each other (parent/child terms). A copy of the DoPI's circular relating to the amendment is attached (refer Attachment 4).

Generally, the latest amendments are considered to provide overall improvements to the Standard Instrument Order 2006, resulting in a more legible document. The Draft LEP has been amended to incorporate the statutory changes in accordance with the advice of Parliamentary Counsel.

It is noteworthy that the latest amendment reaffirms the State Government's position in relation to several important matters. In particular the method for calculating height of building remains at being taken from the existing ground level. This is distinct from the Tweed LEP 2000, which takes its measure from finished ground level. This is not seen to be a significant issue in relation to the Tweed City Centres LEP and any additional height that may be required to offset any required site filling can be achieved through the provisions of the LEP, where warranted following merit assessment.

In addition, the template amendments have limited the ability for councils to prohibit restricted premises and bulky goods premises within the B2 – Local Centre, B3 – Commercial Core and B4 – Mixed Use zones. The effect of these changes can be best managed through amendments to the Tweed DCP and will need to be investigated when resources permit.

#### *Roads*

Following concerns raised by DECCW and Council's engineering unit, the land-use tables within the Draft LEP have been amended to change 'Roads' from a 'Permitted without Consent' use to 'Permitted with Consent'. The changes do not affect the permissibility of roads per se but it does result in a change in the level of assessment required to construct or modify roads by the private sector. Pursuant to both the LEP and State Infrastructure SEPP Council's statutory requirements would remain substantially unchanged from those currently operating.



Design competition

Clause 6.9(4) of the Draft City Centres LEP provides that an architectural design competition is required for any development having a capital investment value of more than \$2m on the land identified on the Key Sites Map. Concerns were raised about the application of the provision to internal renovations and refurbishments.

Clarifying that this provision is not intended to capture internal works Clause 6.9(4) of the Draft LEP was amended to read as follows:

*“Development involving the erection of new buildings or external alterations to an existing building having a capital investment value of more than \$2m.*

**CONCLUSION:**

The Tweed City Centre is a unique and diverse place and will face many new challenges as new development occurs and as the population increases.

Among those challenges is maintaining a sense of place and identity that Tweed residents identify with and value. Achieving a balance of new development and retaining the identifiable character requires careful long-term planning, with the ability to translate the ‘vision’ into a tangible set of tools that are legible across a broad sector of the community and professions.

Long-term planning is essential not only for managing the look and feel of the City Centre but for providing certainty for investment both at the private and public level, whether through new businesses, housing or necessary infrastructure.

The amended draft Plans have taken all relevant factors into consideration, including public opinion, and are designed to foster the growth of the Tweed City Centre as a contemporary multi-functional centre focused on providing integration of employment, residential and recreational uses in a liveable and vibrant urban environment.

The draft LEP, DCP and Vision are seen to be a balanced response to the diverse views and issues facing the future development and growth of the City Centre. The suite of Plans have progressed to a point where they are now suitable for re-exhibition.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Draft Tweed City Centre Vision (ECM 35602634)
  2. Draft Tweed City Centre Local Environmental Plan 2011 (ECM 35603650)
  3. Draft Tweed City Centre Development Control Plan (ECM 35603676)
  4. Planning Circular PS 11-011 (ECM 35603731)
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## REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

### 21 [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 80 applications have been submitted for the Biodiversity Grant Program, 75 private properties, three community groups and two research projects.

Site visits have been made to 73 private properties, 70 of which meet the Grant's criteria and 60 have been approved.

The purpose of this report is to seek Council's approval to fund the remaining eleven private landowners, as listed below, 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 80 applications have been submitted for the Biodiversity Grant Program, 75 private properties, three community groups and two research projects.

Site visits have been made to 73 private properties, 70 of which meet the Grant's criteria and 60 have been approved. The purpose of this report is to seek Council's approval to fund the eleven 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
Pease	Eungella	2380	Strong landholder commitment to maintain works in mod. to high biodiversity value flora and fauna area with good vegetation connectivity.
Wunderlich	Urliup	2720	Landholder committed to maintain works in mod. to high biodiversity value flora and fauna.
Murfet	Numinbah	2720	Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with good vegetation connectivity
Boyd	Eungella	3400	Landholder commitment to maintain works in high biodiversity value flora and fauna area with good vegetation connectivity
Coates	Uki	1360	Landholder committed to maintain works in mod. to high biodiversity value flora and fauna.
Grainger	Uki	1360	Landholder committed to maintain works in mod. to high biodiversity value flora and fauna.
Hogan	Chowan Creek	4760	Landholder committed to maintain works in mod. to high biodiversity value flora and fauna with good vegetation connection and riparian/rainforest areas.
Reid	Eungella	3400	Landholder committed to maintain works in mod. to high biodiversity value flora and fauna with good vegetation connection and riparian/rainforest areas.
Carroll	Terragon	5440	Strong landholder commitment to maintain works on large property with high biodiversity value, good vegetation connectivity and known threatened species. This funding will augment and provide follow-up on works supported by Commonwealth funding over the last 2 years.
Rifello	Terragon	3400	Strong landholder commitment to maintain works on large property with high biodiversity value, good vegetation connectivity and known threatened species. This funding will augment and provide follow-up on works supported by Commonwealth funding over the last 2 years.
Nobbs	Terragon	6800	Strong landholder commitment to maintain works on large property with high biodiversity value, good vegetation connectivity and known threatened species. This funding will augment and provide follow-up on works supported by Commonwealth funding over the last 2 years.

**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](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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**22 [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 with reference to the request from Friends of Tweed Heads Library Inc., provides the Tweed Heads Civic Centre Auditorium free of charge for the Annual Book sale to be held on 25 and 26 June 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:-

<b>Organisation Name</b>	<b>Request</b>	<b>Est \$ Amount of Waiver</b>	<b>Recommendation</b>	<b>Meet Guidelines?</b>
<b>Friends of the Tweed Heads Library Inc.</b>	<b>Request waiver of fees for hire of Tweed Heads Civic Centre Auditorium on 25 and 26 June 2011 for the Annual Book Sale</b>	<b>\$443</b>	<b>That the fee of \$443 be waived.</b>	<b>Yes.</b>

A copy of the request is reproduced below.



## Friends of the Tweed Heads Library Inc.

23/06/2011

General Manager  
Tweed Shire Council  
PO Box 816  
Murwillumbah NSW 2484

Dear Mike Rayner,

On behalf of Friends of the Tweed Heads Library Inc. not for profit organisation I am writing in relation to our use of the Tweed Heads Civic Centre Auditorium for our Annual Book Sale held this year 25<sup>th</sup> & 26<sup>th</sup> June 2011. As we are a volunteer organisation we endeavor to increase community support for the Tweed Heads Library and promote awareness of the Library service in the Tweed Area.

We request that you would see fit to waive the fees associated with the booking and use of the Auditorium in the Tweed Heads Civic Centre for the Book Sale weekend 2011. Our annual book sale raises much needed funds for the Tweed Heads Library allowing the purchase of new equipment and resources for use by the local community. Your support and assistance with our Tweed Heads Library promotion and fundraising endeavors is most appreciated.

Regards,



Colette Stapleton  
Secretary  
Friends of the Tweed Heads Library Inc.

**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](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1Nil.

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**23 [CNR-CM] River Health Grant Program**

**ORIGIN:**

**Natural Resource Management**

**SUMMARY OF REPORT:**

This report provides Council with details of proposed investment in river and riparian management, through implementation of the River Health Grants Program. The goal of this project is to improve the quality of Tweed Waterways by subsidising works on private stream banks, for example by revegetation, weed control and provision of off stream water for cattle. The source of funding for this program is the Water Unit mandatory dividend for water and sewerage.

Projects included for endorsement through this report are located at Eungella, Chowans Creek, Terragon and Commissioners Creek.

**RECOMMENDATION:**

**That Council approves the expenditure under its River Health Grants Program to assist the private land holders to undertake the projects listed in the table contained within this report.**

**REPORT:**

Since June 2006 Council's Waterways Program Leader has worked with landholders in the Upper and Mid-Tweed and Oxley River catchments to initiate riparian projects which serve to protect and improve water quality. The program was expanded in 2008 to include properties in the catchment of Cobaki and Terranora Broadwaters. The goal of this program is to enhance the environmental condition of Tweed River and its Catchment, leading to improved water quality and aquatic ecosystem health.

The River Health Grants Program has been successful in attracting a diverse range of landholders, from traditional farmers to rural lifestyle property owners. Projects included for endorsement through this report will provide positive outcomes in the restoration of tributaries to the Oxley and Tweed Rivers.

In each case of funding, an agreement with land holders will be signed that details Council's contribution to a project and the commitments and responsibilities of the land holder. Each grant is based on the agreement that the landholder will contribute significantly to the project, in most cases by undertaking agreed works, with materials supplied by Council.

The River Health Grants program has been very well received by the community and has made an immediate improvement in the riparian conditions of some areas by removing cattle from waterways.

It is proposed to support landholders with additional River Health Grants as detailed below.

<b>Owner</b>	<b>Waterway</b>	<b>Objective</b>	<b>Council Contribution</b>	<b>Cost</b>
Thurman	Doughboy Creek	Remove lantana from riparian zone	12 days bush regeneration contractor	\$4,080
Bloomfield	Tweed River	Remove Madeira vine and cats claw creeper from riparian zone	12 days bush regeneration contractor	\$3,360
Wilson	Chowan Creek	Remove lantana from riparian zone	12 days bush regeneration contractor	\$4,080
Jackson	Tweed River	Remove Madeira vine and cats claw creeper from riparian zone	10 days bush regeneration contractor	\$3,040
Toneguzzo	Commissioners Creek	Revegetation of riparian zone	15 days bush regeneration contractor	\$5,700
Everest	Oxley River	Fencing riparian zone	Electric fencing materials	\$1,300
Rix	Tweed River	Remove Madeira vine and cats claw creeper from riparian zone	12 days bush regeneration contractor	\$4,080
<b>Total</b>				<b>\$25,640</b>

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Funding for this project is to be sourced from the existing Water Unit mandatory dividend for water and sewerage.

**POLICY IMPLICATIONS:**

This program is supported by the Water Supply Catchment Stream Bank Protection Policy.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**24 [CNR-CM] Banora Point Community Centre Additions**

**ORIGIN:**

**Director Community and Natural Resources**

**SUMMARY OF REPORT:**

Changes are proposed to the Banora Point Community Centre by external additions and internal renovations. The changes to the building are to house a new position supporting Seniors activities and information and additional offices for income generation. Section 94 funds are available to complete the works.

**RECOMMENDATION:**

**That Council votes \$36,000 from Contribution Plan No 3 – Community Facilities Banora Point to fund renovations to Banora Point Community Centre.**

**REPORT:**

Additions and renovations are required to the Banora Point Community Centre to house a new position supporting Seniors activities and information and additional offices for income generation. A proposal for the funding of a Seniors Information Project Officer was submitted to the NSW Department of Ageing, Disability and Home Care ("ADHC") in 2010 and approved by Council on 21 June 2011.

This position will be fully funded by ADHC on an ongoing basis. The first instalment of the funding for this 25 hour per week position plus set up costs and the purchase of a vehicle has been received. A Position Description is being finalised for Human Resources.

The proposal for the new position was based on research undertaken by the Healthy Ageing Project Officer, Community and Cultural Services in conjunction with Southern Cross University on the needs of the increasing population of seniors in the community of Banora Point and surrounding suburbs.

The renovations proposed for Banora Point Community Centre will provide office space and an information and technology access space for seniors. The additions include two new offices providing rental income from Non-Government Organisation tenants.

Section 94 funding is available for the renovations.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Contribution Plan No 3 – Community Facilities Banora Point has a current balance of \$36,000 available that is consistent with the upgrade of Banora Point Community Centre. This will expend the last of the funds contained in this superseded Plan.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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25 [CNR-CM] EC2011-049 Management of Stotts Creek Landfill Facility

**ORIGIN:**

Waste

**SUMMARY OF REPORT:**

This report outlines the tender for EC2011-049 Management of Stotts Creek Landfill Facility and provides a recommendation on the preferred tenderer.

Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation & Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. A summary of the Selection Criteria is also included in the body of this report. It is recommended that Council accepts the tender of Rico Enterprises Pty Ltd (t/a Solo Resource Recovery) for Contract EC2011-049 Management of Stotts Creek Landfill Facility.

**ATTACHMENT A** is **CONFIDENTIAL** in accordance with Section 10A(2)(c) or 10A(2)(d) of the Local Government Act 1993, because it contains commercial information of a confidential nature that would, if disclosed:-

- (c) *confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business*
  
- (d) *prejudice the commercial position of the person who supplied it, or confer a commercial advantage on a competitor of the council, or reveal a trade secret*

**RECOMMENDATION:**

**That:**

1. **Council accepts the tender from Rico Enterprises Pty Ltd (t/a Solo Resource Recovery) to the value of \$1,483,900 exclusive of GST at a compaction rate of 800kg/m<sup>3</sup> for EC2011-049 Management of Stotts Creek Landfill Facility.**
  
2. **The General Manager be given delegated authority to approve variations up to \$150,000 above the initial tender price and those variations reported to Council following completion of works.**

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) *confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business*
  
  - (d) *prejudice the commercial position of the person who supplied it, or confer a commercial advantage on a competitor of the council, or reveal a trade secret*

## **REPORT:**

### **Current situation**

Rico Enterprises Pty Ltd (t/a Solo Resource Recovery) currently manages all of the operations at the Stotts Creek Resource Recovery facility under the current expiring Contract.

### **Background**

Council's current operation at Stotts Creek Landfill will have approximately 18 months of life remaining at the commencement of this Contract. It is with this in mind that the Contract for Management of Stotts Creek Landfill Facility is for a one year period, with the option to extend for a further one year at the absolute discretion of Council. This enables Council to award the Contract with a life to coincide with the life of the landfill.

Council Tender EC2011-049 invited responses for the Management of Stotts Creek Landfill Facility. The awarded Contractor shall provide the Service on an ongoing basis for the term of the Contract, being one (1) year.

The successful Contractor will be responsible for the overall management of the Facility including but not limited to:

- The operation of the landfills
- The operation of the recycling areas
- The operation of a Buy Back Centre
- The completion of landfill cells up to and including the Final Landfill Cover
- Environmental performance including leachate management and stormwater controls.

The following functions are not included in the Landfill Management Contract.

- The management and operation of the gatehouse and weighbridge facilities. Council will manage and operate these facilities utilising its own staff.
- The Greenwaste receipt and processing area. A separate contract is let for the Provision of Greenwaste Processing and Marketing Services

### **Tenders Received**

A total of one (1) tender responses were received for tender EC2011-049 Management of Stotts Creek Landfill Facility;

Rico Enterprises Pty Ltd (t/a Solo Resource Recovery)

### Selection Criteria

Tenders were evaluated based on the criteria listed in Clause 11 contained within the Conditions of Tendering:

<b>Criterion</b>
Contract Experience
Staff Resources
Vehicles, Plant & Equipment
Occupational Health & Safety
Proposed Methods of Service Delivery
Current & Future Commitments
Transition Plan
Quality Management & Systems
Financial Capacity
Tender Price (Total Normalised Score)
Environmental Management & Performance Proposals
Ecologically Sustainable Development Proposals
LG (General) Amendment (Tenders) Regulation 2008
Total

For each criterion, scores were awarded to tenderers on a descending scale, ie. the most merit attracting the highest score, the lesser merit will attract a lesser score and equal merit will attract an equal score. The final Rating for all Evaluation Criteria was established by a consensus decision of the Project Group.

### Tender Evaluation

The tender evaluation was conducted by Council's Project Group, consisting of three staff. A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(c) or 10A(2)(d) of the Local Government Act 1993, because it contains commercial information of a confidential nature that would, if disclosed:-

- (c) *confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business*
  
- (d) *prejudice the commercial position of the person who supplied it, or confer a commercial advantage on a competitor of the council, or reveal a trade secret*

Based on a demonstrated understanding and relevant experience it is recommended that Rico Enterprises Pty Ltd (t/a Solo Resource Recovery) be nominated for EC2011-049 Management of Stotts Creek Landfill Facility. The Tender price was deemed to be market competitive based on the previous tender exercise (EC2008-152) for these works undertaken in 2009. An alternative (discounted) tender was rejected by the Project Group after consideration.

Details of Rico Enterprises Pty Ltd (t/a Solo Resource Recovery) relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT A** which was endorsed by Council's Project Group.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

This tender process is in accordance with Section 55 of the Local Government Act 1993 and Part 7 (Tendering) of the Local Government (General) Regulation 2005.

Funding for this contract is provided through gate fees from waste materials presented at the Stotts Creek Resource Recovery Centre and a portion of the Landfill Management Fee apportioned to all rateable land under s501A of the Local Government Act.

**POLICY IMPLICATIONS:**

The recommendations in this report are consistent with Council's Procurement Policy, Procurement Procedure, Contracts Management Process document and Tenders Procedure.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. Confidential Attachment A - EC2011-049 Tender Evaluation (ECM 35313357)
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**26 [CNR-CM] Community Options Client Contribution Policy Version 1**

**ORIGIN:**

**Community and Cultural Services**

**SUMMARY OF REPORT:**

Council at its meeting of 19 April 2011 resolved:

*“That the Community Options Client Contribution Policy be placed on public exhibition in accordance with Section 160 of the Local Government Act 1993, following which a report be brought forward for Council’s consideration for adoption.*

The Policy was advertised from 4 May 2011 to 1 June 2011 with submissions closing on 15 June 2011. No submissions were received during this period.

The policy is based on Human Services Ageing, Disability & Home Care (ADHC) Integrated Monitoring Framework, Home and Community Care (HACC) Standards, NSW ADHC and Home Care NSW service type guidelines for HACC Case Management and Guide for HACC Funded Case Management Projects.

**RECOMMENDATION:**

**That Council adopts the Community Options Client Contribution Policy Version 1.**

**REPORT:**

Council at its meeting of 19 April 2011 resolved:

*“That the Community Options Client Contribution Policy be placed on public exhibition in accordance with Section 160 of the Local Government Act 1993, following which a report be brought forward for Council’s consideration for adoption.*

The Policy was advertised from 4 May 2011 to 1 June 2011 with submissions closing on 15 June 2011. No submissions were received during this period.

The policy is based on Human Services Ageing, Disability & Home Care (ADHC) Integrated Monitoring Framework, Home and Community Care (HACC) Standards, NSW ADHC and Home Care NSW service type guidelines for HACC Case Management and Guide for HACC Funded Case Management Projects.

It is proposed that the Policy will be made available to the public.





Policy

**Community Options Client Contribution**  
Version 1

Adopted by Council at its meeting on XXX  
Minute No: XXX

Division:	Community and Natural Resources
Section:	Community and Cultural Services
File Reference:	XXX
Historical Reference:	XXX

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## **Community Options Client Contribution**

### **Introduction:**

This policy aims to ensure that the principles of equity and access and that the established mechanisms of Tweed Shire Council underpin collection and payment of client contributions.

Tweed Community Options (TCOPS) endorses the principle that clients make a financial contribution to the provision of services in line with the Home and Community Care (HACC) National Program Guidelines, Guidelines for the operation of HACC Funded Case Management Projects August 2006, the Good Practice Guide for HACC Funded Case Management Projects August 2006, and the NSW Health ComPacks guidelines April 2010. This policy has been developed in line with the Common Community Care Standards released by the Department of Health and Ageing (October 2010) which will guide future approaches to HACC services as the national HACC reforms are introduced.

### **Rationale for Client Contributions:**

Where a client is being assessed for services provided by Tweed Community Options, the case manager will explain that all services are partly funded by the government and that client contributions will be used to expand the services.

Tweed Community Options recognises that many clients have a reduced or limited capacity to contribute to the cost of services, and criteria for reducing or waiving client contributions will be explained to clients. No one will be refused service due to their inability or refusal to contribute.

This policy will not be applied retrospectively or to current clients on the date that the policy is implemented, however, it will apply to all new clients from the date of implementation.

### **Procedure**

For projects like Podiatry, Older Parent Carer and ComPacks, a contribution for a one off amount of \$60 per client will be negotiated at the initial assessment. The client contribution policy and procedure will be included in the information packs and brochures provided to potential clients.

For Community Option Project (COPs) clients, a weekly contribution will be negotiated based on the contribution schedule, taking into account a range of considerations as outlined below

Where COPs services are being provided to clients who are on the waiting list for package services such as Community Aged Care Package (CACP), Extended Aged Care at Home (EACH), Extended Aged Care at Home Dementia (EACH D) packages

and the like, the Government set cost currently 17.5% of the aged pension will be negotiated at the initial assessment.

**Client contribution considerations:**

- Where the client is already paying "one off" client contributions for other community care services (e.g. other HACC services), the one off contribution made to TCOPS services can be reduced by 25%.
- For those clients making weekly payments for other community care services while waiting for package services, the weekly contribution overall will not exceed 17.5% of the aged care pension. If the client is unable to pay this contribution after essential living expenses are accounted for, the client may be regarded as disadvantaged, the contribution may be reduced.
- The client contribution assessment will be based on the client's own statement of their income. It is not necessary to ask to see bank statements or details of expenditure. All information about a client's income will be kept confidential.
- The case manager will ascertain that access to financial assistance is supported for their clients including carer allowances, emergency assistance from social workers, and the like so that client contributions (even at a minimal \$5 per week) is supported. In addition, strategies to access interest free loans for whitegoods etc will be explored.
- Clients will be asked to notify Tweed Community Options within 30 days if there are any significant changes in their circumstances that could affect their arrangements to pay a contribution; for example, receiving a compensation payment or a full Department of Veterans Affairs Pension entitlement.
- If clients, potential clients, or advocates are unhappy with the level or extent of the contributions they have agreed to pay, they may contact the Coordinator and ask for a review of their contributions. This may be done in writing or by telephone.

**Collection of Contributions:**

The discretionary contribution schedule of TCOPS will be published in the Service Agreement made between the client and case manager. Agreement about contribution will be linked to the client care plan and included in the service agreement which is signed by the client.

TCOPS will send out client invoices/statements on a monthly basis.

Contributions will be collected by direct debit where possible. Alternately, clients can make payments to the Council cashier in any of the usual payment methods for payments of fees to Council for services.

TCOPS staff will contact the client and/or carer about any unpaid invoices

**Discretionary Contribution Schedule:**

<b>Service Provided</b>	<b>Contribution</b>
For up to two hours care per week	\$5.00 per week
Between two and four hours care per week	\$10.00 per week
Between four and six hours care per week	\$15.00 per week
More than six hours care per week	\$20.00 per week
For services and care coordination with CACP approval	\$55 per week
For Podiatry services (six appointments)	\$60 as a one off payment
For supply of equipment, furniture and whitegoods	TCOPS provides a 25% subsidy towards the purchase.

**Related Standards**

- Human Services Ageing, Disability & Home Care (ADHC) Integrated Monitoring Framework  
2.1 Access  
2.1.2 Clients have fair and equitable access to services and resources
- HACC Standards
- NSW Department of Ageing, Disability and Home Care NSW service type guidelines for HACC Case Management (April 2008)
- NSW Department of Ageing Disability and Home Care Good Practice Guide for HACC Funded Case Management Projects (2006)  
Information and Consultation, 2.3  
Disability Service Standards Service Access, 1.0, 1.1

**Policy Review**

This policy will be reviewed on an annual basis.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

It is proposed that this Policy and the related contributions be reviewed on an annual basis.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**27 [CNR-CM] Proposed Land for Wildlife Program**

**ORIGIN:**

**Natural Resource Management**

**SUMMARY OF REPORT:**

On 9 February 2011 the Tweed River Committee resolved to support the implementation of Land for Wildlife in Tweed Shire with an allocation of up to \$3,000 from its education budget.

Land for Wildlife is a voluntary program that aims to encourage and assist private landholders to provide habitats for wildlife on their property, even though the property may be managed primarily for other purposes. In NSW, The Community Environment Network (CEN) co-ordinate and administer Land for Wildlife via third party agreements with organisations such as local Councils, State Agencies or community groups.

This initiative represents an important component of Council's community engagement and land management extension and will be coordinated within Council's Biodiversity Program.

The purpose of this report is to seek Council's approval to become a signatory to the Land for Wildlife Program.

**RECOMMENDATION:**

**That Council supports implementation of the Land for Wildlife program in the Tweed Shire.**

## **REPORT:**

On 9 February 2011 the Tweed River Committee resolved that it supports the implementation of Land for Wildlife (LfW) in Tweed as a component of the Biodiversity Program with an allocation of up to \$3,000 from the Tweed River Committee's education budget. This initiative adds to Council's community engagement and land management extension role.

Established in Victoria in 1981, Land for Wildlife is now implemented by various Government and non-Government organisations throughout Australia. The Community Environment Network (CEN) co-ordinate and administer the program in NSW where various Local Governments have signed agreements with the CEN to implement it in their LGAs.

Land for Wildlife is a voluntary, legally non-binding program that aims to encourage and assist private landholders to provide habitats for wildlife on their property, even though the property may be managed primarily for other purposes. It aims to promote continuity of habitat across landscapes, community participation in nature conservation, and to contribute to the ecologically sustainable long-term viability of agricultural systems. It's pro-active, non-threatening attributes attract many landholders who would otherwise not get involved in conservation activities.

Land for Wildlife is a cost effective mechanism for NRM community engagement with an 'off the shelf' nationally recognised model with guidelines and procedures already established and the provision of some resources and support from CEN. No additional staffing will be required, as this support will be through the existing Biodiversity Grants Program.

Applications under the program will be made throughout the year and assessed using the following basic criteria:

- Minimum 1 hectare native bushland, and
- Landholder commitment to enhancing habitat for wildlife.

## **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Funding for this project is to be sourced from the Tweed River Committee education budget and staffing from Council's Biodiversity Grant Program.

## **POLICY IMPLICATIONS:**

Nil. This program is consistent with the Tweed River Committee's aims and objectives, the Tweed Vegetation Management Strategy and Council's Community Options key objectives and strategies for caring for the environment.

## **UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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## REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

### 28 [EO-CM] Chinderah Service Centre

#### ORIGIN:

Director Engineering and Operations

#### SUMMARY OF REPORT:

At the meeting held 15 February 2011 Council:

*RESOLVED 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.*

A response has been received from the Roads and Traffic Authority.

*"The RTA owned land on its own is likely to be constrained for use for a HSC (Highway Service Centre) development and there is no current plan to seek necessary rezoning and approvals to develop the site.*

*The RTA has engaged a consultant to advise on the suitability of the site for a range of uses and once this work is completed and depending on findings, a meeting with council officers or councillors may be appropriate in light of council and resident concerns.*

*The matter of operation and impacts of the existing rest area on the southbound off-ramp of the interchange is considered to be one for council, noting that there may be some opportunity for council to address concerns of residents through the assessment of the recent development application for expansion of that site.*

*Please let me know if councillors feel that a meeting in the short term remains necessary in this circumstance."*

#### RECOMMENDATION:

**That in response to the letter from the Roads and Traffic Authority dated 3 June 2011 the Authority be advised that Council still desires a meeting, in the short term, 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.**

**REPORT:**

At the meeting held 15 February 2011 Council:

**RESOLVED 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.**

A response has been received from the Roads and Traffic Authority.

*"The RTA owned land on its own is likely to be constrained for use for a HSC (Highway Service Centre) development and there is no current plan to seek necessary rezoning and approvals to develop the site.*

*The RTA has engaged a consultant to advise on the suitability of the site for a range of uses and once this work is completed and depending on findings, a meeting with council officers or councillors may be appropriate in light of council and resident concerns.*

*The matter of operation and impacts of the existing rest area on the southbound off-ramp of the interchange is considered to be one for council, noting that there may be some opportunity for council to address concerns of residents through the assessment of the recent development application for expansion of that site.*

*Please let me know if councillors feel that a meeting in the short term remains necessary in this circumstance."*

David Bell (02) 6640 1337



MEETINGS - GENERAL  
L: 9713, 14621

General Manager  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH NSW 2484

TWEED SHIRE COUNCIL	
To: No:	SP: 1924
DOC. No:	
REC'D:	- 7 JUN 2011
ASSIGNED TO:	KNIGHT, P
HARD COPY	<input type="checkbox"/>
IMAGE	<input checked="" type="checkbox"/>

Attention: Patrick Knight

Dear Mr Knight

Highway Service Centre – Pacific Highway, Chinderah

- 29737213

- 33545287.

I refer to your letter of 7 March 2011 and follow up of 25 May 2011 regarding speculation about development of a Highway Service Centre (HSC) on Roads and Traffic Authority (RTA) owned land at the Chinderah interchange and a request to meet with councillors to discuss this matter and the operation of the existing HSC that services southbound traffic.

The Department of Planning regional strategy for the Far North Coast identifies Chinderah as one of a small number of locations along the Pacific Highway where rezoning could allow development of new HSCs. The supporting direction under Section 117 of the *Environmental Planning and Assessment Act (1979)* describes a broad area at Chinderah where a HSC for northbound traffic could be developed and the RTA owned land in question sits within that area.

The RTA owned land on its own is likely to be constrained for use for a HSC development and there is no current plan to seek necessary rezoning and approvals to develop the site.

The RTA has engaged a consultant to advise on the suitability of the site for a range of uses and once this work is completed and depending on findings, a meeting with council officers or councillors may be appropriate in light of council and resident concerns.

The matter of operation and impacts of the existing rest area on the southbound off-ramp of the interchange is considered to be one for council, noting that there may be some opportunity for council to address concerns of residents through the assessment of the recent development application for expansion of that site.

Please let me know if councillors feel that a meeting in the short term remains necessary in this circumstance.

Yours sincerely

David Bell  
Regional Manager, Northern Region

3 JUN 2011

Roads and Traffic Authority

31 Victoria Street Crafton NSW 2460  
Post Office Box 576 Crafton NSW 2460 DX7610  
www.rta.nsw.gov.au | 02 66401300

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**29 [EO-CM] Streetlight Maintenance and Energy Efficient Lighting Upgrade**

**ORIGIN:**

**Director Engineering and Operations**

**SUMMARY OF REPORT:**

In February 2011 Council accepted an offer from Country Energy to upgrade street lights for energy efficiency for a cost of \$248,484. Essential Energy now advise that the revised cost including GST and additional storage costs is \$293,881.72.

Whilst the increased cost is regrettable it is still considered to be in the public interest to accept the revised offer as the energy efficient street lights are predicted to save \$273,000 per annum in energy costs and 1,014 tonnes per annum in greenhouse emissions.

**RECOMMENDATION:**

**That:**

- 1. Council accepts Essential Energy's revised costing to upgrade existing street lighting lamps for energy efficiency.**
- 2. Council approves expenditure from the Haulage Fees Reserve funds of \$293,881.72.**
- 3. The General Manager be given delegated authority to authorise variations up to 15%.**

**REPORT:**

Country (now Essential) Energy advised Council by letter dated 6 December 2010 that for an upfront cost of \$248,484 they will upgrade all applicable street lighting luminaries to the most energy efficient type available. They advised that work would commence in January 2011.

Council considered a report on this matter at its meeting held 15 February 2011 and resolved:

*"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."*

Country Energy were advised of Council's acceptance in writing by letter dated 17 February 2011. On 9 May 2011 Country Energy forwarded an invoice for the upgrade in the amount of \$293,881.72 and advised that this was for Type 1 Tariff Streetlights only (i.e. excluded Type 2 Streetlights that have been installed by Council and subdivision developers). A letter was forwarded to Country Energy dated 25 May 2011 advising Essential Energy that the invoice was not consistent with their offer dated 6 December 2010 and in that it was considerably higher than the dollar amount advised in that letter and did not include Type 2 Tariff Streetlights.

Richard Wake, General Manager, Essential Energy North Coast replied by letter dated 20 June 2011 advising that the revised amount was due to inclusion of GST and additional storage costs. He further advised that the amount quoted in the invoice is on a strict cost recovery basis for Essential Energy.

Whilst the revised cost is regrettable, even more regrettable is the delay to the streetlight energy efficient upgrade as this was estimated to save Council \$273,000p.a. in energy costs and 1,014 tonnes p.a. in greenhouse gas emissions. Essential Energy are not negotiable on this invoice price and any further delays will reduce Council's opportunity for energy savings of \$22,750 per month and similar savings in greenhouse gas emissions.

Essential Energy's Mr Wake has advised that the streetlight upgrade will commence immediately Council has agreed to the new invoice cost and it is believed that it is in the public interest to commence this process as soon as possible.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**30 [EO-CM] Lease to Australian Volunteer Coast Guard Association - Rotary Park, Sutherland Street, Kingscliff**

**ORIGIN:**

**Design**

**SUMMARY OF REPORT:**

The Australian Volunteer Coast Guard Association (“Kingscliff Coast Guard”) have operated from Rotary Park under a lease that has expired and the Kingscliff Coast Guard have made a written request for a further lease.

Rotary Park is a Public Reserve and is within Lot 287 in DP 542598 and classified as community land. The land is included in the current Plan of Management which provides that leases and licences may be entered into provided they adhere to the provisions of the *Local Government Act 1993*.

The *Local Government Act 1993* states that if Council wishes to enter into a lease agreement for a period exceeding five years it must give public notice of the proposal with a 28 day submission period. Further, if a lease exceeds five years, a plan of subdivision for lease purposes is required, which is generally paid for by the Lessee.

As the Kingscliff Coast Guard are a voluntary group that obtains regular grants from Council to operate, it is recommended that a lease for a period of five years is entered into to avoid the costs of a lease plan, and further, that Council only seek a peppercorn rent.

The premises are maintained to a high level and it is recommended that Council approve a five year lease with a peppercorn rent, and to execute the lease under the Common Seal of Council.

**RECOMMENDATION:**

**That:**

- 1. Council approves entering into a lease agreement with the Australian Volunteer Coast Guard for premises within Lot 287 DP 542598 at Rotary Park, Sutherland Street, Kingscliff for a period of five years for a rental of \$1.00 per year; and**
- 2. All necessary documentation be executed under the Common Seal of Council.**

**REPORT:**

The Australian Volunteer Coast Guard Association ("the Coast Guard") have operated from Rotary Park, Kingscliff for quite some time and more recently under a lease which expired in May 2011. The Coast Guard have lodged a written request for a further lease.

Rotary Park is a Public Reserve and is within Lot 287 in DP 542598 at Sutherland Street, Kingscliff on the estuary and is classified as community land. The land is included in the current Plan of Management which provides that leases and licences may be entered into provided they adhere to the provisions of the *Local Government Act 1993*.

The *Local Government Act 1993* states that if Council wishes to enter into a lease agreement for a period exceeding five years it must give public notice of the proposal with a 28 day submission period. Further, under the *Conveyancing Act 1919*, if a lease exceeds five years, a plan of subdivision for lease purposes is required, which is generally paid for by the Lessee.

As the Kingscliff Coast Guard are a voluntary group that obtains regular grants from Council to operate, it is recommended that a lease for a period of five years be granted, this will provide the tenure available under the *Local Government Act* and avoid the costs of a lease plan. To further assist the Coast Guard, it is recommended that Council only seek a peppercorn rent.

The premises are maintained to a high level and it is recommended that Council approve a five year lease with a peppercorn rent, and to execute the lease under the Common Seal of Council.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**31 [EO-CM] Classification of Land as Operational - Proposed Lots 408 and 409 at Kingscliff**

**ORIGIN:**

**Design**

**SUMMARY OF REPORT:**

Proposed Lots 408 and 409 in the subdivision of Lots 44, 60, 61, 69-83, 85-120, 122-137, 144 & 171-204 in DP 1145386 at Kingscliff are to be transferred to Council as Drainage Reserve and Sewer Pump Station respectively following registration of the plan of subdivision.

It will be necessary to classify the parcels of land as operational pursuant to the provisions of the Local Government Act, 1993.

A notice was published in the Tweed Link on 21 September 2010 allowing a period of 28 days for any member of the public to provide a written submission to the proposed classification of this land as operational. No submissions were received.

It is now necessary to resolve to approve the transfer and classification of proposed Lots 408 and 409 as operational land pursuant to S31 of the Local Government Act, 1993.

**RECOMMENDATION:**

**That:**

- 1. Council approves the transfer to Council of proposed Lots 408 and 409 to be created in the subdivision of Lots 44, 60, 61, 69-83, 85-120, 122-137, 144 & 171-204 in DP 1145386 at Kingscliff.**
- 2. Proposed Lots 408 and 409 at Kingscliff be classified as “Operational” pursuant to Section 31 of the Local Government Act, 1993; and**
- 3. All necessary documentation be executed under the Common Seal of Council.**

**REPORT:**

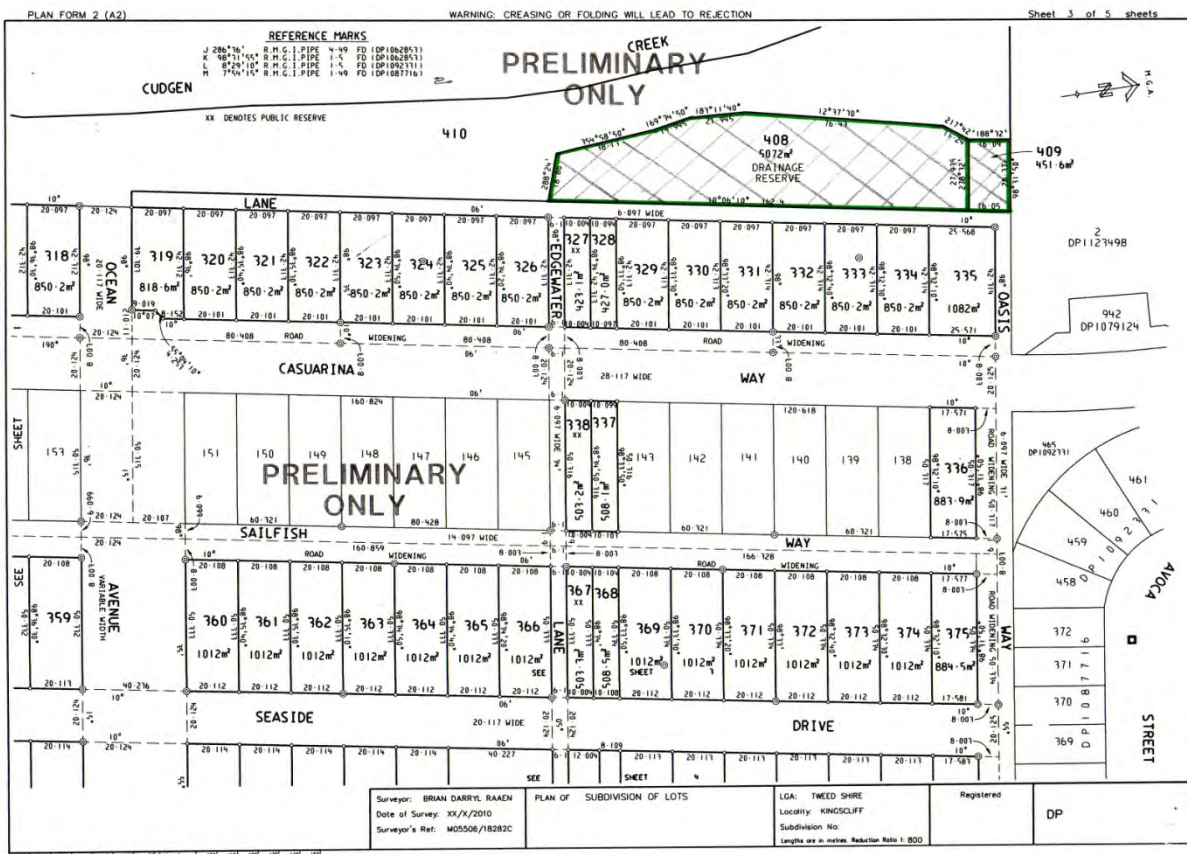
Proposed Lots 408 and 409 to be created in the subdivision of Lots 44, 60, 61, 69-83, 85-120, 122-137, 144 and 171-204 in DP 1145386 at Kingscliff are to be transferred to Council as Drainage Reserve and Sewer Pump Station respectively following registration of the plan of subdivision.

It is necessary to classify the parcels of land as operational pursuant to the provisions of the Local Government Act, 1993.

A notice was published in the Tweed Link on 21 September 2010 allowing a period of 28 days for any member of the public to provide a written submission to the proposed classification of this land as operational. No submissions were received.

Accordingly it is recommended that the parcels being Lots 408 and 409 be classified as 'operational' pursuant to the provision of the Local Government Act, 1993.

**Copy of the plan of subdivision showing proposed Lots 408 and 409 below:**



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**32 [EO-CM] Duroby and Chillingham Quarries - Restriction on the Use of the Land**

**ORIGIN:**

**Design**

**SUMMARY OF REPORT:**

At its meeting held on 21 June 2011, Council amended the resolution relating to the disposal of two parcels of land containing Chilcotts Quarry at Chillingham and the Duroby Quarry, by adding:

*“Places a “Restriction as to User” to prevent the re-establishment of quarries on the subject parcels of land”*

To enable the Restriction to be registered on the titles prior to offering them for sale by public tender, it is necessary for Council to resolve to sign the necessary documentation under the Common Seal of Council.

This is necessary as Council will sign the document as landowner, which requires a resolution to execute under the Common Seal of Council.

When the Restriction has been registered, the Restriction will be disclosed in the Contracts for Sale and will be enforceable by Council as the consent authority following the sale of the parcels.

**RECOMMENDATION:**

**That Council executes a Restriction on the Use of the Land by a Prescribed Authority to be registered over Lot 10 in 262383 and Lot 1 in DP 794307 under the Common Seal of Council.**

**REPORT:**

At its meeting held on 21 June 2011, Council amended the resolution relating to the disposal of the quarries at Chillingham and Duroby Creek by adding:

*“Places a “Restriction as to User” to prevent the re-establishment of quarries on the subject parcels of land”*

To enable the Restriction to be registered on the titles prior to offering them for sale by public tender, it is necessary for Council to resolve to sign the necessary documentation under the Common Seal of Council.

As Council will sign the document as landowner, this requires a resolution to execute under the Common Seal of Council.

When the Restriction has been registered, the Restriction will be disclosed on the title searches forming part of the Contracts for Sale and will be enforceable by Council as the consent authority following the sale of the parcels.

The terms of the Restriction are as follows:

*“The subject land shall not be used for quarrying or extractive purposes notwithstanding that any planning instrument that applies to the land may indicate that extractive industries are permitted with or without consent.”*

Both parcels are currently zoned 1(b) Rural Protection, and the draft Tweed LEP 2010 has identified the parcels as RU2 Rural Landscape. Each plan allows extractive industries with consent.

Clause 56 of the current LEP and clause 1.9A of the draft LEP, each provide for the suspension of covenants and restrictions that prohibit an activity that would otherwise be allowable with consent. These clauses also state that where the Restriction is imposed by a public authority, the clause will not act to operate against the Restriction.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

All legal implications form part of the Report.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**33 [EO-CM] Application to Close and Purchase Part of Road Reserve - Banner Lane, Murwillumbah**

**ORIGIN:**

**Design**

**FILE NO: GR3/12/8**

**SUMMARY OF REPORT:**

Council at its meeting of 17 May 2011 resolved to advertise the proposed closure of part of the road reserve adjacent to Lot A in DP 378525, Banner Lane Murwillumbah. This came about after Council received an application to close and purchase this section of road to allow for a carport/garage to be constructed in accordance with Council approval.

The road closure proposal was advertised in the Tweed Link on 7 June 2011 and invited the public to provide any written submissions regarding the proposal within a period of 28 days.

Two submissions were received and are provided as confidential attachments to this report.

It is recommended that Council approves the closure and purchase of part of the road reserve adjacent to Lot A in DP 378525, Banner Lane Murwillumbah.

**RECOMMENDATION:**

**That:**

- 1. Council approves the closure of part of the road reserve adjacent to Lot A in DP 378525, Banner Lane Murwillumbah;**
- 2. The applicant bears all the survey and legal costs and purchases the subject land as determined in value by a local registered valuer;**
- 3. The title of the closed road be consolidated with the adjacent land;**
- 4. Easements be created over public authority reticulation services, if any; and**
- 5. All necessary documentation be executed under Common Seal of Council.**

**REPORT:**

Council at its meeting of 17 May 2011 resolved to advertise the proposed closure of part of the road reserve adjacent to Lot A in DP 378525, Banner Lane Murwillumbah. This came about after Council received an application to close and purchase this section of road to allow for a carport/garage to be constructed in accordance with Council approval.

The road closure proposal was advertised in the Tweed Link on 7 July 2011 and invited the public to provide any written submissions regarding the proposal within a period of 28 days.

Two submissions were received and are provided as confidential attachments to this report. Both submissions object to the proposed closure and recommend that Council upgrade the laneway and provide public access from Banner Lane to Mooball Street.

There is no current public access from Banner Lane to Mooball Street as the area in question is on a steep descent and has moderate to dense foliage cover including established trees, shrubs and undergrowth. The cost of upgrading this area to provide a safe walkway for pedestrians is prohibitive at this time and not considered necessary by Councils Road Safety Officer as other safe alternatives are available.

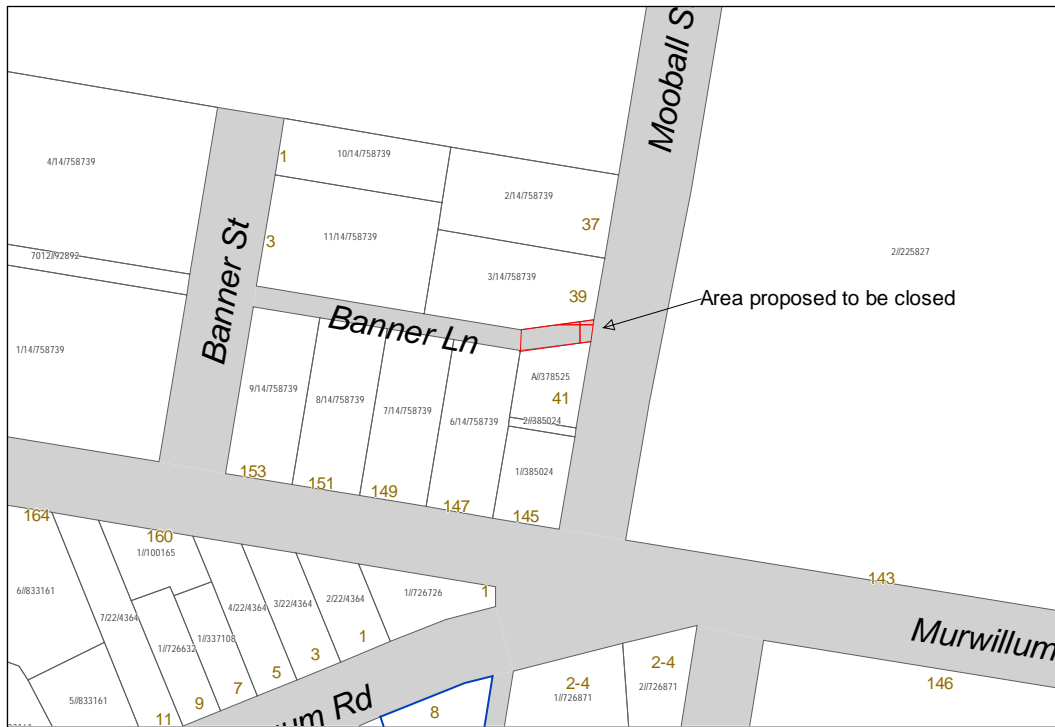
The applicant has to date experienced several incidents involving car theft and extensive car damage over the period of October 2010 to March 2011. They are seeking to close a small section of Banner Lane which is currently not in use by the public, to provide secure off street parking for their vehicles as well as a safe ingress/egress to the vehicles for their young children.

The road closure would not impact in any way on the properties either side of Lot A, nor would it interfere with any current public use. Consent has been sought and provided by the neighbouring property to the closure. A copy of the written consent is also attached to this report.

An inspection of the site has been conducted and it was determined that no Council or other service infrastructure was apparent within or near this part of the road reserve that would be detrimentally impacted. There are no environmental impacts apparent at the site. The applicant does not wish to remove any existing vegetation for the purpose of construction of the garage/carport structure.

A copy of the full application including photos of the area is attached for further information. As this is a private application containing personal information the attachment is of a confidential nature.

Plan showing area proposed to be closed (approximately 134m<sup>2</sup>).



It is recommended that Council approves the closure and purchase of part of the road reserve adjacent to Lot A in DP 378525, Banner Lane Murwillumbah.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. **Confidential Attachment** - Correspondence from N Murphy (ECM 31510062).
2. **Confidential Attachemnt** - Correspondence from J Hancock (ECM 35264030).
3. **Confidential Attachment** - Correspondence from D Eriksen (ECM 35506508).

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**34 [EO-CM] Naming of Public Bridge - Snake Creek, Mt Burrell**

**ORIGIN:**

**Design**

**FILE NO: GS5/1 Pt 6**

**SUMMARY OF REPORT:**

Council at its meeting of 17 May 2011, resolved to publicise its intention to name the bridge which crosses Snake Creek at Kyogle Road, Mt Burrell as "*Tom Grant Bridge*" and allowed one month for written objections to the proposal.

No written objections were received.

It is recommended that Council adopt the name of "Tom Grant Bridge" for the bridge that crosses Snake Creek at Kyogle Road, Mt Burrell.

**RECOMMENDATION:**

**That:**

- 1. Council adopts the name of "*Tom Grant Bridge* ", for the bridge that crosses Snake Creek at Kyogle Road, Mt Burrell; and**
- 2. The naming of the public bridge be gazetted under the provisions of the Roads (General) Regulation, 2008 and the Roads Act, 1993 as amended.**

**REPORT:**

Council at its meeting of 17 May 2011, resolved to publicise its intention to name the bridge which crosses Snake Creek at Kyogle Road, Mt Burrell as "Tom Grant Bridge" and allowed one month for written objections to the proposal.

No written objections were received.

Aerial view of the Bridge:



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

**35 [EO-CM] Indexation of S94 Plan Works Programs and Developer Contribution Rates**

**ORIGIN:**

**Planning and Infrastructure**

**FILE NO: S94 Plan**

**SUMMARY OF REPORT:**

This report is for the information of Councillors and summarises the effects of indexation on S94 Plan developer contribution rates for the new financial year. Some rates do not change, while others increase. The median increase per lot per contribution is \$11.45.

**RECOMMENDATION:**

**That Council notes the indexation of S94 contribution rates as detailed in this report and in accordance with the:**

- 1. Provisions of Regulation 32 of the Environmental Planning and Assessment Regulation 2000,**
- 2. ABS Implicit Price Deflator (IPD) index as adopted in each S94 Plan,**
- 3. Tweed Shire Council Land Cost index as published in the adopted 2011/2012 Review Policy and Statement and adopted in each S94 Plan and**
- 4. Clause entitled "Adjustment of Contribution Rates" as adopted in each S94 Plan.**

## **REPORT:**

### **Background:**

Council reviewed all of its contribution plans between July and December 2009 in accordance with a Direction from the NSW Minister for Planning. This was a major undertaking, and to streamline the process the opportunity was taken to standardise Council's disparate S94 plans in line with the then current Department of Planning 'template for a S94 Plan'. The template included a section with reference to indexation of the plan's works program. The Environmental Planning and Assessment (EP&A) Act had always allowed for such indexation however the review process revealed that Council had never previously utilised this mechanism to update developer contribution rates, in most cases because the S94 plan did not allow for it, or in one case, because a process had not been implemented to apply the update. Therefore a benefit of the Direction was that this oversight was rectified during the review process.

All of the plans which were reviewed were exhibited for comment and adopted by Council in accordance with the usual requirements of the EP&A Act. The majority of the amended plans were adopted by Council in December 2009.

### **What is a S94 Plan for?**

S94 of the Environmental Planning and Assessment Act enables Council to collect money from developers for the provision of additional infrastructure required as a result of that development. It is an attempt to implement a 'user pays' approach and the intention is to ensure that sufficient additional open space, community facilities and other community infrastructure continues to be provided by Council, without placing the burden to pay for that infrastructure onto existing residents and ratepayers.

To collect contributions from developers, Council must have a S94 Plan in place which has been adopted in accordance with the EP&A Act and Regulations. The plan must spell out the infrastructure required, how much it will cost, and clearly demonstrate a direct link (nexus) between the required work and the demand generated by the new population as a result of development.

Council currently has 23 active contribution plans, approximately half of these apply to the whole shire, the rest are area-specific plans. The majority of plans levy contributions on residential and tourist development, while others, like the Road Contribution Plan (No 4) and Council Admin Facilities Plan (No 18), also levy contributions for commercial development.

It should be noted that two plans were not updated to utilise the Department of Planning's 'Template for a S94 Plan' during the plan review and therefore do not include the clauses to enable indexation:

- S94 Plan No 27 - Tweed Heads Master Plan - this plan was being updated separately in conjunction with the Department of Planning and was excluded from the general review
- S94 Plan No 28 - Seaside City - this plan is an unusual case as it collects money on behalf of a developer in accordance with a ruling from the Land and Environment Court and was excluded from the review.



## Indices:

The Department of Planning's 'template for a S94 Plan' includes clauses for indexation of the works program broken down in terms of land and non-land components, including a localised 'Land Cost Index'. It is open to Council to use any viable index, provided that it is 'readily accessible'.

Regulation 32 of the Environmental Planning and Assessment Regulation 2000 states as follows:

- (3) A council may make the following kinds of amendments to a contributions plan without the need to prepare a new contributions plan:*
- (a) minor typographical corrections,*
  - (b) changes to the rates of section 94 monetary contributions set out in the plan to reflect quarterly or annual variations to:*
    - (i) readily accessible index figures adopted by the plan (such as a Consumer Price Index), or*
    - (ii) index figures prepared by or on behalf of the council from time to time that are specifically adopted by the plan,*
  - (c) the omission of details concerning works that have been completed.*

Consequently the following indices were selected:

### **Non land component - IPD (Implicit Price Deflator):**

This index is published by the Australian Bureau of Statistics and refers to the value of work done (implicit price deflator). It is referred to as Chain Volume Measures; Engineering Construction; ABS Reference A405071T, ABS Product Number 8782.0.65.001

This index is applied to components of a S94 Plan works program for non-land items such as open space embellishment and the construction of buildings, roads and carparks.

The currently available IPD figures are for December 2010, released 19/4/2011.

### **Land component - TSC Land Cost Index:**

Tweed Shire Council's Land Cost Index is a simple index calculated with reference to the movement in annual median property sale values and is published annually under the heading **Land Cost Indexation** in Council's Revenue Policy.

In 2009, escalating property values in Tweed Shire were of serious concern and price movements were noted well in excess of any non-land related index. It was felt that it was essential that an index that could closely reflect the actual cost to Council of the acquisition of land would be the most appropriate index to use, therefore the TSC Land Index was calculated and published.

When there is no current land valuation available with which to update the works program costs for the purchase of land, this index is applied so that Council can ensure that the land component of the works program in a S94 Plan reflects an acquisition cost closer to market value.

Note that an oversight meant that this index was not published in the previous 2009/2010 year and because a S94 Plan can only utilise a 'readily available' index, this meant that any land indexation which occurred during the previous year utilised the indexation figures from the 2008/2007 year.

The currently available TSC Land Cost Index figures are published in the latest Revenue Policy with the latest available index figures being for 2009/2010.

**Effect of negative movements in indices:**

The template for a S94 Plan, and therefore each updated Tweed Shire Council S94 plan, contains the following statements:

*Note: In the event that the Current IPD is less than the previous IPD, the Current IPD shall be taken as not less than the previous IPD.*

*Note: In the event that the Current LV Index is less than the previous LV Index, the Current LV Index shall be taken as not less than the previous LV Index.*

**Indexation as at 1 July 2010:**

Because of the Global Financial Crisis, the consequent downturn in development and construction meant that the IPD (Engineering Construction) had not risen between December 2009 and June 2010.

As mentioned above, the TSC Land Cost Index was not published for the 2009/2010 year.

Therefore no indexation was applied to developer contribution rates on 1 July 2010.

**Indexation as at 1 July 2011:**

A summary of the effect of indexation on current contribution plan rates is shown in the table below. As the relevant plan clauses state, a contribution rate will not be adjusted downwards. Therefore some rates do not change:

Plan		Component	Current \$	per unit	Rate at 1 July 2011*	Increase per unit	increase per lot
1	Banora Point Open Space	Structured Open Space	\$1,043	person	\$1,043	Nil	Nil
		Casual Open Space with dedication	\$224	person	\$224	Nil	Nil
		Casual Open Space no dedication	\$686	person	\$686	Nil	Nil
2	Banora Point West Drainage Scheme	Drainage	\$13,144	HA	\$13,252	\$108.00	\$10.80
4	Tweed Road Contribution Plan	Tweed Heads	\$656	Trip	\$656	Nil	Nil
		Tweed Heads South	\$936	Trip	\$936	Nil	Nil
		Cobaki	\$999	Trip	\$999	Nil	Nil
		Bilambil Heights	\$1,829	Trip	\$1,829	Nil	Nil
		Terranora	\$1,527	Trip	\$1,527	Nil	Nil
		LAC1: 'Area E'	\$2,081	Trip	\$2,081	Nil	Nil
		Kingscliff	\$861	Trip	\$861	Nil	Nil
		Duranbah/Cabarita	\$955	Trip	\$955	Nil	Nil
		LAC2: Kings Forest Development	\$1,351	Trip	\$1,351	Nil	Nil
		LAC4: Casuarina	\$1,114	Trip	\$1,114	Nil	Nil
		Pottsville	\$1,125	Trip	\$1,125	Nil	Nil
		LAC3: Koala Beach/Seabreeze	\$1,216	Trip	\$1,216	Nil	Nil
		Murwillumbah	\$1,166	Trip	\$1,166	Nil	Nil
		Rural - Inner East	\$1,601	Trip	\$1,601	Nil	Nil
		Burringbar	\$1,124	Trip	\$1,124	Nil	Nil
		Rural - Inner North	\$2,358	Trip	\$2,358	Nil	Nil
		Rural - Inner West	\$2,062	Trip	\$2,062	Nil	Nil
Rural - Other	\$2,366	Trip	\$2,366	Nil	Nil		
5	Local Open Space	Structured Open Space	\$251	person	\$251	Nil	Nil
		Casual Open Space	\$219	person	\$219	Nil	Nil
7	West Kingscliff	Structured Open Space	\$994	person	\$1,204	\$210	\$504
		Drainage	\$42,720	HA	\$58,148	\$15,428	\$1,542
10	Cobaki	Community facilities	\$205	person	\$205	Nil	Nil
11	Libraries (Under Review)		\$330	person	\$330	Nil	Nil
12	Bus Shelters	bus shelters	\$25	person	\$25	Nil	Nil
13	Eviron Cemetery	Cemetery	\$50	person	\$50	Nil	Nil
15	Community Facilities	Community facilities	\$544	person	\$552	\$8.00	\$19.20
18	Council Admin/Tech Support	Admin	\$733	person	\$740.76	\$7.47	\$17.93
19	Casuarina Beach/Kings Forest	Community Facilities	\$897	person	\$897	Nil	Nil
		Structured Open Space	\$513	person	\$513	Nil	Nil

## Council Meeting held Tuesday 19 July 2011

Plan		Component	Current \$	per unit	Rate at 1 July 2011*	Increase per unit	increase per lot
21	Terranora Village	Structured Open Space	\$492	person	\$497.25	\$5.04	\$12.09
		Community facilities	\$168	person	\$169.24	\$1.71	\$4.11
22	Cycleways	Cycleway	\$186	person	\$188	\$1.92	\$4.61
23	Offsite Parking	Tweed Heads	23,400	space	24,117	\$717	NA
		Murwillumbah	15,150	space	15,150	Nil	NA
		Kingscliff	26,340	space	26,340	Nil	NA
		Bogangar/Cab. Bch	26,340	space	26,340	Nil	NA
		Pottsville	18,810	space	20,206	\$1,396	NA
		Fingal Head	2,760	space	2,760	Nil	NA
25	SALT Open Space & Associated Carparking	Structured Open Space	\$789	person	\$943	\$154	\$369.55
26	Regional Open Space	Structured Open Space	\$1,508	person	\$1,523.40	\$15	\$36.95
		Casual Open Space	\$430	person	\$434.02	\$4	\$9.64
27	Tweed Heads Master Plan	Open space and streetscaping	\$616	person	\$616	Nil	Nil
28	Seaside City	For existing subdivisions, excludes open space	\$12,199	person	\$12,199	Nil	Nil
		For new subdivisions, includes open space	\$18,548	person	\$18,548	Nil	Nil

\* Including indexation if applicable. Current IPD at 30 June 2011 is for Dec 2010; Current TSC Land Index at 30 June 2011 is 2009/2010.

### LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the rates are not indexed, contribution rates will not reflect the real cost of providing infrastructure arising out of new development, and therefore will place additional cost burden for the provision of this infrastructure onto existing ratepayers.

### POLICY IMPLICATIONS:

Council has adopted the means to index contribution rates in the majority of its S94 Plans.

### UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

**36 [EO-CM] Jack Evans Boat Harbour Parkland Usage and Event Guidelines**

**ORIGIN:**

**Recreation Services**

**SUMMARY OF REPORT:**

In order to provide a framework for the management and authorisation of events and activities in the Jack Evans Boat Harbour (JEBH) precinct, a Parkland Use and Event Guidelines document has been developed.

The Jack Evans Boat Harbour Parkland Use and Event Guidelines provides a set of opportunities for the use of the Public Open space at JEBH to help it fulfil its potential as a regional attraction and revitalise the Tweed Heads CBD. It provides guidance for event organisers, park user groups and the Tweed Shire Council staff responsible for approving and managing temporary outdoor events and regular on-going park use.

**RECOMMENDATION:**

**That Council endorses the Jack Evans Boat Harbour Parkland Use and Event Guidelines and proceeds to an expression of interest for activities within the precinct in August 2011.**

## REPORT:

In order to provide a framework for the management and authorisation of events and activities in the Jack Evans Boat Harbour (JEBH) precinct, a Parkland Use and Event Guidelines document has been developed.

The Jack Evans Boat Harbour Parkland Use and Event Guidelines provides a set of opportunities for the use of the Public Open space at JEBH to help it fulfil its potential as a regional attraction and revitalise the Tweed Heads CBD. It provides guidance for event organisers, park user groups and the Tweed Shire Council staff responsible for approving and managing temporary outdoor events and regular on-going park use.

In addition to its day-to-day functioning as regional parkland, the types of festivals, events and organised activities which may be catered for by the site include, but are not limited to, the following:

- Large scale performance/amphitheatre space and temporary stage locations
- Busking and small scale performance sites
- Markets
- Exhibitions (sculpture competitions, art festivals etc)
- Marquee sites for functions (conferences, wedding ceremonies etc)
- Display and Demonstration sites (i.e. during regional events such as car/bike rallies and the display of classic cars during the 'Cooly Rocks On' festival)
- Surf Club beach training (nippers, especially in times of poor weather/tidal conditions)
- Beach and water focussed events (i.e. dragon boat race, surf club demonstrations, fireworks displays and water performance)
- Small water craft hire operations (non-motorised)
- Bike / beach umbrella hire operations
- Group fitness / personal training / yoga
- Rally or public meeting
- Special needs group water activities (assisted access to tidal water via DDA compliant ramps)

The Guidelines allows for the management and authorisation of park use for the purposes of holding events in a one off or regular capacity. This includes both revenue raising and non-revenue raising uses.

These Guidelines primarily provide a series of site maps which outline a site-by-site description of public use opportunities within the Jack Evans Boat Harbour. Specifically they include Goorimahbah, Chris Cunningham Park and the series of water edge sites and spaces which have been identified as suitable for a variety of outdoor events.

Resourcing of the management and coordination of events and activities within the site will obviously require the allocation of resources. There may be potential to attract some income through leases and licences of activities such as boat and equipment hire, markets and event fees which could contribute to the costs of managing the precinct. In order to gauge the potential for such activities and the associated income it is proposed to undertake an expression of interest process (EOI). There may be some merit in delaying the EOI process until after the official opening and Local Government Week when the awareness and profile of the area will be increased.

As Destination Tweed has a presence on the site in the Visitor Information Centre it may be an option to engage them to undertake the management of the precinct. There would also be some synergies in promoting activities within the precinct and their overall objectives for the Tweed Heads area. It is proposed that Council will engage in discussion with Destination Tweed to explore potential opportunities.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Jack Evans Boat Harbour Parkland Use and Event Guidelines (ECM 35690233).
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**37 [EO-CM] Draft Public Transport Strategy**

**ORIGIN:**

**Design**

**SUMMARY OF REPORT:**

At its meeting on 16 November 2010 Council resolved:

*"That Council brings forward a report on developing a long term Public Transport Strategy and how future transport corridors could be preserved in the Tweed."*

A workshop titled "Draft Public Transport Strategy Overview for Tweed Shire" was presented to Councillors on the 7 June 2011.

This report investigates various modes of public transport including their potential for use in Tweed Shire at strategic overview level and discusses benefits and weaknesses associated with the modes.

Mode options considered are heavy rail, light rail, bus ways, bus lanes and combinations of these modes. An analysis of the available public transport modes indicates that a rapid transit corridor bus system is the optimal rapid transport mode for Tweed Shire because of the Shire's relatively low current and future population and its dispersed patterns of development.

It is not considered expedient to rely on heavy rail as part of a Tweed Public Transport Strategy, due to its extreme uncertainty. However if at some future date a decision was taken at a state or federal level to construct a link from the Gold Coast Airport Transport Hub to Yelgun or thereabouts this would be a welcome addition to the suite of public transport modes within Tweed Shire. A heavy rail link would be compatible with the rapid bus transport corridor system that Council may construct in the interim period.

Public transport planning in Tweed Shire is dependent on higher level planning by the NSW and Queensland Governments. The yet to be commenced *NSW Far North Coast Regional Transport Strategy* needs to be completed and fully integrated with South East Queensland for Tweed Shire to have a clearer regional framework on which to plan its local public transport strategy.

Notwithstanding these higher level strategic planning constraints, this report aims to establish a preferred strategic transport direction for Tweed Shire that is achievable in terms of sustainability, cost and population, and to support integration with public transport modes proposed or existing within the Gold Coast City Council and South East Queensland areas.

**RECOMMENDATION:**

**That Council:**

1. **Requests the NSW Government integrate the bus services in Tweed Shire into the Queensland 'Trans Link' transportation system.**
2. **Develops a Rapid Bus Transit Corridor Plan from Gold Coast Airport Transport Hub to Pottsville through the coastal villages with links to Murwillumbah.**
3. **Requests the NSW Government Ministry of Transport to advise on progress on The Cross Border Transport Taskforce Report 2009 recommendations.**
4. **Due to uncertainty that it will ever be constructed does not rely on a heavy rail link from Coolangatta to Yelgun in a medium to long term Tweed Shire Public Transport Strategy.**
5. **Does not include the southerly extension of light rail south of the Coolangatta Airport Hub in any medium/long term Tweed Shire Public Transport Strategy.**
6. **Council advises Transport NSW of these views and requests to be involved in the Far North Coast Regional Transport Strategy development.**

## REPORT:

### 1. Introduction

At its meeting on 16 November 2010 Council resolved:

*"That Council brings forward a report on developing a long term Public Transport Strategy and how future transport corridors could be preserved in the Tweed."*

A workshop titled "Draft Public Transport Strategy Overview for Tweed Shire" was presented to Councillors on the 7 June 2011. This report follows on from that workshop and aims to set a strategic direction for a Public Transport strategy in Tweed Shire.

The report investigates various forms of public transport including potential options and identifies benefits and issues with them.

Mode options considered are heavy rail, light rail, bus ways, bus lanes and combinations of these modes.

Public transport planning in Tweed Shire is dependent on higher level planning by the NSW and Queensland Governments. The yet to be commenced *NSW Far North Coast Regional Transport Strategy* needs to be completed and fully integrated with South East Queensland for Tweed Shire to have a clearer regional framework on which to plan its local public transport strategy.

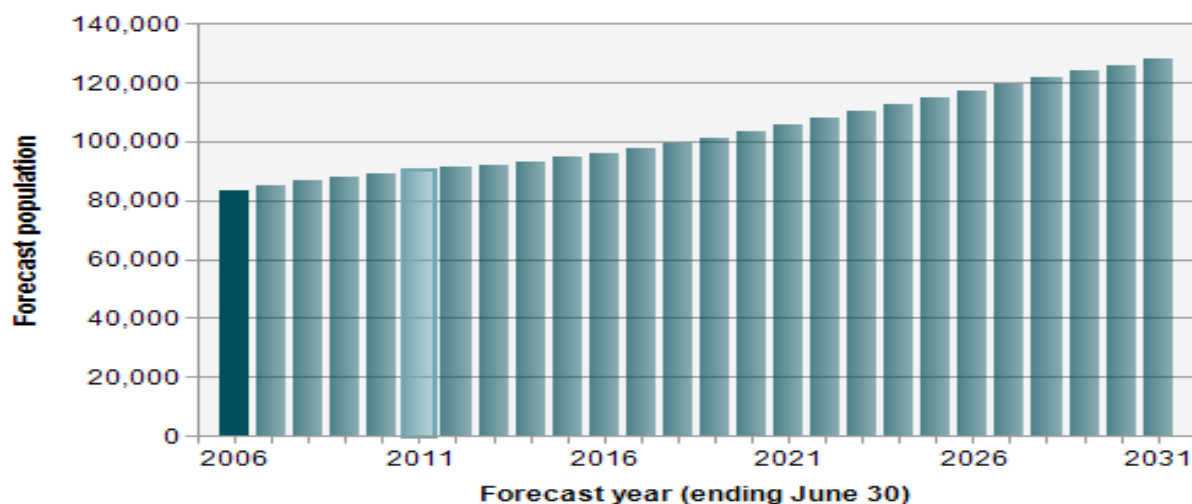
Notwithstanding these higher level strategic planning constraints, the report aims to establish a preferred strategic transport direction for Tweed Shire that is achievable in terms of sustainability, cost and population, and to support integration with public transport modes proposed or existing within the Gold Coast City Council area.

### 2. Demographics

To develop a public transport plan for the future demographics for the Shire need to be considered as it is a critical factor in identifying the most appropriate transport mode.

The Shire's population is currently 90,381 and is expected to grow to 128,134 by 2031. This is an increase of nearly 42% at just under 2% growth per year and is shown on the graph below:

**Forecast population, Tweed Shire**



Source: Tweed Shire Council

Where people live and work is also important to understand and the following two tables show the area of residence for people working in Tweed Shire (Table 1) and the number of workers that travel across the border to or from Tweed Shire to reach their place of employment (Table 2).

These tables show that about 80% of Tweed Shire workers live in Tweed Shire and also work within the Shire and that almost all the remaining 20% live in Queensland, mostly on the Gold Coast. They also show that whilst about 6,300 residents of Tweed Shire cross the border to work, 3,600 residents of Queensland travel into Tweed Shire to work. This indicates that about 10,000 workers could be targeted by better regional transport and a further 18,000 by better local (Tweed Shire) transport.

**Table 1:**

**Local Government Areas of residence<sup>(a)</sup> for workers in Tweed Shire Council, 2006**

Rank	Local Government Area	Number	Percent (%)
1	Tweed	17,784	79.8
2	Gold Coast	3,591	16.1
3	Byron	383	1.7
4	Lismore	67	0.3

Source: Tweed Shire Council

**Table 2:**  
**Workers travelling across the Border 2006**

Rank	Local Government Area	Number	Percent (%)
1	Tweed Shire To Gold Coast	5,824	19.9
2	From Gold Coast to Tweed Shire	3,591	16.1
3	Tweed Shire To Brisbane	357	1.2
4	Tweed Shire To Logan	62	0.2

Source: Tweed Shire Council

These figures are relatively low and are problematic in planning public transport in terms of cost effectiveness because by applying population growth figures to workers, it is estimated that 17,000 interstate workers and 25,000 local workers would be in the area by 2031.

In contrast the Gold Coast currently has 560,000 residents and 40,000 visitor/nights (6 times greater than Tweed).

Also of major importance is the data on travel to work methods shown in Table 3 below:

**Table 3:**

Travel method	number	%	Regional NSW %
Car, as driver	18,688	59.3	57.4
Car, as passenger	1,887	6.0	6.2
Train	15	0.0	0.5
Train and Car	25	0.1	0.2
Train and other	3	0.0	0.1
Train and multiple other methods	7	0.0	0.0
<b>Bus</b>	<b>276</b>	<b>0.9</b>	<b>0.7</b>
Bus and car	41	0.1	0.1
Bus and other (not train)	11	0.0	0.0
Ferry	3	0.0	0.0
Truck	619	2.0	1.9
Motorbike/Motor scooter	212	0.7	0.7
Bicycle	286	0.9	0.8
Taxi/Other	186	0.6	0.7

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Other - multiple methods	184	0.6	0.5
<b>Walked only</b>	<b>962</b>	<b>3.1</b>	4.4
Worked at home	1,647	5.2	6.0
Did not go to work	3,568	11.3	11.1
Unemployed	2,238	7.1	7.0
<b>Total</b>	<b>31,500</b>	<b>100.0</b>	

Source: Tweed Shire Council

The data is not encouraging showing only 1% of workers use buses to travel to work with just as many riding bikes to work and three times as many walking. This is very poor public transport usage and it would appear to reflect on the current public transport services and availability.

The Gold Coast had 3.5% public transport usage in 1992 with a target of 6.5% in 2011. Based on this even if Tweed Shire achieved 6.5% public transport usage by 2031, it would still only equate to about 2,700 employment related commutes per day.

### 3. Previous Public Transport Studies

Public transport within Tweed and the region has been the subject of previous studies, the ones of most significance to Tweed Shire are listed below, along with their recommendations:

1. Gold Coast City Transport Plan 1998
  1. Identified a "line haul" corridor along the Gold Coast to Gold Coast Airport
2. Gold Coast Light Rail Feasibility Study 2004
  1. Identified light rail was feasible from Helensvale to Broadbeach
  2. Broadbeach to Gold Coast Airport more likely to be Bus Rapid Transport
3. Cross Border Transport Taskforce Discussion Paper 2007
  1. A senior officer working group comprising representatives from relevant Queensland and NSW agencies and reporting to the Cross Border Task Force should be formed to take long term responsibility for the establishment of viable regional and cross border public transport in the Northern NSW/South East Queensland region. That group should immediately begin to identify a potential corridor.
  2. The Working Group should also begin to identify an appropriate interchange location and preserve capacity to build such a facility.
  3. That planning for a rail line should be premised on it being staged southwards from the Queensland border.
  4. That as part of the rural and regional bus reform process, new planning, funding and contracting arrangements be introduced in the Northern NSW Region as a matter of priority.
  5. That a cross border consultation capacity be established at the local level between the two states to achieve over time a more consistent planning and regulatory approach for the cross border region.

4. Cross Border Transport Taskforce Report 2009
  1. That no further work be advanced on potential rail links between northern New South Wales and South-east Queensland, including the infrastructure requirements, costs and delivery timeframe for any such rail link.
  2. That a cross-border liaison officer be nominated by both the New South Wales Ministry of Transport and by the Queensland Trans Link Transit Authority to provide continuing coordination of effort to better integrate public transport services on both sides of the border.
  3. That Rail Infrastructure Corporation be asked to assess the feasibility of enabling road traffic to traverse the rail line at an additional location in Byron Bay township. This could involve, for example, a second level-crossing, but would need to be subject to a commitment from both RIC and Byron Shire Council to agree on a grade-separated crossing if ever regular rail services through Byron Bay township were resumed.

The first two recommendations of the Task Force Report 2009 are of considerable importance to Tweed Shire and are currently the most up to date.

#### **4. Proposed Studies**

Whilst Recommendation 4.1 rules out any future rail link between northern NSW and South East Queensland, the NSW Government has proposed that a Far North Coast Regional Transport Strategy be developed as an outcome of the NSW State Plan 2010.

Work has yet to commence on the Strategy however Northern Rivers Regional Organisation of Councils (NOROC) has been actively trying to stimulate the NSW Government into commencing preparation of the Strategy.

Any Tweed Shire Public Transport Plan or direction will need to be integrated into the proposed Far North Coast Regional Transport Strategy which may not be finalised for some time. This creates uncertainty for this report as the Regional Framework that a Tweed Shire Transport Strategy must reflect and integrate with is unknown.

It is also essential to consider the recommendations of various South East Queensland Transport Strategies in developing a Strategy for Tweed Shire and the Far North Coast.

These studies recommended that:

1. The heavy railway currently terminating at Varsity Lakes be progressively extended to the Gold Coast Airport Multi Modal Transport Hub.
2. A rapid transport corridor following the Gold Coast Highway be developed from Broadbeach to the Gold Coast Multi Modal Transport Hub (this may be a bus way or light rail) in 2026.
3. The Gold Coast Airport Multi Modal Transport Hub will be the transport Interchange for the southern corner of the Gold Coast and the Tweed.
4. Requests to extend the Rapid Transport Corridor to Coolangatta are being considered.
5. A new study is being undertaken titled the 'Gold Coast Urban Area Strategy' including the impact of growth in northern NSW.

From these recommendations, it is highly probable that the Regional Multi Modal Transport Interchange will be located at Gold Coast Airport. This means that any transport planning strategy for Tweed Shire needs to integrate with this location.

## **5. Public Transport Modal Options**

There are several modes of public transport that can form the basis of a transport strategy either as standalone options, or, more commonly combinations of modal options.

### **5.1 Heavy Rail Option**

At best heavy rail is considered a long term option (2030+) because it is extremely expensive and has been rejected as a viable option by the 2009 Cross Border Taskforce Report.

The Gold Coast Airport is planned as the future Regional Multi Modal Transport Interchange and any heavy rail option for Tweed needs to feed into this hub.

Tweed Coast, Cobaki and Bilambil Heights are Tweed Shire's major growth areas and population base. South of the Tweed River, growth is concentrated along the coast, it is expedient to maximise potential patronage by locating a heavy rail corridor along the coastal strip. Murwillumbah and other rural areas would need to be serviced by a high frequency bus service connecting with a future station at or near the Chinderah Interchange.

Whilst significant expenditure is required to determine an acceptable and physically constructible alignment, the following option is put forward for strategic assessment.

A heavy rail option corridor could consist of 3 distinct elements which are:

#### **Part 1**

Continue from Gold Coast Airport Transport Hub via Tweed City to Barneys Point Bridge with a proposed station at Tweed City. It would most likely need to be constructed underground.

#### **Part 2**

Overland through Chinderah following Pacific Highway alignment with proposed stations at Chinderah Interchange, Bogangar Interchange and Pottsville Interchange and merging with the existing railway at Yelgun.

*Note: This alignment would be the most achievable as a corridor along the freeway would only require incremental widening of existing property resumptions. A new corridor would fragment many currently unaffected properties and create a barrier across the Tweed landscape that would adversely impact on the social amenity of the area and the environment.*



### Part 3

A system of feeder bus routes to and from proposed stations for the Coastal Villages and Murwillumbah.

A strategic level cost estimate based on expenditure for recently completed rail projects has been prepared.

In 2007 dollars based on Epping/Chatswood underground railway and Mandurah WA surface railway an indicative cost of the above proposal is:

7.5km underground at \$177.6M/km	=	\$1,332 M
24km overground at \$42.3M/km	=	\$1,015 M
Total Indicative Construction Cost	=	\$2,347 M

(only covers Gold Coast Airport to the connection with existing railway at Yelgun)

The high cost of a heavy rail option and relatively low population base indicates this option is very unlikely to proceed.

This is an indicative estimate only and can only be used for comparison purposes in this report and should not be used for any budgetary type considerations.

The Recommendation of the Cross Border Transport Task Force Report 2009:

*"That no further work be advanced on potential rail links between northern New South Wales and south-east Queensland, including the infrastructure requirements, costs and delivery timeframe for any such rail link."*

Indicates there is currently insufficient high level support for a heavy rail link through Tweed Shire.

The indicative cost to construct a heavy rail link (through Tweed Shire from Coolangatta to Yelgun) is \$2.3 billion, this is not sustainable for an area with an estimated future population of 128,134. However the link may be more feasible in an interstate/inter regional connection context.

Given the high cost of construction and current lack of meaningful high level support a heavy rail link cannot be relied upon as a component of Tweed Shires long term public transport strategy.

It is recommended that Council does not rely on a heavy rail link from Coolangatta to Yelgun in any medium to long term Tweed Shire Public Transport Strategy.

It is not considered expedient to rely on heavy rail as part of a Tweed Public Transport Strategy, due to its extreme uncertainty. However if at some future date a decision was taken at a state or federal level to construct a link from the Gold Coast Airport Transport Hub to Yelgun or thereabouts this would be a welcome addition to the suite of public transport modes within Tweed Shire. A heavy rail link would be compatible with the rapid bus transport corridor system that Council may construct in the interim period.

## **5.2 Rapid Bus Option**

This option can consist of two sub options being dedicated bus ways which are separate roads only accessible by buses or bus lanes where lanes on existing roads are marked for bus use only. There is some interaction with other traffic as turning vehicles need to cross or use short lengths of these lanes.

In developing this option, Surfside Buslines were consulted in regard to their strategic vision and views on how to best service the Tweed.

It was advised that to maximise attractiveness to potential passengers, the major route should travel along the coast through as many population centres as possible so as to be readily accessible and minimise changes between buses.

It is proposed that the Rapid Bus Corridor would follow the route of Wharf Street, Minjungbal Drive and the Tweed Coast Road. This route can be broken down into 2 segments being:

1. Dedicated bus lanes from Darlington Drive to the Gold Coast Transport Hub including bus priority activated traffic signals.
2. Bus lanes along the Tweed Coast Road.

Murwillumbah would be serviced by a separate route either interchanging at Chinderah or continuing on through Tweed Heads South to the Gold Coast Airport Multi Modal Interchange.

A major benefit of this option is that the Bus Corridor can be developed and upgraded in stages as funds become available and in accordance with demand. For example Minjungbal Drive bus lanes and priority activated traffic signals would be Stage 1 of Segment 1 above, then Stage 2 being Wharf Street bus lanes.

The following figure shows the Potential Tweed Shire Rapid Bus Corridor:



Figure 1

### **Indicative Cost Estimate**

An indicative cost estimate has been prepared based on the 2007 costs of constructing bus lanes which varied between \$5M and \$8M/km.

This equates to \$130M for a 26km rapid bus corridor from Pottsville to the Gold Coast Airport Multi Modal Transport Interchange.

### **5.3 Light Rail**

Light rail has similar attributes to Rapid Bus Transport, but can carry more passengers per hour than Bus Ways and can potentially be faster depending on the extent of interaction with traffic.

Current plans for Gold Coast Rapid Transport have light rail terminating at Broadbeach with a potential extension to Coolangatta Airport Transport Hub after 2026. Local groups have also requested that it be extended to Coolangatta.

The extension of light rail is dependent on future decisions by the Queensland Government and current information suggests the probability of extension of light rail south of Broadbeach is marginal. Published SEQ studies only identify 'a rapid transport corridor' along the Gold Coast Highway Corridor to the Gold Coast Airport, and high frequency bus services could be utilised instead of light rail.

### **Indicative Cost Estimate**

The Gold Coast Light Rail Project currently under construction is costing \$949M for 13km at \$73M per kilometre which is very expensive. In the unlikely event that such a system was to be built in Tweed Heads and Tweed Heads South, this order of costs (**\$73M per kilometre**) would be similar as extensive road realignment, upgrades, intersection realignments and property acquisitions would be required.

### **5.4 Rapid Transport Options**

Both Light Rail and Bus Rapid Transport can be considered as rapid transport options for Tweed.

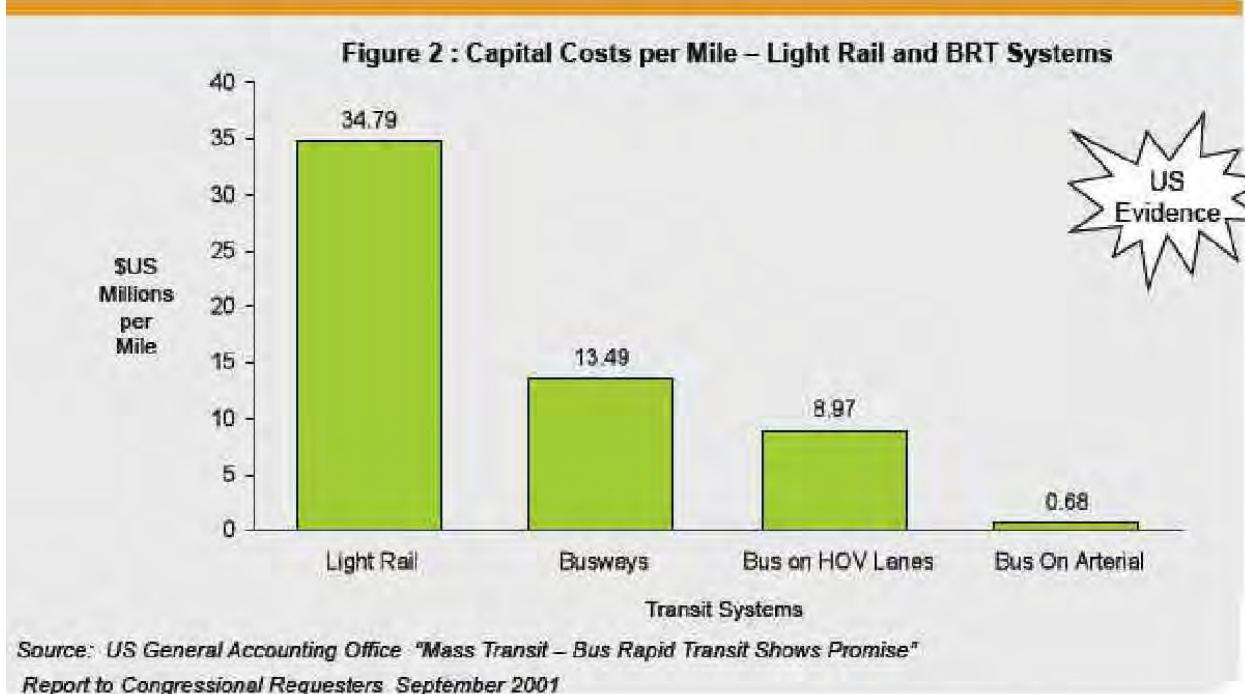
Light Rail is handicapped as a viable Tweed option by a number of issues:

- Current publically available material suggests it is unlikely the Gold Coast Light Rail will be extended to the Southern Gold Coast and that the preferred option is likely to be bus rapid transport. Therefore Tweed is unlikely to have long term connectivity to the Gold Coast Light Rail system. An isolated Tweed system would not be viable.
- There is a very large cost disadvantage for light rail compared with bus rapid transport
- Even with the most optimistic public transport utilisation assumptions there are insufficient potential public transport users in the long term to create the volume of passengers that would utilise the capacity of a light rail system. A Tweed light rail system would be permanently underutilised and therefore not viable on a cost/benefit basis compared with a rapid bus system.



The following figure shows a United States indicative cost comparison for construction between light rail and Bus Rapid Transport Systems:

## BRT is cheaper to build than Light Rail...



Institute of Transport Studies

37

\* Monash University Data

**Figure 2**

Given the low population base and resultant public transport users catchment within Tweed Shire, Light Rail fails the cost/benefit test as Rapid Bus Transport is sixty percent cheaper and can easily accommodate expected demand.

Operating costs are also significantly lower for Bus Rapid Transport than Light Rail as shown in the United Kingdom sourced tables below:

### Examples of Systems Operating Costs - UK Evidence

	UK Light Rail	UK Bus
£ per vehicle km	£3.79	£0.94
£ per passenger km	£0.14	£0.08

### Examples of Out-turn Capital Costs (2002 prices)

	Light Rail	Bus Lanes	Busways	Conventional Guided Bus
Infrastructure cost (£m/km, 3-way)	5-25	0.006-0.8	2.7-1.5	2.7-4.3
Vehicle cost (£'000)	800-2,150	120-200	129-200	120-200
Expected Kilometres (pa)	25-50	8-14	8-14	8-14

Tweed data shows 10,500 workers cross the border now increasing to 17,000 in 2031. If 5% switch to public transport it equates to 850 passengers in peak hour.

Figure 3 below gives indicative capacity ranges for rapid transport systems. As can be seen, light rail becomes a viable option at between 5,000 and 22,000 passengers per hour. At passenger volumes below this, bus based solutions are the only cost effective option.

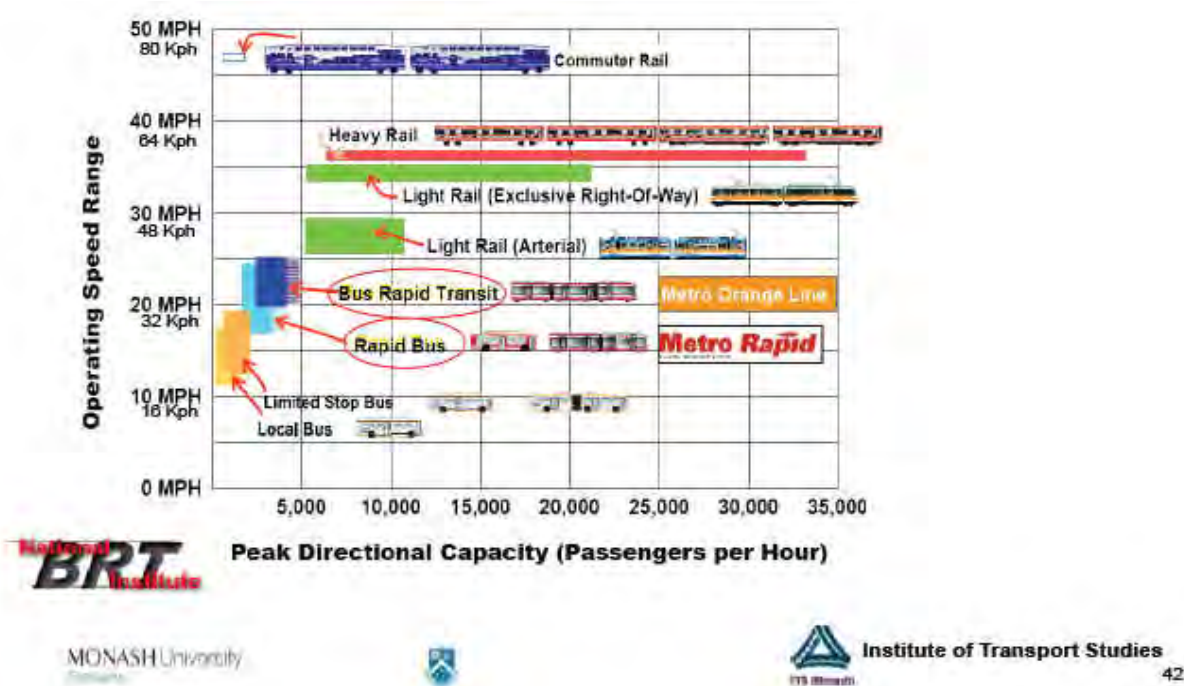


Figure 3

Tweed's future potential of 850 passengers per hour gets nowhere near the volume required to justify a light rail service.

Light rail extension beyond the Coolangatta Airport Hub is not viable on an economic or patronage basis and is therefore not a feasible transport option.

It is therefore recommended that light rail extending into NSW not be considered in a medium to long term Tweed Shire Public Transport Strategy.

### Conclusion, Rapid Transport Systems

The most viable system of rapid transport south of the Coolangatta Airport Hub is by bus rapid transport.

It is considered that this mode of transport is the optimal public transport mode for Tweed Shire because of the Shire's relatively low current and future population and its dispersed patterns of development.

Rapid Bus Transport is flexible in delivery. It can be delivered in stages and be upgraded as demand grows. It allows for high frequency bus services to use the current heavy rail terminus at Varsity Lakes on the Gold Coast as an interim Modal Interchange which can be progressively shifted south as the heavy rail line is extended to Elanora, Tugun and finally the Gold Coast Airport Multi Modal Interchange.

Rapid Bus Transport is also the most affordable rapid transport option and planning and improvements can start in the short term without waiting for future decisions by the Queensland Government. They can be readily adapted to integrate with any of the public transport options selected for the Gold Coast region.

It is recommended that Rapid Bus Transport be supported as the preferred rapid transport mode for Tweed Shire and its inclusion be supported by Council in any future transportation studies.

## **6. Short Term Public Transport Issues**

Currently Tweed Shire is serviced by public bus operations. These services are privately operated and as such need to be commercially viable. As shown in Table 3 only 1% of workers use public transport as their choice of transport to places of employment.

### **Impediments to Public Transport Use**

#### **1. High Cost**

To travel 8km from Kingscliff to Tweed Heads costs \$6.80. The same distance on the Gold Coast (2 zones) is \$3.11 using the Go Card.

#### **2. Infrequent Services**

Services are not suitable for commuters (workers) because they are circuitous and infrequent as unsubsidised operators in NSW need to run commercially viable services.

#### **3. Travel Time**

To go from Kingscliff to Murwillumbah takes 1 ¼ hours and cannot get to Murwillumbah until 8.30am (operator needs to run a viable service).

#### **4. Changing busses to complete journey**

Forced changes at Bay Street for patrons travelling across the border because of different systems and fee structures in each State and delay and inconvenience.

### **Potential Short Term Improvements**

Public transport in South East Queensland has made strong progress in recent years and of most significance is the formation of the Qld State Government subsidised '**TransLink**' which enabled transport in the greater SEQ Region from the Sunshine Coast to the NSW border to become integrated and have a standardised fee structure apply to all modes of transport.

The simplest and easiest, but potentially politically and legislative difficult improvement that could be made to improve the attractiveness of public transport in Tweed Shire is for the NSW Government to join (and subsidise on a similar pro rata basis as the Queensland Government) the 'Trans Link' system for at least services operated by Surfside Buslines in NSW. Surfside buses operating within Tweed Shire are all equipped to offer integrated TransLink ticketing and consistent fare zoning.

If Surfside services within Tweed Shire were operated under the 'TransLink' system the following benefits would be immediate:

#### **1. Uniformity of travel costs between NSW and Queensland**

NSW could be added to TransLink zones shown in Figure 4 rather than Surfside having to operate a separate zone system for NSW shown in Figure 5.

2. More services (not dictated entirely by commercial considerations)  
As TransLink services are government subsidised this would have a financial impact on NSW Government, however they already provide subsidies for Sydney residents (e.g. Hills Bus and subsidised Government busses in Sydney and Newcastle)
3. **Go Card** integrated ticketing  
Allows fares to be paid via computerised integrated ticketing card system that is fast and efficient and multi modal (trains, busses, light rail, Brisbane Ferries).
4. Reduced requirement for bus changes  
As zones and fares would be consistent on both sides of the border, the need for changing busses at the border would be reduced.



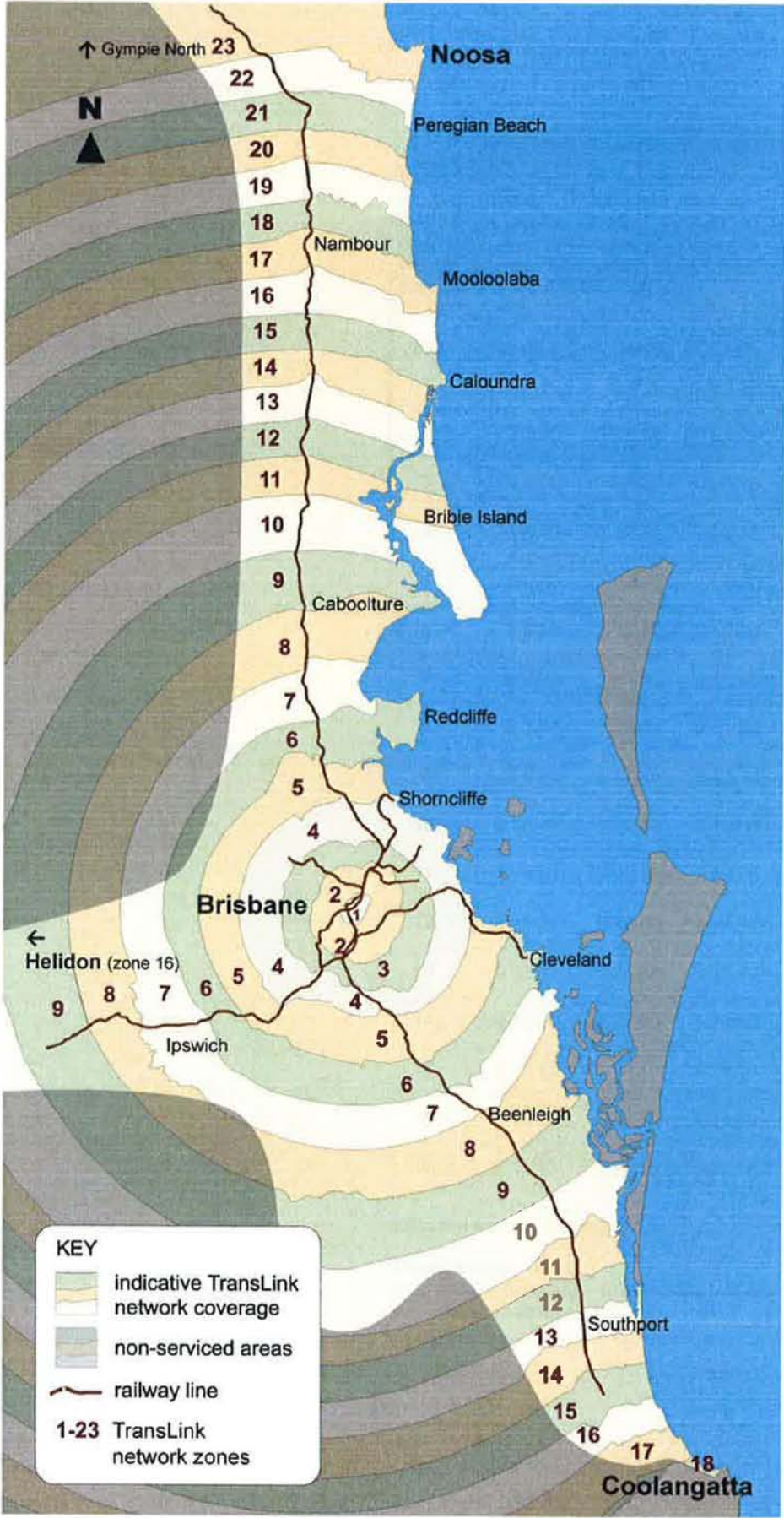


Figure 4 South East Queensland TransLink Zone Map



Figure 5 NSW Zone Map

## 7. Corridor Preservation

### Heavy Rail:

An underground heavy rail corridor from the Gold Coast Airport Multi Modal Transport Hub to Barney's Point would require little corridor preservation, except for access/ventilation portals and stations.

The above ground corridor south of Barney's Point is proposed to be located adjacent to the existing freeway between Chinderah and Yelgun. Development immediately adjacent to the existing freeway reserve that would impact on a future heavy rail corridor in this rural area is likely to be limited.

**Light Rail:**

Corridor preservation is not further considered as this mode of rapid transport for Tweed is not recommended in the medium or long term in this report.

**Bus Rapid Transport:**

Corridors need to be created and are recommended.

**8. Summary**

Based on the above information, the optimal rapid transport mode for Tweed Shire is Rapid Bus Transport. This is a flexible option that is readily adaptable to staging to reflect available budgets.

There is also immediate potential at a joint state government level to improve the attractiveness of the existing bus services in Tweed Shire by NSW negotiating with the Queensland Government for bus services in Tweed Shire to be operated under Trans Link system.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Interstate government and legislation issues need to be resolved to enable optimisation of integrated short term operation and strategic planning of public transport across the South East Queensland and NSW Northern Rivers regions. Implementation of the recommendations of this report would have cost implications for both the NSW Government and Council.

**POLICY IMPLICATIONS:**

Public transport planning in Tweed Shire is dependent on higher level planning by NSW and Queensland Governments. The yet to be commenced NSW Far North Coast Regional Transport Strategy needs to be completed and fully integrated with South East Queensland for Tweed Shire to have a clearer regional framework on which to plan its local public transport 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](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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**REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES**

**38 [TCS-CM] Monthly Investment Report for Period Ending 30 June 2011**

**ORIGIN:**

**Financial Services**

**SUMMARY OF REPORT:**

The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Cl. 212 of the Local Government (General) Regulations and Council policies.

Council had \$159,985,107 invested as at 30 June, 2011 and the net return accrued on these funds was \$806,418 or 6.05% annualised for the month.

**RECOMMENDATION:**

**That in accordance with Section 625 of the Local Government Act 1993 the monthly investment report as at 30 June 2011 totalling \$159,985,107 be received and noted.**



**REPORT:**

**Report for Period Ending 30 June 2011**

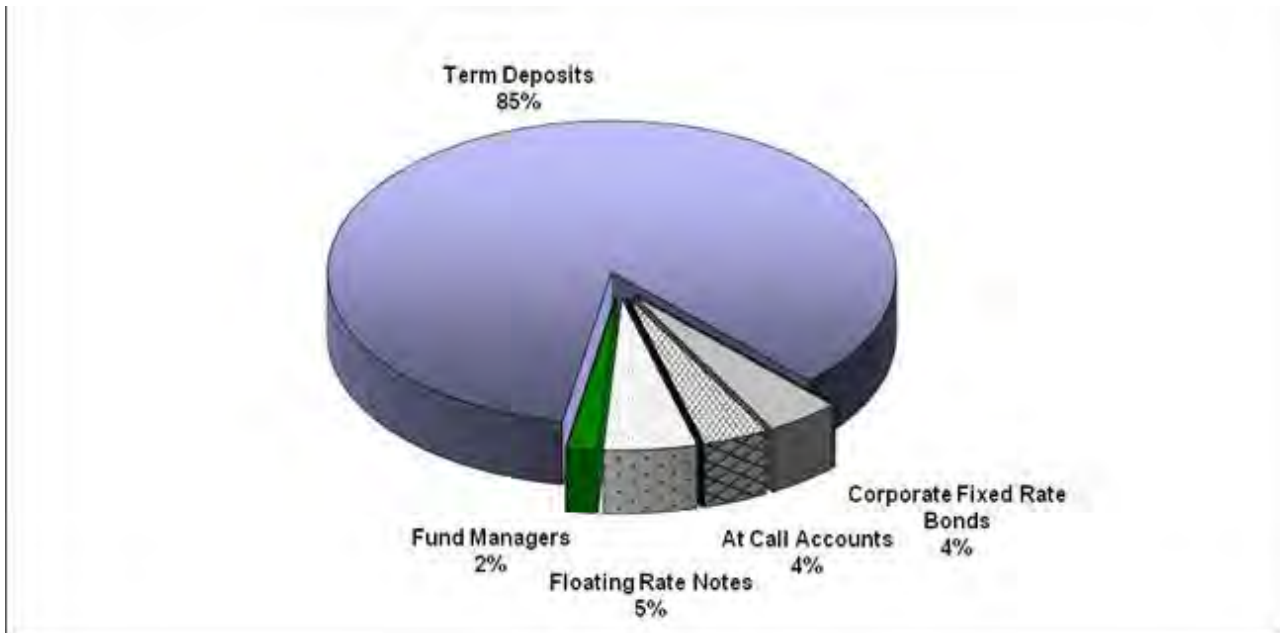
The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government (General) Regulations and Council policies.

**1. RESTRICTED FUNDS AS AT 1 JULY 2010**

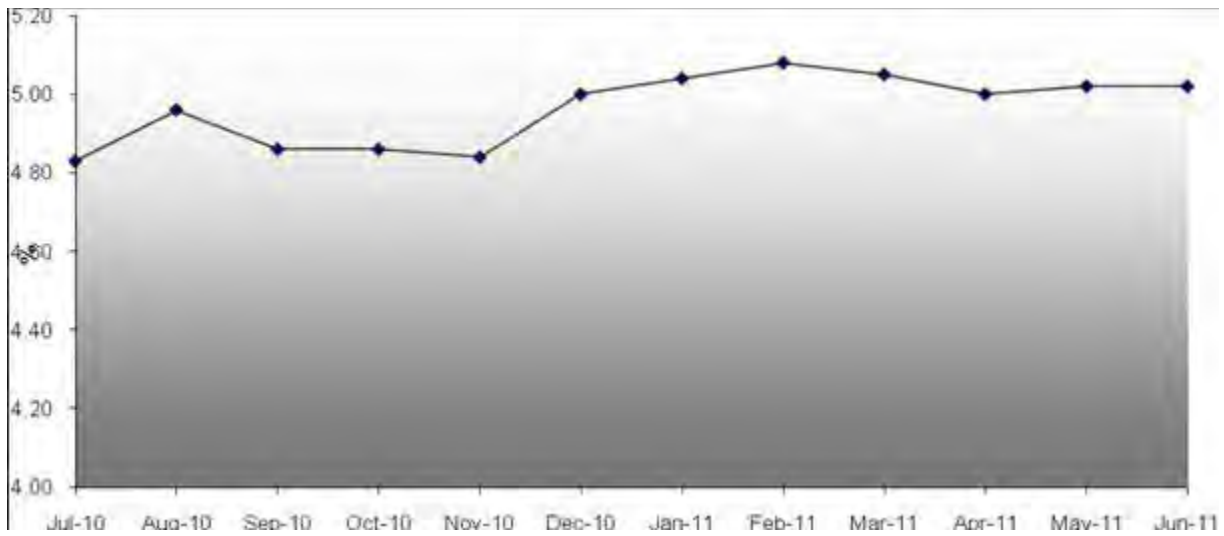
Description	(\$'000)			
	General Fund	Water Fund	Sewer Fund	Total
<b>Externally Restricted</b>	948	14,977	37,039	<b>52,964</b>
Crown Caravan Parks	11,013			<b>11,013</b>
Developer Contributions	30,195	16,801		<b>46,996</b>
Domestic Waste Management	8,262			<b>8,262</b>
Grants	4,261			<b>4,261</b>
<b>Internally Restricted</b>	15,097			<b>15,097</b>
Employee Leave Entitlements	1,833			<b>1,833</b>
Grants	3,185			<b>3,185</b>
Unexpended Loans	9,847			<b>9,847</b>
<b>Total</b>	<b>84,641</b>	<b>31,778</b>	<b>37,039</b>	<b>153,458</b>

*Note: Restricted Funds Summary updated September 2010*

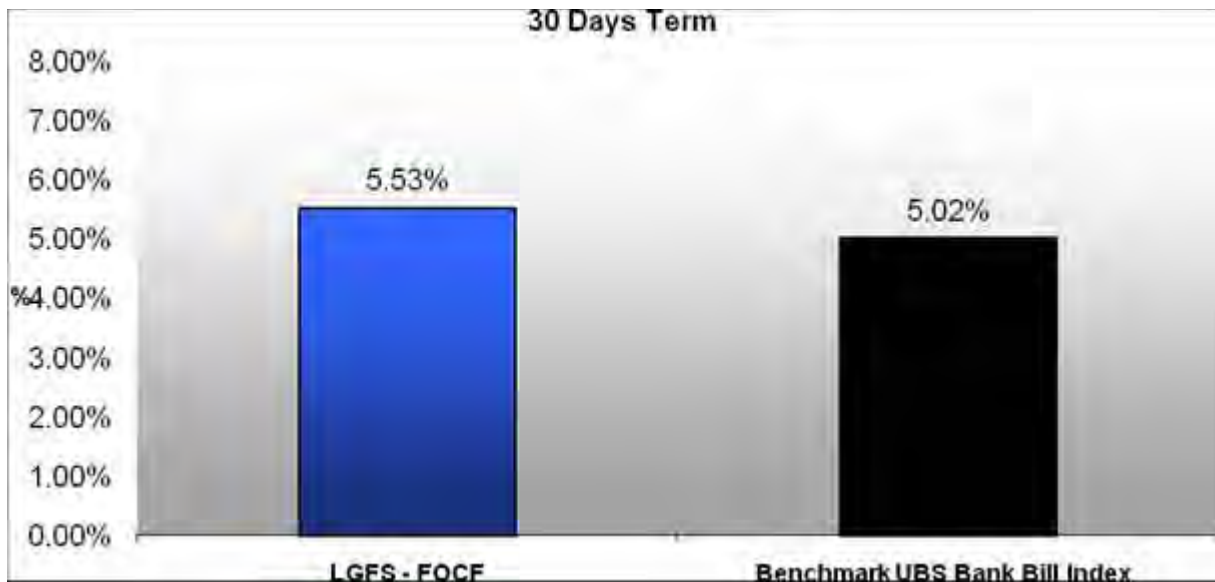
**2. CURRENT INVESTMENT PORTFOLIO BY CATEGORY**



**3. INVESTMENT RATES - 90 DAY BANK BILL RATE (%)**



**4. FUNDS MANAGERS PERFORMANCE FOR MONTH - NET OF FEES (NOT ANNUALISED)**



**5. FUND MANAGERS - DETAILED INFORMATION**

Fund	Credit Rating	Percentage of Total Fund Managers Current Month	Fund Managers Balance end of Previous month	Fund Managers Balance end of Current month	Distribution for Month
LGFS - FOCF	AA-	100%	\$2,758,833	\$2,771,065	\$12,232
Total		100%	\$2,758,833	\$2,771,065	\$12,232

## 6. DIRECT SECURITIES

Counterparty/ Product Name	Face Value	Market Value	% Return on Face Value	Investment Type	Final Maturity Date	Next Quarterly or Final Coupon
ANZ Bank	1,000,000.00	1,068,570.00	6.50	Fixed Rate Bond	08/11/2011	32,500.00
ANZ Bank	1,000,000.00	1,013,831.61	8.50	Fixed Rate Bond	22/04/2013	42,500.00
CBA Retail Bond	1,000,000.00	1,010,000.00	6.04	FRN	24/12/2015	18,500.00
CBA Retail Bond	498,250.00	505,000.00	6.45	FRN	24/12/2015	6,361.64
CBA	1,000,000.00	1,020,717.51	6.17	FRN	17/04/2012	15,378.50
CBA/Merrill Lynch Zero Coupon Bond	4,000,000.00	2,568,000.00	7.28	Fixed Rate Bond	22/01/2018	0.00
Deutsche Bank	1,000,000.00	930,253.00	5.99	FRN	23/11/2012	15,102.37
Members Equity Bank	2,000,000.00	1,989,380.00	6.04	FRN	08/03/2012	30,196.16
National Australia Bank	1,000,000.00	1,014,410.00	6.15	FRN	05/11/2015	15,501.37
Suncorp Metway	2,000,000.00	2,011,380.00	6.12	FRN	26/05/2014	30,180.82
Westpac Bank	1,000,000.00	1,041,250.00	7.25	Fixed Rate Bond	24/09/2012	36,250.00
Westpac Bank	1,000,000.00	1,041,250.00	7.25	Fixed Rate Bond	24/09/2012	36,250.00
<b>Total</b>	<b>16,498,250.00</b>	<b>15,214,042.12</b>	<b>6.65</b>			<b>278,720.87</b>

ABS=AssetBackedSecurity  
 Bond = Fixed Rate Bond  
 CDO = Collaterised Debt Obligation  
 FRN = Floating Rate Note

## 7. TERM DEPOSITS

Lodged or Rolled	Due	Counterparty	Principal	Term	% Yield	Income Receivable	Notes	Maturity
16/02/11	23/08/11	ADCU	1,000,000.00	188	6.230	32,088.77	Fixed Rate	23/08/2011
17/02/11	16/08/11	Adelaide Bendigo Bank	2,000,000.00	180	6.250	61,643.84	Fixed Rate	16/08/2011
1/09/10	6/09/11	Adelaide Bendigo Bank	3,000,000.00	370	6.200	188,547.95	Fixed Rate	06/09/2011
24/05/11	22/05/12	Adelaide Bendigo Bank	2,000,000.00	364	6.350	126,652.05	Fixed Rate	22/05/2012
6/08/10	7/08/12	Adelaide Bendigo Bank	2,000,000.00	732	6.600	264,723.29	Fixed Rate	07/08/2012
22/03/11	19/03/13	Adelaide Bendigo Bank	1,000,000.00	728	6.500	129,643.84	Fixed Rate	19/03/2013
11/08/10	16/08/11	AMP Bank (RIMSEC)	1,000,000.00	370	6.310	63,964.38	Fixed Rate	16/08/2011
31/08/10	31/08/11	AMP Bank (RIMSEC)	1,000,000.00	365	6.310	63,100.00	Fixed Rate	31/08/2011



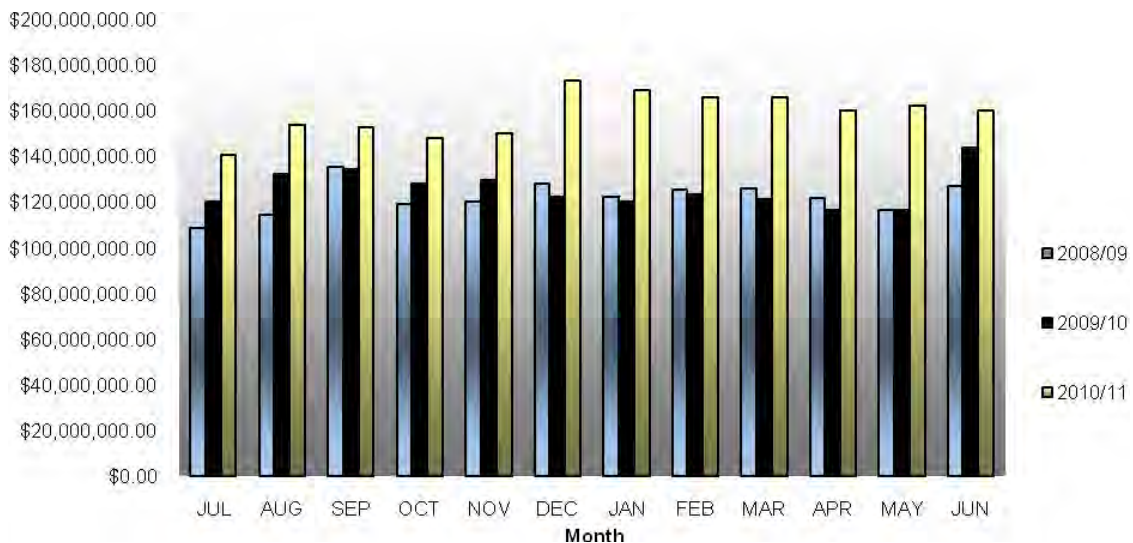
Lodged or Rolled	Due	Counterparty	Principal	Term	% Yield	Income Receivable	Notes	Maturity
1/12/10	30/08/11	ANZ	4,000,000.00	272	6.420	191,368.77	Fixed Rate	30/08/2011
25/05/11	22/05/12	ANZ	2,000,000.00	363	6.400	127,298.63	Fixed Rate	22/05/2012
12/05/11	12/08/11	Bank of QLD	2,000,000.00	92	6.473	32,632.53	<b>Floating 90DBBSW + 1.50</b>	12/11/2013
14/01/11	11/10/11	Bank of QLD	5,000,000.00	270	6.450	238,561.64	Fixed Rate	11/10/2011
3/02/11	8/11/11	Bank of QLD	2,000,000.00	278	6.450	98,252.05	Fixed Rate	08/11/2011
1/03/11	13/12/11	Bank of QLD	2,000,000.00	287	6.350	99,860.27	Fixed Rate	13/12/2011
12/08/10	13/08/13	Bank of QLD	2,000,000.00	1097	7.050	423,772.60	Fixed Rate	13/08/2013
22/03/11	25/03/14	Bank of QLD	1,000,000.00	1099	6.750	203,239.73	Fixed Rate	25/03/2014
4/04/11	8/04/14	Bank of QLD	2,000,000.00	1100	6.390	385,150.68	Fixed Rate	08/04/2014
12/01/11	18/10/11	Bank of QLD (RIMSEC)	4,000,000.00	279	6.400	195,682.19	Fixed Rate	18/10/2011
1/09/10	30/08/11	Bankwest	3,000,000.00	363	6.000	179,013.70	Fixed Rate	30/08/2011
31/05/11	28/09/11	Bankwest	1,000,000.00	120	6.200	20,383.56	Fixed Rate	28/09/2011
10/05/11	25/10/11	Bankwest	2,000,000.00	168	6.130	56,429.59	Fixed Rate	25/10/2011
14/06/11	16/08/11	CPS CU	1,000,000.00	63	5.900	10,183.56	Fixed Rate	16/08/2011
15/09/10	20/09/11	CUA	1,000,000.00	370	6.330	64,167.12	Fixed Rate	20/09/2011
14/06/11	13/09/11	CUA	1,000,000.00	91	6.110	15,233.15	Fixed Rate	13/09/2011
3/09/10	6/09/11	Heritage BS	1,000,000.00	368	6.250	63,013.70	Fixed Rate	06/09/2011
31/05/11	31/08/11	IMB	2,000,000.00	90	6.270	30,920.55	<b>Floating 90DBBSW + 1.25</b>	03/12/2013
2/03/11	6/03/12	IMB	1,000,000.00	370	6.360	64,471.23	Fixed Rate	06/03/2012
18/05/11	18/08/11	IMB (RIMSEC)	1,000,000.00	92	6.240	15,728.22	<b>Floating 90DBBSW + 1.25</b>	18/11/2011
31/05/11	31/08/11	ING (RIMSEC)	1,000,000.00	90	6.170	15,213.70	<b>Floating 90DBBSW + 1.15%</b>	29/05/2012
24/05/11	25/10/11	ING (RIMSEC)	1,000,000.00	154	6.060	25,568.22	Fixed Rate	25/10/2011
17/02/11	14/02/12	ING (RIMSEC)	1,000,000.00	362	6.450	63,969.86	Fixed Rate	14/02/2012
12/11/08	14/11/11	Investec Bank	1,000,000.00	1099	6.880	207,153.97	Fixed Rate	14/11/2011

Council Meeting held Tuesday 19 July 2011

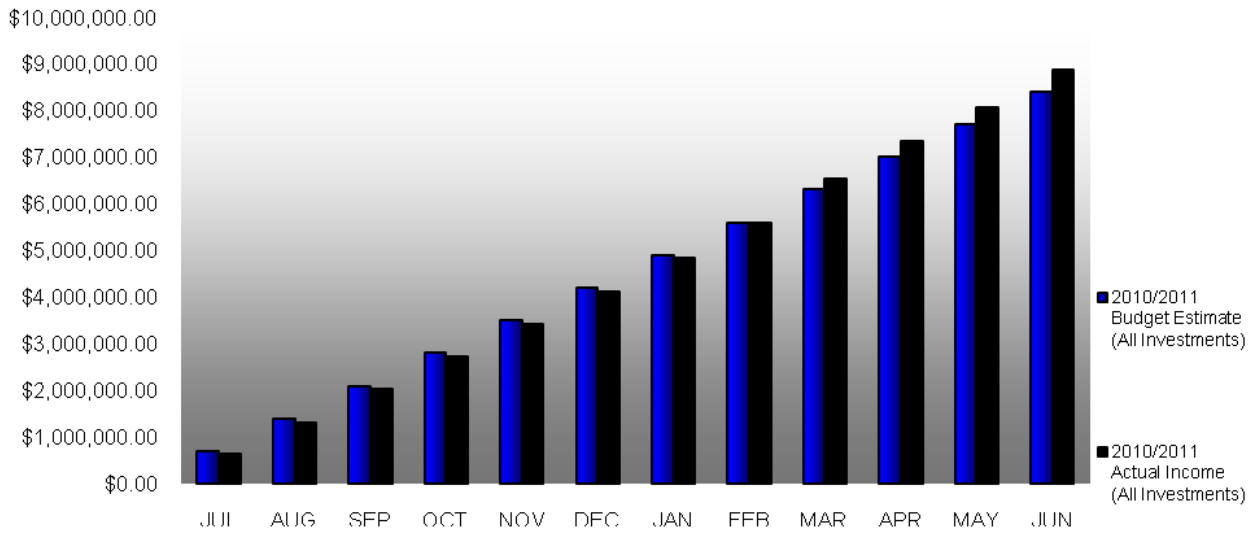
Lodged or Rolled	Due	Counterparty	Principal	Term	% Yield	Income Receivable	Notes	Maturity
9/06/10	12/06/12	Investec Bank	1,000,000.00	369	6.420	64,903.56	Fixed Rate	25/06/2012
17/05/11	21/05/13	Investec Bank	1,000,000.00	735	7.100	142,972.60	Fixed Rate	21/05/2013
9/06/11	9/09/11	Investec Bank (RIMSEC)	1,000,000.00	92	6.970	17,568.22	<b>Floating Rate 90DBBSW +1.25</b>	10/06/2014
20/06/11	20/09/11	LGFS CRI	1,000,000.00	92	5.790	14,593.97	<b>Floating Rate 90DBBSW + 0.80</b>	20/03/2012
28/06/11	28/09/11	LGFS CRI	4,000,000.00	90	6.050	59,671.23	<b>Floating 90DBBSW + 1.05</b>	27/06/2012
11/01/11	17/01/12	Members Equity Bank	1,000,000.00	371	6.500	66,068.49	Fixed Rate	17/01/2012
12/01/11	26/07/11	NAB	10,000,000.00	195	6.300	336,575.34	Fixed Rate	26/07/2011
3/05/11	8/05/12	NAB	2,000,000.00	371	6.330	128,681.10	Fixed Rate	08/05/2012
8/12/10	11/12/12	NAB	2,000,000.00	733	6.950	279,142.47	Fixed Rate	11/12/2012
22/03/11	26/03/13	NAB	1,000,000.00	735	6.380	128,473.97	Fixed Rate	26/03/2013
1/09/10	2/09/13	NAB	4,000,000.00	1098	6.520	784,543.56	Fixed Rate	02/09/2013
11/08/10	11/08/15	NAB (RBS)	2,000,000.00	1095	6.000	360,000.00	<b>Fixed &amp; Floating 1.96</b>	11/08/2015
29/06/11	21/12/11	NAB	2,000,000.00	175	6.140	58,876.71	Fixed Rate	21/12/2011
27/08/10	27/08/15	NAB (RBS)	2,000,000.00	365	7.000	140,000.00	<b>Fixed &amp; Floating 1.20</b>	27/08/2015
10/03/11	6/09/11	RaboDirect	1,000,000.00	180	6.400	31,561.64	Fixed Rate	06/09/2011
4/04/11	10/01/12	RaboDirect	1,000,000.00	281	6.400	49,271.23	Fixed Rate	10/01/2012
7/03/11	6/03/12	RaboDirect	1,000,000.00	365	6.600	66,000.00	Fixed Rate	06/03/2012
18/05/11	20/03/12	RaboDirect	1,000,000.00	307	6.300	52,989.04	Fixed Rate	20/03/2012
22/03/11	22/03/16	RaboDirect	1,000,000.00	1827	7.150	357,891.78	Fixed Rate	22/03/2016
6/07/10	12/07/11	Summerland Credit Union	1,000,000.00	371	6.550	66,576.71	Fixed Rate	12/07/2011
8/02/11	4/10/11	Suncorp Metway	1,000,000.00	238	6.330	41,275.07	Fixed Rate	04/10/2011
19/04/11	18/10/11	Suncorp Metway	2,000,000.00	182	6.150	61,331.51	Fixed Rate	18/10/2011
12/11/08	11/11/11	Suncorp Metway	4,000,000.00	1094	6.880	824,846.03	Fixed Rate	11/11/2011

Lodged or Rolled	Due	Counterparty	Principal	Term	% Yield	Income Receivable	Notes	Maturity
5/01/11	5/12/11	Suncorp Metway	5,000,000.00	334	6.440	294,652.05	Fixed Rate	05/12/2011
5/01/11	5/12/11	Suncorp Metway	2,000,000.00	334	6.440	117,860.82	Fixed Rate	05/12/2011
22/07/10	18/07/12	Suncorp Metway	2,000,000.00	727	6.720	267,695.34	Fixed Rate	18/07/2012
11/01/11	12/07/11	Suncorp Metway (RBS)	5,000,000.00	182	6.320	157,567.12	Fixed Rate	12/07/2011
21/07/10	23/07/13	Suncorp Metway (RBS)	1,000,000.00	1097	7.300	219,400.00	Fixed Rate	23/07/2013
9/11/10	9/08/11	Suncorp Metway (RIMSEC)	2,000,000.00	274	6.520	97,889.32	Fixed Rate	09/08/2011
18/05/11	18/08/11	Westpac	2,000,000.00	92	6.200	31,254.79	Floating 90DBBSW +1.21	18/02/2016
11/04/11	11/07/11	Westpac Bank	8,000,000.00	91	6.150	122,663.01	Floating 90DBBSW +1.25	11/01/2016
4/03/11	5/03/13	Westpac Bank	2,000,000.00	735	6.350	255,739.73	Fixed Rate	05/03/2013
7/04/11	7/04/16	Westpac Bank	2,000,000.00	1825	7.000	700,000.00	Fixed 1yr x 7% Floating 4yrs x 90DBBSW +1.30% Capped 7.25%	07/04/2016
22/07/10	19/07/11	Wide Bay CU	1,000,000.00	362	6.550	64,961.64	Fixed Rate	19/07/2011
			136,000,000.00		6.431			

**8. MONTHLY COMPARISON OF TOTAL FUNDS INVESTED**



**9. TOTAL PORTFOLIO INCOME YEAR TO DATE**



**10. PERFORMANCE BY CATEGORY**

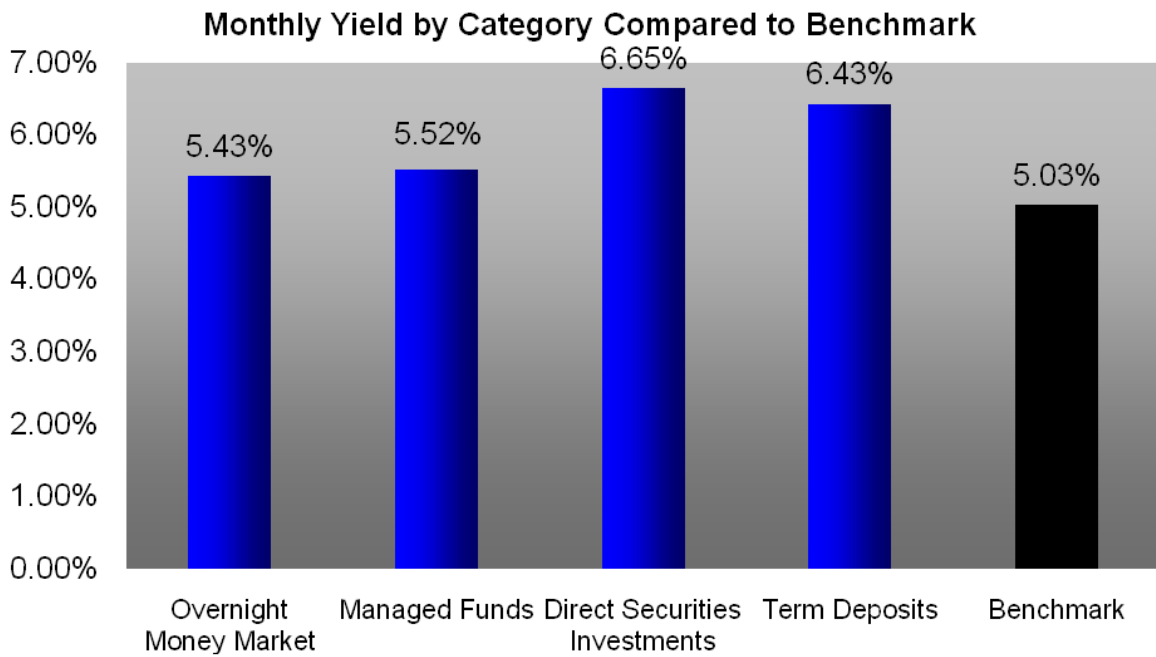
Total Portfolio Credit Limits Compared to Policy Limits					
Long-Term Credit Ratings	Investment Policy Limit	Actual Portfolio	Short-Term Credit Ratings	Investment Policy Limit	Actual Portfolio
AAA Category	100%	<b>0.62%</b>	A-1+	100%	<b>23.56%</b>
AA Category	100%	<b>20.94%</b>	A-1	100%	<b>17.36%</b>
A Category or below	60%	<b>6.20%</b>	A-2	60%	<b>15.50%</b>
BBB Category or below	20%	<b>8.68%</b>	A-3	20%	<b>0.62%</b>
Unrated	10%	<b>2.17%</b>	Unrated	10%	<b>4.34%</b>

**11. INVESTMENT POLICY DIVERSIFICATION AND CREDIT RISK GUIDELINES**

Maturity Profile	Actual % Portfolio	Policy Limits
Less than 365 days	66.82%	Less than 1 year maximum 100% of portfolio minimum 40%
Greater than 365 days less than 2 years	9.30%	Maximum 60%
Greater than 2 years less than 5 years	21.39%	Maximum 35%
Greater than 5 years less than 7 years	2.48%	Grandfathered investment. Outside current policy limit
Total	100.00%	

**12. INVESTMENT POLICY TERM TO MATURITY LIMITS**

Category	Face Value	Market Value	Average Return	Above/(Below) 30 day BBSW Benchmark
Overnight Money Market	\$6,000,000.00	\$6,000,000.00	5.43%	0.40%
Managed Funds	\$2,771,065.10	\$2,771,065.10	5.52%	0.49%
Direct Securities Investments	\$16,498,250.00	\$15,214,042.12	6.65%	1.62%
Term Deposits	\$136,000,000.00	\$136,000,000.00	6.43%	1.40%
Benchmark	\$161,269,315.10	\$159,985,107.22	5.03%	Benchmark 30 Day UBS Bank Bill Index



**13. SECTION 94 DEVELOPER CONTRIBUTIONS - MONTHLY BALANCES REPORT - PERIOD ENDING - 30 JUNE 2011**

Contribution Plan	Plan Description	End of Month Balance	Contributions Received for Month
01	DCP3 Open Space	3,891,728	-
02	Western Drainage	494,002	-
03	DCP3 Community Facilities	35,917	-
04	Tweed Road Contribution Plan	11,335,736	53,469
05	Open Space	1,185,381	5,218
06	Contribution Street Trees	226,062	594
07	West Kingscliff	484,177	-
10	Cobaki Lakes	(749)	-
11	Libraries	1,589,556	3,663
12	Bus Shelters	45,885	97
13	Cemeteries	(46,252)	555
14	Mebbin Springs	74,355	-
15	Community Facilities	1,333,693	979
16	Surf Lifesaving	385,567	339
18	Council Administration & Technical Support	1,450,123	8,587
19	Kings Beach	986,476	-
20	Seabreeze Estate	620	-
21	Terranora Village Footpath	25,457	-
22	Shirewide Cycleways	333,828	1,620
23	Shirewide Carparking	1,831,692	-
25	Salt Development	833,287	-
26	Shirewide Open Space	2,988,036	21,505
27	Tweed Heads Masterplan & Streetscaping	86,823	-
28	Seaside City	(696)	-
90	Footpath Cycleway	(41,904)	-
91	DCP14	88,983	-
	Public Reserve Contributions	111,692	-
95	Bilambil Heights	435,134	-
<b>Total</b>		<b>30,164,610</b>	<b>96,626</b>

## **14. ECONOMIC COMMENTARY**

### **Global Economy**

#### United States

Chairman of the Federal Reserve Bank Ben Bernanke stated that weakness in the financial sector, problems in the housing sector, balance sheet and deleveraging issues may be more persistent than at first thought.

#### Japan

Economic indicators in Japan continue to bounce back strongly as the economy recovers from recent natural disasters. Both fiscal and monetary policy are likely to remain accommodative for some time to come.

#### China

Moves by the Chinese government to contain inflation, via both interest rates and cash rate hikes are starting to have an effect. The Peoples Bank of China are likely to increase the cash rate in the second half of 2011 as the latest manufacturing and inflation data while moderating, remain high.

#### Euro Zone

The European Central Bank remains committed to fighting inflation and appears set to move the refinancing rate higher in the near term.

#### New Zealand

The Reserve Bank of New Zealand said indicators of capacity usage and core inflation suggested that underlying inflation remains constrained. Over the next two years inflation is expected to rise and the overnight cash rate will need to increase.

### **Domestic Economy**

The Reserve Bank of Australia (RBA) left the cash rate on hold at 4.75% at their meeting on 5 July, 2011.

Key points to note from their statement are:

- the greater attention to cautious consumer spending
- economic growth for the remainder of 2011 is unlikely to be as strong as earlier forecast
- underlying inflation is likely to move to the bottom half of the target 1% to 3% range.

The RBA has expressed doubts about the strength of the Australian economic recovery in the second half of 2011 and questioned whether a more moderate pace of growth will continue. The RBA continued to note that banking and sovereign debt problems in Europe are adding to global uncertainty and volatility.

### **Council's Investment Portfolio**

Council's investment portfolio is conservatively structured in accordance with Division of Local Government guidelines with 89% of the portfolio held in term deposits or cash at call. This investment segment continues to provide above trend returns while minimizing capital risk.

All investment categories out-performed the UBS 30 day bank bill benchmark this month. Overall, the investment portfolio has returned an average 2.12% pa above the 30 day UBS bank bill index for the last 12 month period.

**Source:** *Oakvale Capital Limited & Governor of the RBA*



**15. INVESTMENT SUMMARY AS AT 30 JUNE 2011****GENERAL FUND**

COLLATERISED DEBT OBLIGATIONS		0.00	
COMMERCIAL PAPER		0.00	
CORPORATE FIXED RATE BONDS	6,732,901.61		
FLOATING RATE NOTES	8,481,140.51		
ASSET BACKED SECURITIES FUND MANAGERS		0.00	0.00
TERM DEPOSIT - LOAN 104 OFFSET		0.00	
TERM DEPOSITS	52,000,000.00		
CALL ACCOUNT	6,000,000.00	<b>73,214,042.12</b>	

**WATER  
FUND**

TERM DEPOSITS FUND MANAGERS	28,000,000.00	2,771,065.10	<b>30,771,065.10</b>
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**SEWERAGE FUND**

TERM DEPOSITS FUND MANAGERS	56,000,000.00	0.00	<b>56,000,000.00</b>
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<b>TOTAL INVESTMENTS</b>			<b><u>159,985,107.22</u></b>
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It should be noted that the General Funds investments of \$73 million are not available to be used for general purpose expenditure. It is virtually all restricted by legislation and council resolution for such purposes as unexpended loans, developer contributions, unexpended grants and various specific purpose reserves such as domestic waste, land development and employee leave entitlements.

All Water and Sewerage Fund investments can only be expended in accordance with Government regulation and Council resolution.

**Statutory Statement - Local Government (General) Regulation 2005 Clause 212**

I certify that Council's investments have been made in accordance with the Local Government Act 1993, the Local Government (General) Regulations and Council's investment policies.



**Chief Financial Officer  
(Responsible Accounting Officer)**

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**39 [TCS-CM] 2010/2011 Loan Borrowing Program**

**ORIGIN:**

**Financial Services**

**SUMMARY OF REPORT:**

It is Council's practice to call quotations for the supply of loan funds from various financial institutions. The annual loan requirements for 2010/11 totalling \$4,710,400 as outlined in the body of this report were authorised and accepted by the General Manager and Manager Financial Services.

**RECOMMENDATION:**

**That Council:**

- 1. Confirms and ratify the execution by the Mayor and the General Manager on 27 June 2011 of a Letter of Offer for \$595,000 dated 24 June 2011 from ANZ Bank.**
- 2. Confirms and ratify the execution by the Mayor and the General Manager on 21 June 2011 of a Letter of Offer for \$4,115,400 dated 16 June 2011 from National Australia Bank**
- 3. Authorises the affixing of the Common Seal to the Letters of Offer and otherwise observe and perform its obligations under the Letters of Offer from ANZ Bank and National Australia Bank.**

## REPORT:

It is Council's practice to call quotations for the supply of loan funds from various financial institutions.

In order to distribute the cost of long term facilities over the period which the facilities benefits will be enjoyed, it is usual for Council to finance part of these works from borrowings. This ensures that both current and future ratepayers share the cost of the facility equally.

The 2010/11 Operational Plan and Budget included new loan requirements of \$4,710,400 as follows:

<b>Infrastructure Borrowings</b>	<b>\$</b>	
Public toilets	100,000	
Road construction	160,000	*
Bridges	772,500	
Drainage	<u>940,000</u>	
Sub- total	1,972,500	
<b>Seven Year Plan Borrowings</b>	<b>\$</b>	
Economic marketing and promotion	400,000	
Sealed road rehabilitation	688,900	**
Kerb & gutter rehabilitation	70,000	
Footpaths rehabilitation	266,000	**
Stormwater drainage rehabilitation	<u>450,000</u>	
Sub- total	1,874,900	
<b>Renewal Loans</b>	<b>\$</b>	
Loan 149	428,000	**
Loan 468	<u>435,000</u>	*
Sub- total	863,000	
<b>Total</b>	<b>4,710,400</b>	

Council received quotations to supply loan funds from all four major Australian banks. The most cost effective loan quotations were selected and the 2010/11 loan requirements have been funded as follows:

		<b>\$</b>
ANZ Bank	10 year loan *	595,000
National Australia Bank	15 year loan **	1,382,900
National Australia Bank	20 year loan	<u>2,732,500</u>
		<b>4,710,400</b>

## LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Under Section 55.1(f) of the Local Government Act 1993 Council is not required to call tenders for the Provision of Banking, Borrowing or Investment Services.

However, Council invited quotations from all major banks, with the National Australia Bank and ANZ on this occasion provided the most attractive terms.

The \$4,710,400 in loan funding was adopted by Council in the 2010/2011 Budget and subsequent quarterly budget reviews.

The Manager Financial Services as the Responsible Accounting Officer has the following delegation:

*FI017 Loans - accept from lending institutions*

*"To accept loans from lending institutions within the Council approved loan program and arrange the necessary, mortgage deed and documentation".*

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**40 [TCS-CM] 2011/2012 Loan Borrowing Program**

**ORIGIN:**

**Financial Services**

**SUMMARY OF REPORT:**

It is Council practice to call quotations for the supply of loan funds from various financial institutions. The annual loan requirements for 2011/2012 totalling \$11,062,535 are outlined in the body of this report.

**RECOMMENDATION:**

**That:**

- 1. The General Manager and Manager Financial Services be authorised to negotiate acceptance of the loan quotations.**
- 2. Relevant loan documentation is to be completed under the Common Seal of Council.**

## REPORT:

It is Council's practice to call quotations for the supply of loan funds from various financial institutions.

In order to distribute the cost of long term facilities over the period which the facilities benefits will be enjoyed, it is usual for Council to finance part of these works from borrowings. This ensures that both current and future ratepayers share the cost of the facility equally.

The 2011/2012 Operational Plan and Budget include new loan requirements of \$11,062,535 as follows:

### New Loans

<b>Purpose</b>	<b>Term</b>	<b>\$</b>
7YP Coastline Mgt Plan	20	1,100,000
7YP Drainage	20	650,000
7YP Footpaths	20	266,000
7YP Kerb & guttering	20	70,000
7YP Kingscliff amenities centre	20	500,000
7YP Museums Murwillumbah	20	1,900,000
7YP Museums Tweed Heads	20	1,100,000
7YP Open space	10	350,000
7YP Roads	15	688,900
Bridges	20	750,000
Crematorium	5	600,000
Drainage	20	1,068,480
Fingal SLSC clubhouse	20	200,000
Flood Mitigation	20	100,000
Public Toilets	20	100,000
Sub-total		<b>9,443,380</b>
<b>Renewal Loans</b>	15	<b>1,619,155</b>
<b>Total</b>		<b>11,062,535</b>

### LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Under Section 55.1(f) of the Local Government Act 1993 Council is not required to call tenders for the Provision of Banking, Borrowing or Investment Services.

Loan borrowings will be as adopted by Council in the 2011/2012 Budget and any subsequent quarterly budget reviews.

Quotations for the loan borrowing program will be invited from all major banks in due course depending upon funding requirements for the various loan purposes.



The Manager Financial Services as the Responsible Accounting Officer has the following delegation:

*F1017 Loans - accept from lending institutions*

*"To accept loans from lending institutions within the Council approved loan program and arrange the necessary, mortgage deed and documentation".*

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**41 [TCS-CM] Division of Local Government Complaint Statistics for the period 1 July 2009 to 30 June 2010**

**ORIGIN:**

**Corporate Governance**

**SUMMARY OF REPORT:**

The Division of Local Government has released information on complaint statistics for council for the period 1 July 2009 to 30 June 2010, being 45 complaints in comparison to 40 received in 2008-2009.

The actual number of complaints is not necessarily an effective indicator of the seriousness of the matters raised. In some cases the council may be the subject of campaigns, usually about a single controversial issue. This can distort the council's reputation if there is in fact no maladministration on the council's part and the issues relate more to concerns about a particular decision. The Division generally will not investigate such issues provided the council's decision is lawful and proper processes are followed.

**RECOMMENDATION:**

**That the Division of Local Government Complaint Statistics for the period 1 July 2009 to 30 June 2010 be received and noted.**

**REPORT:**

The complaint statistics released by the Division of Local Government are detailed in the tables below:

<b>Complaint Type</b>	<b>Qty</b>
General complaint - decline	41
Pecuniary Interest allegation	3
Pecuniary Interest complaint	1
	<b>45</b>

<b>Complaint Topic</b>	<b>Qty</b>
Council Governance	14
Pecuniary/Conflict of Interest	17
Land Use Planning and Development Matters	10
Mismanagement/Maladministration	8
Misconduct by Councils	18
Other	1
Public Land Management	1
Social Policy/Community Services	1
	<b>70</b>

*Note: Some complaints involve more than one issue resulting in multiple keywords used to describe the matter.*

<b>Complaint Outcome</b>	<b>Qty</b>
Advice/explanation provided - local issue	25
Advice/explanation provided - no evidence of maladministration	5
Misbehaviour - trivial or does not warrant investigation	1
No utility	6
Pecuniary Interest - trivial or does not warrant investigation	4
Referred to another authority	1
	<b>42</b>

Complaint type and complaint topic details relate to matters received in the reporting period, however, complaint outcome relates to matters *finalised* in the reporting period, therefore there are three complaints to be finalised.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**42 [TCS-CM] Making of the Rate 2011/2012**

**ORIGIN:**

**Revenue and Recovery**

**SUMMARY OF REPORT:**

Council at its meeting of 21 June 2011 resolved to adopt the Delivery Program 2011/2015, Operational Plan 2011/2012, the Resourcing Strategy and the Revenue Policy and Statement incorporating the Budget and Fees and Charges for 2011/2012 which includes an increase in general (minimum) rates for 2011/2012 of 7.5% above that for 2010/2011.

The basis of this report is the formal Making of the Rate and Charges for 2011/2012.

**RECOMMENDATION:**

**That:**

- 1. Council makes the 2011/2012 rates and charges in accordance with the provisions of sections 493, 494, 495, 495A, 496, 498, 501, 502, 506, 508A, 541, 548 and 553 of the Local Government Act 1993:**
  - (a) Ordinary Rates (Sections 494, 498, 508A)**
    - (i) Residential Rate**

A Residential Rate of .3764 cents in the dollar on the rateable land value of all applicable rateable land in the Tweed Shire Council area classified Residential with a minimum rate of eight hundred and seventy one dollars and forty cents (\$871.40) in respect of any separate parcel of rateable land.
    - (ii) Farmland Rate**

A Farmland Rate of .2486 cents in the dollar on the rateable land value of all applicable rateable land in the Tweed Shire Council area classified Farmland with a minimum rate of eight hundred and seventy one dollars and forty cents (\$871.40) in respect of any separate parcel of rateable land.
    - (iii) Business Rate**

A Business Rate of .4198 cents in the dollar on the rateable land value of all applicable rateable land in the Tweed Shire Council area classified Business with a minimum rate of nine hundred and thirty-one dollars and twenty two cents (\$931.22) in respect of any separate parcel of rateable land.

**(b) Annual Charges, User Charges and Special Rates (Sections 495, 495A, 496, 501, 502 and 553)**

**(i) Sewerage Annual Charge (Section 501)**

A sewerage annual charge on each parcel of rateable land in the Tweed Shire Council area for which the service is provided or proposed to be provided of six hundred and nine dollars (\$609.00).

**(ii) Water Annual Charge (Section 501)**

A water annual charge on each parcel of rateable land in the Tweed Shire Council area for which the service is provided or proposed to be provided of

1. Residential assessments – a service charge of \$118.00
2. Business assessments – a service charge based on meter size, being \$118.00, times the Flow Capacity Factor (as detailed in Table1) and given the Multiplier Consumption Factor was reached (as detailed in Table2)
3. Vacant assessments rated to water – a service charge of \$118.00

**Table 1: Flow Capacity Factors**

Diameter of Service mm	Cross sectional area	Flow Capacity Factor
20	314	1.00
25	491	1.56
32	804	2.56
40	1,256	4.00
50	1,963	6.25
80	5,024	16.00
100	7,850	25.00
150	17,663	56.25
200	31,400	100.00
250	49,063	156.25
300	70,650	225.00

**Table 2: Consumption Factors**

Consumption Scale		Consumption Factors										
KL from	KL to	Meter size (mm)										
		20	25	32	40	50	80	100	150	200	250	300
0	290	1.000	0.640	0.391	0.250	0.160	0.063	0.040	0.018	0.010	0.006	0.004
291	454	1.000	1.000	0.610	0.391	0.250	0.980	0.063	0.028	0.016	0.010	0.007
455	743	1.000	1.000	1.000	0.640	0.410	0.160	0.102	0.046	0.026	0.016	0.011
744	1,160	1.000	1.000	1.000	1.000	0.640	0.250	0.160	0.071	0.040	0.026	0.018
1,161	1,814	1.000	1.000	1.000	1.000	1.000	0.391	0.250	0.111	0.063	0.040	0.028
1,815	4,640	1.000	1.000	1.000	1.000	1.000	1.000	0.640	0.284	0.160	0.102	0.071
4,641	7,250	1.000	1.000	1.000	1.000	1.000	1.000	1.000	0.444	0.250	0.160	0.111
7,251	16,314	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	0.563	0.360	0.250
16,315	29,000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	0.640	0.444
29,001	45,314	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	0.694
Over 45,314		1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000



**(iii) Water Volumetric Charge (Section 502)**

A volumetric charge of \$1.85 per kilolitre for all consumption to 300KL.

A volumetric charge of \$2.80 per kilolitre for all consumption after 300KL.

**(iv) Tweed Heads Streetscaping Special Rate (Section 495)**

A Tweed Heads Streetscaping Special Rate of .001040 cents in the dollar on the rateable land value of applicable land in the Tweed Shire Council area. The following is a description of the applicable land:

LOT 7 DP 167898  
LOT A DP 398092  
LOT 2 DP 525905  
LOT 8 SEC 2 DP 759009  
LOTS 2-6 DP 224382  
LOT 3 DP 110355  
LOT 1 DP 306057  
LOT A DP 313926  
LOT 1 SP 5287  
LOT 2 SP 5287  
LOT 3 SP 5287  
LOT 4 SP 528  
LOT 5 SP 528  
LOT 6 SP 5287  
LOT 2 DP 229412  
LOT 5 DP 549037  
LOT 6 DP 549037  
LOT 1 SP 10552  
LOT 2 SP 10552  
LOT 3 SP 10552  
LOT 4 SP 10552  
LOT 1 DP 534136  
LOT 2 DP 101111  
LOTS 3-4 DP 420750  
LOTS 1-2 DP 420749  
COR LOTS 32/35 DP 237678 SPL COR 73.15 X 50.8  
LOT 64 DP 237806 16.99X29.26/36.58 SPL COR  
LOT 2 DP 549328 14.5/12.14X36.58/36.65  
LOT 1 DP 549328  
LOT 61 DP 237806 12.19X36.58  
LOT 60 DP 237806 12.19X36.58  
LOTS 58/59 DP 237806  
LOT 57 DP 237806 12.19X36.58  
LOT 56 DP 237806  
LOT 55 DP 237806 12.19X36.58  
LOT 54 DP 237806  
LOT 53 DP 237806  
LOT 52 DP 237806  
LOT 1 SP 14263  
LOT 2 SP 14263

LOT 3 SP 14263  
LOT 4 SP 14263  
LOT 5 SP 14263  
LOT 1 DP 525413  
LOT 1 DP 553728  
LOT 1 DP 777183 SUBJ TO E'MENTS  
LOT 9 DP 964880 LOT 1 DP 303503  
LOT A DP 332137 49.911 X 50.292  
LOT B DP 332137 LOT 1 DP 962785 LOT 1 DP 962784 LOT 2  
SEC 1DP 758279 DP 758279  
LOT 100 DP 775892  
LOT 3 DP 329933  
LOT 1 DP 17554  
LOT 2 DP 17554  
LOT 3 DP 17554  
LOT 4 DP 17554  
LOT 5 DP 17554  
LOT 6 DP 17554  
LOT 7 DP 17554 29'9/30'XIRR90'10/93'9  
COR LOTS 2 & 3 DP 519757  
LOT 1 DP 222704  
LOT 1 DP 609342  
LOTS A & B DP 373378  
LOTS 1-2 SEC 4 DP 4570  
LOT 30 SEC 4 DP 4043 LOT 1 DP 329246 LOT 2 DP329247 LOT  
3 DP 329248 LOT 4 DP 329249  
LOT 6 SEC 4 DP 4570 LOT A DP 341926 & LOT 28 SEC 4 DP  
4043  
LOT 10 SEC 4 DP 4570  
LOT 11 SEC 4 DP 4570 15.16/15.09 X 35.08/34.62  
LOTS 15 SEC 4 DP 4570 LOT 16 SEC 4 DP 4043  
LOT 1 SP 14262  
LOT 2 SP 14262  
LOT 3 SP 14262  
LOT 4 SP 14262  
LOT 5 SP 14262  
LOT 6 SP 14262  
LOT 7 SP 14262  
LOT 8 SP 14262  
LOT 9 SP 14262  
LOT 10 SP 14262  
LOT 1 SP 32143  
LOT 2 SP 32143  
LOT 3 SP 32143  
LOT 4 SP 32143  
LOT 1 SEC 5 DP 759009 LOT 23 DP 776673  
LOT 672 DP 755740 LOT 3 DP 520173 LOT 1 DP 245697 LOTS  
2-3 DP 561138 LOT 1 DP 820693  
LOT 19 SEC 4 DP 4043 LOTS 12/14 SEC 4 DP 4570  
LOT 1 DP 866236  
LOT 1 DP 1007168  
LOT 2 DP 1007168  
LOT 1 SP 57664  
LOT 2 SP 57664  
LOT 3 SP 57664  
LOT 4 SP 57664

LOT 5 SP 57664  
LOT 6 SP 57664  
LOT 7 SP 57664  
LOT 8 SP 57664  
LOT 9 SP 57664  
LOT 10 SP 57664  
LOT 11 SP 57664  
LOT 12 SP 57664  
LOT 13 SP 57664  
LOT 14 SP 57664  
LOT 15 SP 57664  
LOT 16 SP 57664  
LOT 17 SP 57664  
LOT 18 SP 57664  
LOT 100 DP 1021860  
LOT 1 SP 70355  
LOT 2 SP 70355  
Lot 6 DP 1096714  
Lot 3 DP 1086912

**(v) Koala Beach Special Rate (Section 495)**

**A Koala Beach Special Rate of .0581 cents in the dollar on the rateable land value of applicable land in the Tweed Shire Council area. The following is a description of the applicable land:**

LOT 1 DP 86409  
LOT 2 DP 864093  
LOT 3 DP 864093  
LOT 4 DP 864093  
LOT 5 DP 864093  
LOT 6 DP 864093  
LOT 7 DP 864093  
LOT 8 DP 864093  
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LOT 10 DP 864093  
LOT 11 DP 864093  
LOT 12 DP 864093  
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LOT 16 DP 864093  
LOT 17 DP 864093  
LOT 18 DP 864093  
LOT 19 DP 864093  
LOT 20 DP 864093  
LOT 21 DP 864093  
LOT 30 DP 864094  
LOT 31 DP 864094  
LOT 32 DP 864094  
LOT 33 DP 864094  
LOT 34 DP 864094  
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LOT 28 DP 870695  
LOT 29 DP 870695  
LOT 213 DP 1033384  
LOT 214 DP 1033384  
LOT 215 DP 1033384  
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LOT 207 DP 1033384  
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LOT 210 DP 1033384  
LOT 211 DP 1033384  
LOT 451 DP 1040725  
LOT 452 DP 1040725  
LOT 453 DP 1040725  
LOT 454 DP 1040725  
LOT 455 DP 1040725  
LOT 456 DP 1040725  
LOT 457 DP 1040725  
LOT 458 DP 1040725  
LOT 459 DP 1040725  
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LOT 461 DP 1040725  
Lot 301 DP 1049060  
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Lot 353 DP 1049061  
Lot 354 DP 1049061  
Lot 355 DP 1049061  
Lot 356 DP 1049061  
LOT 357 DP 1049061  
Lot 339 DP 1052080  
Lot 370 DP 1052082  
Lot 371 DP 1052082  
Lot 372 DP 1052082  
Lot 373 DP 1052082  
Lot 374 DP 1052082  
Lot 375 DP 1052082  
Lot 376 DP 1052082  
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LOT 420 DP 1052083  
Lot 421 DP 1052083  
Lot 422 DP 1052083  
Lot 423 DP 1052083  
Lot 424 DP 1052083  
Lot 425 DP 1052083  
Lot 426 DP 1052083  
Lot 90 DP 864094 Lot 212 DP 1033384  
Lot 89 DP 864094 Lot 200 DP 1033384  
Lot 501 DP 1068516  
Lot 502 DP 1068516  
Lot 503 DP 1068516  
Lot 504 DP 1068516  
Lot 505 DP 1068516  
Lot 506 DP 1068516  
Lot 507 DP 1068516  
Lot 508 DP 1068516  
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Lot 511 DP 1068516  
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Lot 513 DP 1068516  
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Lot 516 DP 1068516  
Lot 519 DP 1076975  
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Lot 580 DP 1076975  
Lot 581 DP 1076975  
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Lot 585 DP 1076975  
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Lot 588 DP 1076975  
Lot 589 DP 1076975  
Lot 590 DP 1076975  
Lot 591 DP 1076975  
Lot 592 DP 1076975  
Lot 593 DP 1076975  
Lot 594 DP 1076975  
Lot 595 DP 1076975  
Lot 596 DP 1076975  
Lot 597 DP 1076975  
Lot 598 DP 1076975  
Lot 599 DP 1076975  
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Lot 603 DP 1076975  
Lot 604 DP 1076975  
Lot 605 DP 1076975  
Lot 606 DP 1076975  
Lot 607 DP 1076975  
Lot 608 DP 1076975  
Lot 739 DP 1076973  
Lot 919 DP 1077493  
Lot 610 DP 1077500  
Lot 611 DP 1077500  
Lot 612 DP 1077500  
Lot 613 DP 1077500  
Lot 614 DP 1077500  
Lot 615 DP 1077500  
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Lot 618 DP 1077500  
Lot 619 DP 1077500  
Lot 620 DP 1077500  
Lot 621 DP 1077500  
Lot 622 DP 1077500  
Lot 623 DP 1077500  
Lot 624 DP 1077500  
Lot 625 DP 1077500  
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Lot 627 DP 1077500  
Lot 628 DP 1077500  
Lot 629 DP 1077500  
Lot 630 DP 1077500  
Lot 631 DP 1077500  
Lot 632 DP 1077500  
Lot 633 DP 1077500  
Lot 634 DP 1077500  
Lot 635 DP 1077500  
Lot 638 DP 1077500  
Lot 661 DP 1078611

Lot 662 DP 1078611  
Lot 664 DP 1078611  
Lot 665 DP 1078611  
Lot 666 DP 1078611  
Lot 667 DP 1078611  
Lot 668 DP 1078611  
Lot 669 DP 1078611  
Lot 670 DP 1078611  
Lot 671 DP 1078611  
Lot 672 DP 1078611  
Lot 673 DP 1078611  
Lot 674 DP 1078611  
Lot 675 DP 1078611  
Lot 676 DP 1078611  
Lot 677 DP 1078611  
Lot 678 DP 1078611  
Lot 679 DP 1078611  
Lot 680 DP 1078611  
Lot 681 DP 1078611  
Lot 682 DP 1078611  
Lot 683 DP 1078611  
Lot 684 DP 1078611  
Lot 685 DP 1078611  
Lot 686 DP 1078611  
Lot 687 DP 1078611  
Lot 688 DP 1078611  
Lot 689 DP 1078611  
Lot 690 DP 1078611  
Lot 691 DP 1078611  
Lot 692 DP 1078611  
Lot 693 DP 1078611  
Lot 694 DP 1078611  
Lot 695 DP 1078611  
Lot 696 DP 1078611  
Lot 697 DP 1078611  
Lot 698 DP 1078611  
Lot 699 DP 1078611  
Lot 700 DP 1078611  
Lot 701 DP 1078611  
Lot 702 DP 1078611  
Lot 703 DP 1078611  
Lot 704 DP 1078611  
Lot 705 DP 1078611  
Lot 706 DP 1078611  
Lot 707 DP 1078611  
Lot 708 DP 1078611  
Lot 709 DP 1078611  
Lot 710 DP 1078611  
Lot 711 DP 1078611  
Lot 712 DP 1078611  
Lot 713 DP 1078611  
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Lot 719 DP 1078611  
Lot 720 DP 1078611  
Lot 721 DP 1078611  
Lot 722 DP 1078611  
Lot 723 DP 1078611  
Lot 724 DP 1078611  
Lot 725 DP 1078611  
Lot 726 DP 1078611  
Lot 727 DP 1078611  
Lot 728 DP 1078611  
Lot 729 DP 1078611  
Lot 730 DP 1078611  
Lot 731 DP 1078611  
Lot 732 DP 1078611  
Lot 733 DP 1078611  
Lot 734 DP 1078611  
Lot 735 DP 1078611  
Lot 736 DP 1078611  
Lot 737 DP 1078611  
Lot 1 SP 78678  
Lot 2 SP 78678

- (vi) **Burringbar-Mooball Sewerage Annual Charge (Section 501)**  
**A Burringbar-Mooball Sewerage Annual Charge for all rateable land which will be serviced by the Burringbar/Mooball Sewerage Scheme of the Tweed. An annual sewerage charge of three hundred and fifty dollars (\$350.00) in respect of any separate parcel of rateable land within the Mooball/Burringbar area. The following is a description of the applicable land:**

PT LOT 1 SEC 1 DP 3090  
LOT 6 DP 5114  
LOT 5 DP 5114  
Lots 3 & 4 DP 5114 Lot 1 DP 126083 Lot 11 DP 1093305  
LOT 3 SEC 1 DP 3090  
LOT 2 DP 360551  
LOT 1 DP 388082  
LOT 3 DP 574439  
LOT 1 DP 503384  
LOT 7 SEC 1 DP 3090  
LOT 8 SEC 1 DP 3090  
LOT 10-10A SEC 1 DP 6696  
LOT 1 DP 771720  
LOT 1A SEC 2 DP 6696  
LOTS 2-2A SEC 2 DP 6696  
LOTS 3-3A SEC 2 DP 6696  
LOTS 4-4A SEC 2 DP 6696  
LOT 5 SEC 2 DP 6696  
LOT 12 DP 571794  
LOT 10 SEC 2 DP 3090  
LOT A DP 380818  
LOT B DP 380818 16.76 X 50.29  
LOT 1 DP 377857  
LOT 2 DP 377857 20.12 X 50.29  
LOT 3 DP 377857 20.12 X 50.29

LOTS 4/5 DP 379207  
LOT 6 DP 261790  
LOT 7 DP 261790  
LOT 8 DP 261790 23.14 X 73.56  
LOT 9 DP 261790  
LOT 10 DP 261790  
LOT 14 DP 261790  
LOT 16 DP 261790  
LOT 17 DP 261790 18.6 X 39.5  
LOT 18 DP 261790  
LOT 19 DP 261790  
LOT 20 DP 261790  
LOT 4 SEC 2 DP 2853  
LOT 2 DP 261790  
LOT 3 DP 261790  
LOT 5 DP 261790  
LOT 7 DP 617837  
LOT 6 DP 617837  
LOT 1 DP 517616  
LOT 5 DP 563017  
LOT 2 DP 701606  
LOT 1 DP 701606  
LOT 3 DP 542839  
LOT 1 DP 801130  
LOTS A-D DP 6624  
LOT E DP 6624  
LOT I DP 6624  
LOTS J & K DP 6624  
LOT B DP 408782  
LOT A DP 403665  
LOT 1 DP 383810  
LOTS 1-3 DP 124446  
LOT 1 DP 124445  
LOT 2 DP 124445  
LOT 1 DP 124444  
LOT 2 DP 124444  
LOT 16 SEC 1 DP 2853  
LOT 17 SEC 1 DP 2853  
LOT 11 DP 866170  
LOT 4 DP 607681  
LOT 3 DP 607681  
LOT 1 DP 972819  
LOT 6 DP 381443  
LOT 1 DP 378287  
LOT 1 DP 379905  
LOT 1 DP 231691  
LOT 2 DP 231691  
LOT 2 DP 5726  
LOT 3 DP 5726  
LOT 14 DP 631001  
LOT 15 DP 631001  
LOTS 6/7 DP 5726  
LOTS 8/9 DP 5726  
LOTS 10-11 DP 5726  
LOTS 12-13 DP 5726  
LOTS 14-15 DP 5726

LOT 1 DP 124443 LOT 4 DP 877090  
LOT 5 DP 877090  
LOT 1 SEC 3 DP 2853  
LOTS 24/26 DP 597517  
LOT 27 DP 597517  
LOT 8 SEC 3 DP 2853  
LOT 1 DP 332658  
LOT A DP 363236  
LOT B DP 363236  
LOT 10 SEC 1 DP 17414  
LOT 9 SEC 1 DP 17414  
LOT 8 SEC 1 DP 17414  
LOT 7 SEC 1 DP 17414  
LOT 6 SEC 1 DP 17414  
LOT 5 SEC 1 DP 17414  
LOT 4 SEC 1 DP 17414  
LOT 3 SEC 1 DP 17414  
LOTS 1-2 DP 316479  
LOT 1 DP 329318 LOT 1 DP 393596 LOT 1 DP 123205  
LOT 3 DP 329318  
LOT 4 SEC 2 DP 17414  
LOT C DP 370478  
LOTS D/E DP 370478  
LOT A DP 420797 & LOT F DP 370478  
LOTS A-B DP 403876 LOT 2 DP 316482 LOT 3 DP 659959  
LOT 1 DP 129581  
LOT 1 DP 369445  
LOT B DP 365259  
LOT A DP 354678  
LOTS 1-2 DP 26048  
PH MOOBALL LOT 3 DP 26048  
LOT 1 DP 231846 SUBJ TO R O W  
LOT 2 DP 534493  
LOT 3 DP 621019  
LOT 2 SEC 3 DP 3090  
LOT 3 SEC 3 DP 3090  
LOT 4 SEC 3 DP 3090  
LOT 5 SEC 3 DP 3090  
LOTS 6/7 SEC 3 DP 3090  
LOT 1 DP 134112 & LOT 1 DP 444022  
LOT 23 DP 658471 & LOT 1 DP 441094  
LOT 2 DP 603957  
LOT 1 DP 603957  
COR LOT 21 DP 5726  
COR LOT 1 SEC 4 DP 3090  
LOT 2 SEC 4 DP 3090  
LOT 3 SEC 4 DP 3090  
LOT 4 SEC 4 DP 3090  
LOT 6 SEC 4 DP 3090  
LOT 7 SEC 4 DP 3090  
LOT 15 SEC 1 DP 2853  
LOT 1 DP 705526  
LOT 16 DP 712033  
LOT 9 SEC 3 DP 2853  
LOT 1 DP 780313  
LOT 1 DP 812763

LOT D DP 366531  
LOT 14 DP 716554  
LOT 15 DP 716554  
LOT 1 DP 1026551 SRA LEASE 209214 EP45014  
LOT 12 DP 866170  
LOT 1 DP 107628  
LOTS 8/9 DP 383174  
LOT 1 DP 805475  
LOT 2 DP 812763  
LOT 14 SEC 1 DP 2853  
LOT 1 DP 828287  
LOT 1 DP 835350  
LOT 2 DP 835350  
LOT 3 DP 828280  
LOT 3 DP 124444  
LOT 9 SEC 1 DP 2853  
LOT 25 DP 871153  
LOT 2 DP 872622  
LOT 1 DP 124646  
Lots A & B DP 366531  
LOT C DP 366351  
Lot 101 DP 1074149  
Lots 102 & 103 DP 1074149  
Lot 5 DP 1104494  
Lot 6 DP 1104494  
Lot 20 DP 1107578  
Lot 21 DP 1107578

**(vii) Dobbys Crescent Sewerage Annual Charge (Section 501)**

**A Dobbys Crescent Sewerage Annual Charge for all rateable land which will be serviced by the Dobbys Crescent Sewerage Scheme of the Tweed. An annual sewerage charge of four hundred and fifty dollars (\$450.00) in respect of any separate parcel of rateable land within the Dobbys Crescent area. The following is a description of the applicable land:**

LOT 2 SEC 1 DP 30148  
LOT 3 SEC 1 DP 30148  
LOT 4 SEC 1 DP 30148  
LOT 1 DP 781535  
LOT 2 DP 781535  
LOT 7 SEC 1 DP 30148  
LOT 28 DP 212092  
LOT 24 DP 212092  
LOT 18 DP 212092  
LOT 17 DP 212092  
LOT 15 DP 212092  
LOT 14 DP 212092  
LOT 13 DP 212092  
LOT 12 DP 212092  
LOT 11 DP 212092  
LOT 10 SEC 2 DP 30148  
LOT 9 SEC 2 DP 30148  
LOT 8 SEC 2 DP 30148  
LOT 4 SEC 2 DP 30148

LOT 3 SEC 2 DP 30148 21.34X40.23  
LOT 1 SEC 2 DP 30148 LOT 1 DP 781539  
LOT 5 DP 588767  
LOT 3 DP 587870  
LOT 1 DP 781536  
LOT 2 DP 609870  
LOT 1 DP 609870  
LOT 3 DP 211196  
LOT 19 DP 212092  
LOT 20 DP 212092  
LOT 21 DP 212092  
LOT 23 DP 212092  
LOT 25 DP 212092  
LOT 6 SEC 2 DP 30148  
LOT 7 SEC 2 DP 30148  
LOT 32 DP 1013881  
Lot 1 DP 1069663

**(viii) Domestic Waste Management Annual Charge (Section 496)**

**A Domestic Waste Management Annual Charge for all land within the declared domestic waste scavenging area, maps of which are available from Council's Waste Management Unit . An annual charge of fifty dollars and seventy cents (\$50.70) in respect of any applicable land within the declared domestic waste scavenging area.**

**(ix) Domestic Waste Service Annual Charge (Section 496)**

**A Domestic Waste Service Annual Charge for all land within the declared domestic waste scavenging area for the removal of the approved contents of the standard 140 litre mobile waste bin each week, maps of which are available from Council's Waste Management Unit. An annual charge of one hundred and eighteen dollars and thirty cents (\$118.30) in respect of any applicable serviced land within the declared domestic waste scavenging area.**

**An Alternate 80 litre mobile bin will be available to residents who have low waste generation. An annual charge of ninety nine dollars (\$99.00) in respect of any applicable serviced land within the declared domestic waste scavenging area.**

**An Alternate 240 litre mobile bin will be available to residents who have high waste generation. An annual charge of one hundred and eighty three dollars and sixty cents (\$183.60) in respect of any applicable serviced land within the declared domestic waste scavenging area.**



**(x) Landfill Management Charge (Section 501)**

**A Landfill Management Annual Charge for all rateable land within the boundary of the Tweed Shire. An annual charge of thirty dollars (\$30.00) in respect of all rateable land within the boundary of the Tweed Shire.**

**(xi) Green Organics Collection Charge (Section 496)**

**An additional annual charge of fifty two dollars (\$52.00) is applicable to all landowners who have requested a fortnightly green organics collection service.**

**(xii) Waste Minimisation and Recycling Annual Charge (Section 496)**

**A Waste Minimisation and Recycling Annual Charge for all land within the declared domestic waste scavenging area, maps of which are available from Council's Waste Management Unit . An annual charge of sixty dollars and eighty cents (\$60.80) in respect of any applicable land within the declared domestic waste scavenging area.**

- 2. In accordance with section 566(3) of the Local Government Act 1993 that the maximum rate of interest payable on overdue rates and charges be 11% pa.**

## REPORT:

Council, at its meeting of 21 June 2011, resolved to adopt the Delivery Program 2011/2015, Operational Plan 2011/2012, the Resourcing Strategy and the Revenue Policy and Statement incorporating the Budget and Fees and Charges for 2011/2012 which includes an increase in general (minimum) rates for 2011/2012 of 7.5% above that for 2010/2011. Council is now required to make the rate for 2011/2012.

In accordance with the provisions of the Local Government Act 1993 a rate or charge is made by resolution of Council, and each rate or charge is to be made for a specified year, being the year in which the rate or charge is made or the next year. Accordingly, a rate or charge must be made before 1 August in the year for which the rate or charge is made or before such later date in that year as the Minister may, if the Minister is of the opinion that there are special circumstances, allow.

## LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The current numbers of rateable properties as at 1 July 2011 for ordinary rates are:

Residential	35,259
Business	1,789
Farmland	1,540
<b>Total</b>	<b>38,588</b>

The impact on the minimum rates is as follows:

	<b>Residential</b>	<b>Farmland</b>	<b>Business</b>
Ordinary rate	\$871.40	\$871.40	\$931.22
Sewerage charge	\$609.00	\$609.00	\$609.00
Water Access Charge	\$118.00	\$118.00	\$118.00
Garbage Service Charge	\$229.80	\$229.80	\$335.90
Landfill management Charge	\$30.00	\$30.00	\$30.00
<b>Total</b>	<b>\$1,858.20</b>	<b>\$1,858.20</b>	<b>\$2024.12</b>

Increase in minimum rates:

Increase from 2010 – 2011	\$141.75	\$141.75	\$133.77
Cents per week	\$2.73	\$2.73	\$2.58
Percentage increase	8.26%	8.26%	7.08%

The rates in the dollar presented in this report, differs slightly to the advertised amounts in the 2011/2012 Draft Revenue Policy and Statement. The reasons being changes in property status, the revaluation process, supplementary valuation additions and non-availability of catch-up from previous years.

### **Rate Pegging**

The NSW Government introduced rate pegging in 1987. Rate pegging limits the amount that Council can increase its rate revenue from one year to the next by a specific figure determined by the Minister for Local Government.

### **Approved Rate Variation 2004**

The Minister for Local Government in 2004 approved an increase to general income by 7.48% for seven years commencing in 2004/2005. This comprised 3.96% as a special variation and 3.52% as a general variation. The special variation component was approved for the purpose of assisting with costs associated with asset maintenance in general and the sealing of unsealed roads as defined by Council.

The approval was also granted on the condition that Council reduce its general income for the 2011/2012 rating year by the amount of the special variation granted in 2004/2005 plus the equivalent cumulative proportion of this increase from any general variation increases or special variation increases approved for the 2005/2006 to 2010/2011 rate years inclusive.

Division of Local Government has advised an amount of \$1,540,371.00 is required to be adjusted as a result of this action.

As a result of the 2004 approved rate variation concluding, combined with the 7.5% increase approved for the 2011/2012 rating year, the total increase to the general income will be approximately 4.00%.

It is important to note that the conclusion of the 2004 approved rate variation will only affect the ad valorem component of the general rate - the minimum rate will still increase by 7.5% due to those rates being set by the Ministerial instrument for the 2011/2012 rate increase.

This effectively means that those not on the minimum rate (45.4% of ratepayers) will benefit from the reduction.

### **Approved Rate Variation 2006**

The Minister for Local Government in 2006 approved Council increasing its general rate income for two years only based on Council's application to fund the 7 Year Infrastructure and Services Plan as follows:

- 2006/2007 is 7.60% above that for 2005/2006
- 2007/2008 is 8.00% above that for 2006/2007

### **Approved Rate Variation 2007**

Council sought ministerial approval for increases to general income for the periods 2008/2009 to 2012/2013 inclusive for projects proposed in the original 7 Year Infrastructure and Services Plan.

On 15 August 2007 the Minister for Local Government approved Council increasing its general income as follows:

- 2008/2009 is 9.50% above that for 2007/2008
- 2009/2010 is 9.50% above that for 2008/2009
- 2010/2011 is 8.50% above that for 2009/2010
- 2011/2012 is 7.50% above that for 2010/2011
- 2012/2013 is 7.50% above that for 2011/2012

**POLICY IMPLICATIONS:**

Nil.

**FURTHER INFORMATION:**

In accordance with the Local Government Act 1993, Sections:

- 493 Categories of ordinary rates and categories of land
- 494 Ordinary rates must be made and levied annually
- 495 Making and levying of special rates
- 495A Strata lots and company titles taken to be separate parcels of land for annual charges
- 496 Making and levying of annual charges for domestic waste management services
- 498 The ad valorem amount
- 501 For what services can a Council impose an annual charge?
- 502 Charges for actual use
- 506 Variation of general income
- 508A Special variation over a period of years
- 541 Differing amounts for a charge
- 548 Minimum amounts
- 553 Time at which land becomes subject to special rate or charge
- 566 Accrual of interest on overdue rates and charges

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**43 [TCS-CM] Model Code of Conduct Review**

**ORIGIN:**

**Corporate Governance**

**SUMMARY OF REPORT:**

As a result of the request by the NSW Minister for Local Government for submissions on the review of the Model Code of Conduct and following a Councillor workshop, this report provides Council's response to this matter.

**RECOMMENDATION:**

**That the proposed Council response to specific issues on the Model Code of Conduct Review (as outlined in the report) be submitted to the Division of Local Government.**

## **REPORT:**

As a result of the request by the NSW Minister for Local Government for submissions on the review of the Model Code of Conduct and following a Councillor workshop, this report provides Council's response to this matter.

### **Tweed Shire Council's Submission - Review of Model Code of Conduct for Local Councils**

Responses to the specific 17 issues have been provided below and in addition to responding to the specific issues raised, Council is of the view that the Code of Conduct for Local Government should be closely consistent with the existing Code of Conduct for Members of Parliament, which is currently listed as Number 18, Reprinted September 2009, notwithstanding this, it is open to strengthen the existing code for Members of Parliament, to embody all the key principles within both codes.

While it is not noted as a response to the specific issues, the Division of Local Government may give consideration to the establishment of separate Codes of Conduct for councillors and staff.

### **Response to Specific Issues of Model Code of Conduct Review**

In addition to responding to the specific issues raised, Council has a view that the Code of Conduct for Local Government should be closely consistent with the existing Code of Conduct for Members of Parliament, which is currently listed as Number 18, Reprinted September 2009, notwithstanding this it is open to strengthen the existing code for Members of Parliament, to embody all the key principles of the Model Code.

### **WHAT ARE THE OPTIONS FOR ADDRESSING THESE ISSUES?**

The questions posed by the issues raised with respect to the standards of conduct are as follows:

1. Should the scope of the political donations provisions of the code of conduct be expanded to include the following:
  - a. Donations received by councillors in their capacity as candidates at State and Federal elections?
  - b. Donations received by political parties and groups that endorsed the candidacy of a councillor where the councillor receives a direct benefit from the donation in question?

#### **Proposed council response:**

1. *All donations whether received in the capacity of candidature for Federal, State or Local Government should be declared.*
  2. *Donations received by political parties, groups or individuals should also be declared.*
- 
2. Should participation in binding caucus votes be specifically prohibited under the Model Code?

**Proposed council response:** *The provisions of Section 7.29 - Caucus votes should be retained.*

3. Should councillors be exempted from an obligation to comply with a requirement under the Model Code in relation to a non-delegable function where compliance will result in a loss of quorum? If so how should the exemption be granted and should any conditions or restrictions be imposed on it?

**Proposed council response:** *No*

4. Should councillors be permitted to communicate directly with a member of staff or organisation exercising an internal audit function for the council?

**Proposed council response:** *Council has in place an Audit Committee, with the Internal Auditor, being an ex officio member of that Committee. Representation on that committee includes two councillors, so interaction currently exists in a limited form.*

5. Should councils enter into shared arrangements for the establishment of panels of conduct reviewers? If so, should this be done on a regional basis? Can this be done through Regional Organisations of Councils?

**Proposed council response:** *The sharing of Panel Members on a Regional Basis, based upon the existing Regional Planning Panel areas is supported. However, Council would strongly support the establishment of a State Based Panel, with appropriately qualified and trained personnel from regional areas, administered by the Division. Council would support a fee for service from councils to the Division when referring a matter to the State Panel. This would ensure consistency in operation and function across the State.*

6. Is there a need to prescribe the process by which conduct reviewers are appointed? Is there a need to more clearly prescribe the criteria conduct reviewers are required to meet? What should these requirements be?

**Proposed council response:** *The Division of Local Government should appoint and train the independent panel members, rather than being a decision of each Council. The criteria should reflect the skills and knowledge required of Panel members, namely an understanding of the Act, Code, Procedural Fairness, Protected Disclosures, etc.*

7. Should conduct reviewers continue to be required to be independent of the council that engages them as a conduct reviewer?

**Proposed council response:** *Yes, that is why a State Based Panel containing members with some Local Government background is strongly supported.*

8. Is there a need to prescribe arrangements for the management of the performance of conduct reviewers? If so, who should be responsible for the management of the performance of conduct reviewers and how can this be done in a way that does not compromise their independence?

**Proposed council response:** *The Division of Local Government could have an overarching role including a review of outcomes of investigations, to ensure consistency. The Division of Local Government assuming this responsibility will ensure the Panel's independence.*

9. Should the person who makes an initial assessment of complaints made under a council's code of conduct be independent of the council the complaint relates to? If so, who should undertake the initial assessment of complaints made under a code of conduct?

**Proposed council response:** *The existing process of the General Manager and/or Mayor making an initial assessment is supported.*

10. Should there be more options under the Model Code for managing complaints. If so, what should these be?

**Proposed council response:** *Mediation could play a more prominent role.*

11. What can be done to ensure that the only matters that are investigated under the code of conduct are matters that warrant investigation? What can be done to ensure that complaints that can be resolved by means other than investigation are not investigated?

**Proposed council response:** *The existing sections of 12.8, 12.9, 12.10, 12.11 and 13.1 ensure that only 'valid' complaints warrant investigation. Refer also to response to Question 15.*

12. Do the provisions of the Model Code relating to investigations need to be more prescriptive? Do the procedural fairness requirements that apply to the consideration of a matter under the code of conduct need to be better defined? If so what should these requirements be?

**Proposed council response:** *Council has adopted a Conduct Review Panel/ Sole Reviewer Policy that includes a section on "Conduct Review Committee/Sole Reviewer Investigations Procedure" that sets out the minimum requirements associated with an investigation. Attached is a copy, for the Division's consideration of Council's Policy which includes a Confidentiality Undertaking, in accordance with the NSW Ombudsman's guideline "Investigating complaints (2004), maintaining confidentiality", to ensure Procedural Fairness.*

13. What can be done to ensure that councils give appropriate consideration to conduct reviewers' reports in making a determination under the code of conduct?

**Proposed council response:** *These reports are presented to Ordinary Council, with attached information that is pertinent to the conduct of the investigation.*

14. Should there be a right of review in relation to determinations made by a council under its code of conduct. If so, who should exercise this role?

**Proposed council response:** *The Division of Local Government could undertake this role or even a peer review from a Panel established from members of the Local Government and Shires Association.*



15. What can be done to prevent the misuse of the code of conduct? Should it be a breach of the code of conduct to misuse the code of conduct? If so, who should deal with complaints about the misuse of the code of conduct?

***Proposed council response:*** *This is difficult to resolve, as members of the public are able to lodge complaints and are therefore not included within the provisions of the Code of Conduct. There should be a mechanism put in place that prevents serial complainants from continually lodging complaints, particularly where two or more of those complaints are unsubstantiated or vexatious.*

16. What can be done to prevent detrimental action being taken against a person for making a complaint or exercising a function prescribed under the code of conduct? Should it be a breach of the code to take detrimental action? If so, who should deal with complaints about detrimental action?

***Proposed council response:*** *This claim should be referred to an independent who could investigate the claim and make appropriate recommendations, initially to the Division of Local Government should any substantiated findings be established. Part of the reason for establishing the Confidentiality Undertaking in accordance with the Ombudsman Guidelines was to avoid action being taken against a person making a complaint. The Division of Local Government should consider a State based Confidentiality Undertaking or investigations procedure similar to Council's as attached.*

17. How can the penalties or sanctions that apply to breaches be made more effective?

***Proposed council response:*** *By being more prescriptive within the Local Government Act.*

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. Division of Local Government Review of the Model Code of Conduct Discussion Paper (ECM 35593003).
  2. Conduct Review Committee/Sole Reviewer Policy, Version 1.1, adopted by Council at its meeting on 18 May 2010, Minute No: 345 (ECM 16998603).
  3. Parliament of New South Wales - The Code of Conduct for Members of Parliament and the Pecuniary Interest Register No. 18 (ECM 35700682).
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## REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

### 44 [SUB-TRC] Minutes of the Tweed River Committee Meeting held Wednesday 8 June 2011

**Venue:**

Canvas & Kettle Meeting Room, Murwillumbah

**Time:**

9.00am

**Present:**

Cr Katie Milne (Chair); Cr Dot Holdom, Max Boyd (Community Member); Claire Masters (Tweed Landcare Inc); Pat Dwyer (Department of Industry & Investment NSW); Ben Fitzgibbon and Richard Haley (NSW Office of Environment); Judy Robinson (Fingal Head Community Association); Jane Lofthouse, Tom Alletson, (Tweed Shire Council).

**Apologies:**

Rhonda James (Restoration Industry); Robert Quirk (NSW Cane Growers' Association); Bob Loring (Department of Primary Industries - Fisheries); Kyle Slabb (Tweed Byron Local Aboriginal Land Council); Sebastian Garcia Cuenca, David Oxenham, Mark Kingston (Tweed Shire Council).

**Minutes of Previous Meeting:**

**Moved:** Cr Katie Milne

**Seconded:** Max Boyd

**RESOLVED** that the Minutes of the Tweed River Committee meeting held Wednesday 13 April 2011 be accepted as a true and accurate record of the proceedings of that meeting.

**Business Arising:**

**1. Gold Coast Airport**

Tom Alletson advised Committee on details of conversation with Gold Coast Airport Authority re WQ testing.

This call was instigated as a prior alternative to the Committees request that Council write to the airport and ask if they were complying with requirements set by their regulator with respect to water quality.

GC Airports Environment Officer advised that generally all sample results were within guidelines, except for occasional pH results, which were deemed to be low due to environmental conditions. Information regarding a biological monitoring program in Cobaki Broadwater was also provided.

Council's options available with respect to accessing WQ data were discussed, including via FOI. As a preliminary step, the following recommendation was proposed.

**RECOMMENDATION:**

That a workshop be arranged with Councillors on issue of accessing Gold Coast Airport water quality data. This workshop should include an update on the actions underway in implementation of Cobaki/Terranora Catchment Management Plan. This recommendation should be put through the Executive Management Team.

**2. Waterways DCP**

Mark Kingston will present at next Tweed River Committee meeting with an update of how waterways will be classified under the new LEP, and how they will be treated under the proposed Biodiversity DCP.

**3. Tweed River Management Budget**

Claire Masters queried why the Tweed River Committee budget had to be cut. Cr Holdom explained that the budget cuts were required across all of Councils programs to balance the budget.

It was proposed by Max Boyd that in order for the Tweed River Committee to gain a better appreciation of how the Committee's budget was managed in the context of Councils other programs, that a presentation from Council's financial services section be requested.

**Moved:** Max Boyd

**Seconded:** Claire Masters

**RESOLVED** that Troy Green be invited to address the Committee on Council's budget and how Tweed River Committee's budget has been reduced.

**4. Fingal/Letitia Spit 4WD Access Control**

Tweed Byron Aboriginal Land Council and the community stopped vehicles and advised people on land tenure and TBLALC position on access over the Easter weekend.

**5. Cobaki Sediment and Erosion Control**

Pat Dwyer is still following up with Steve Twohill. Erosion and sediment control works have been put in, and Pat is expecting a report detailing all works that have been undertaken.

**6. Project Update**

Tom Alletson provided an update on a number of Tweed River Committee projects, including:

- Uki Community Nursery
- Western Drainage Scheme – options to address water quality
- Fish Friendly Farms Project
- Vine Weed Mapping and Control Project
- Byrill Creek Riparian Rehabilitation Project
- Budd Park River Bank Stabilisation
- Oxley Cove and Bimbadeen Ave Riparian Restoration
- Riparian Projects Team

Max Boyd enquired whether it would be possible for a film to be made of all the Natural Resource Management Unit's projects.

**Agenda Items:**

**General Business:**

Judy brought concerns of FHCA to the Committee regarding the question of a wakeboard school operating on Tweed without a DA. FHCA is concerned regarding the impact of the operation on other river users, and wants to ensure that social and environmental concerns are addressed through the DA process.

When a development application is assessed, it must be ensured that liaison between Tweed Shire Council and NSW Maritime occurs. Correspondence for this will be to the General Manager, Marine Operations Division, NSW Maritime.

It must also be ensured that the findings of wake impact study are applied to assessment of Wake Boarding School development application.

It was suggested that a Commercial Operators Policy should be developed for vessels in public areas, and that a strategic plan for vessel operations in the river is required.

*Agenda Item Next Meeting:*  
Bush Futures Project update.

**Next Meeting:**

The next meeting of the Tweed River Committee will be held on Wednesday 10 August 2011 at 9am.

The meeting closed at 12:30pm

**EXECUTIVE MANAGEMENT TEAM COMMENTS:**

***Gold Coast Airport***

Nil.

**EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:**

***Gold Coast Airport***

That a Councillor workshop be arranged on the issue of accessing Gold Coast Airport water quality data. This workshop should include an update on the actions underway in implementation of the Cobaki/Terranora Catchment Management Plan.

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**45 [SUB-EAC] Minutes of the Equal Access Committee Meeting held Wednesday 15 June 2011**

**Venue:**

Banora Point Community Centre

**Time:**

10.00am

**Present:**

Ron Douglas (Chair), Vic Sparks, Karen Collins, Lee Clark, Milena Morrow, Cr Dot Holdom, Robert Noakes

**Apologies:**

Una Cowdroy, Bev Kelso, Cr Phil Youngblutt, Vanessa Scott-White, Ray Clark

**Minutes of Previous Meeting:**

**Moved: Lee Clark**

**Seconded: Vic Sparks**

**RESOLVED** that the Minutes of the Equal Access Committee meeting held Wednesday 20 April 2011 be accepted as a true and accurate record of the proceedings of that meeting.

**Outstanding Matters Report:**

**1. Flood safe brochures**

Referred to by member of Disability Interagency Network at meeting on 9 June that the State Government, SES had amended the pamphlets content to reflect generic information and the new pamphlets were about to be launched. Karen Collins will bring copies of pamphlet to next meeting.

**2. Disability Action Plan ("DAP") Update**

Karen Collins provided an update relating to the Draft Delivery Program and Operational Plan phase of the Strategic Plan 2011-2021 which has been on exhibition and will now go to Council for adoption by the end of June. After this the consultation plan for broad community consultation with people with disabilities, carers, families and service sector to inform updated policy statement and action plan development will commence.

Lee Clark requested that accessible sporting facilities such as tennis and basketball be included in the final Action Plan as a much needed resource for people with disabilities including young people with spinal cord injuries. Lee Clark informed members that she recently supported 6 young people with spinal cord injuries moving to or returning to the Tweed Heads area after rehabilitation in Sydney who needed accessible activities as part of their recovery.

Robert Noakes provided overview of accessible facilities currently available or being planned including the upgrading of Seagulls. Other members provided suggestions to Lee Clark of other sporting venues in the Tweed area that may have accessible facilities.

Karen Collins said that once Council has adopted the Access and Inclusion Policy and Action Plan any planning requests coming through Council will need to consider access issues.

3. **Mobile Phone Applications for Mobility Mapping information**

The Chair updated members on this issue after further enquiries and informed Committee that the application was provided from Apple. The Chair was advised that the "Rights" application was expensive and worked best on a regional collaboration such as a group of Councils. Karen Collins will investigate further by talking with Apple and on collaboration possibilities after contact with neighbouring Councils and report back to Committee. Cr Dot Holdom was supportive of this action.

4. **Access Funds – regarding turning circle of scooters**

Australian Standards do not recognise scooters as they are not exclusively for people who are wheelchair bound. The access ramp to the Civic Centre was widened as a courtesy after a request from a community member and did not incur a great expense. Council does not want to set a precedent as this is not a requirement under the Standards. Lee Clark said that some people with paraplegia are choosing to use scooters over electric wheelchairs for greater mobility however it is likely that these chairs are smaller and fit within the requirements of ordinary wheelchairs.

The Chair suggested education at point of sale is essential so that people can make an informed decision about their mobility aid. Lee Clark said that all new sales of scooters were provided with education. It is during the purchase of second-hand scooters where information about accessibility is not available. Lee Clark advised members that Ballina, Richmond Valley and Clarence Councils held education days for people with scooters which were very successful. Lee Clark suggested Karen Collins contact Christine Minkov and Joanne Petrovic from Richmond Council to find out about these education days. This item is now closed.

5. **Access Funds – regarding inclusion of scooters in Disability Discrimination Act**

Karen Collins provided an excerpt from the Disability Discrimination Act showing that under the definition of a "disability aid" in the Act it was possible for a scooter user to make a claim. This item is now closed.

6. **Development Application for Murwillumbah Bowls Club**

Robert Noakes advised that the area covering Murwillumbah was the responsibility of Barry Stegeman. Barry advised Robert Noakes by phone that the Murwillumbah Bowls Club was 40 to 50 years old and predated Building Regulations for accessibility. There have been no recent triggers for new ramp or other facilities such as disabled toilet and there were serious financial constraints on the Club operations. The Chair maintained that a new ramp was constructed about 3 years ago and does not meet current standards being too steep. As it seemed that the future of the Bowling Club is in doubt there was no resolution to this issue. This item is now closed.

7. **Casuarina Hockey Clubhouse DA11/003**

Robert Noakes advised that there are existing accessible toilet facilities and a ramp at the club. A new clubhouse is being constructed which will include an accessible shower. This item is now closed.



8. **Tugun Rugby League Football Club**

Karen Collins will contact equivalent Disability Officer to alert Gold Coast City Council to the issue of access in car park of Club. This item is now closed.

9. **Tweed City Shopping Centre**

Robert Noakes informed members that he and Ray Clark has been discussing this issue and had become aware that the RTA was involved with intentions to improve access at the shopping centre. This item is now closed.

10. **Beach Wheelchair**

Karen Collins provided an update about the Beach Wheelchair project outlining the situation for the three chairs owned by Council. Kingscliff chair, housed at Kingscliff Community Hall and accessed through the Kingscliff Beach Holiday Park is not being used due to lack of advertising and the beach is currently inaccessible. Negotiations are underway to find another venue for this chair.

The Cabarita Beach SLSC has agreed to manage the second chair. A Memorandum of Understanding has been drawn up between Council and CabaSLSC soon to be signed by both parties. CabaSLSC has asked for some funding assistance to support their renovations to house the chair to be used to the best advantage.

**Moved:** Melena Morrow

**Seconded:** Lee Clark

**RECOMMENDATION:**

That \$1,000 be made available to the CabaSLSC with a further \$500 in reserve if needed for the provision of a facility to house a beach wheelchair at the Surf Life Saving Club.

The third chair is managed by Pottsville South Holiday Park. Karen Collins will visit soon and arrange for an MoU based on the Cabarita Beach model to be drawn up and put in place for the Pottsville chair.

11. **Pedestrian Access Mobility Plan review**

Ray Clark advised Karen Collins by email that there was no progress on the PAMP at this stage.

12. **Draft Festivals and Events Policy**

Karen Collins reported that the Community Services Unit has provided advice and feedback on the Draft Festivals and Events Policy including an attachment advising how to plan for accessible events and with further advice on the inclusion of access issues within the document. When the Policy has been finalised a copy will be made available to the Committee.

**Agenda Items:**

1. **Beach Wheelchair Update**

See report in outstanding item 10 above.

2. **Flood Safe Brochure**

See report in outstanding item 1 above.

3. **Access Funds - Operational for 2010/11**

The Committee considered the Access Funding report distributed with business papers. The transaction listing identified activity mainly relating to the construction of the ramp at the Murwillumbah museum. There was a balance of \$32,216.90.

4. **Access Funds - Reserves**

The Committee considered the Access Reserve report distributed with the business papers.

The current balance of A2385 is \$32,217, of which \$11,094 is Committee expenditure (A2385.7117)

Access reserve details are:

Balance as at 1 July 2010	\$188,272
Less committed:	
A2452 HACC renovations	\$ 15,998
A2329 Murwillumbah Museum	\$136,457
A2495 Pottsville Beach Neighbourhood Centre	\$ 20,000
<b>Available</b>	<b>\$ 15,817</b>

**General Business:**

1. Karen Collins advised members that Recreational Services had received a grant in excess of \$60,000 from the Commonwealth Accessible Communities Fund to construct an accessible toilet facility in Tumbulgum Road opposite the Civic Centre.
2. Information Update: Karen Collins provided information on the World Health Organisation World Report on Disability launched on June 9. Karen had sent the link by email to members before the meeting. Karen also tabled an email sent by Bill McKinnarney from Blind Citizens Australia regarding the new FaHCSIA Report Characteristics of Disability Support Pension Recipients.
3. Lee Clark raised a request on behalf of a community member with spinal cord injury to keep Kingscliff Swimming Pool open through winter. In response Cr Dot Holdom provided the Committee with an overview of the Asset Management Plan for Council which includes decisions about running costs of the swimming pools in Tweed Shire. Cr Holdom advised that the Kingscliff Swimming Pool was currently open on Sundays with very few patrons. Tweed Heads South Swimming Pool and Murwillumbah Pool are open every day during winter. Karen Collins will discuss Kingscliff Pool opening hours with Jeff Collier, Council's Pools Manager. It was noted that the management of Tweed Heads South and Kingscliff Pools is tendered out to external management.
4. Milena Morrow alerted the Committee to problems with access to the HACC Centre in Tweed Heads South via the new ramp following renovations. Milena said the ramp was too steep and had a bump at the top which may cause problems for people with self propelled wheelchairs. Cr Holdom said she would visit the Centre and take photos for the matter to be investigated.

5. Lee Clark informed Committee about new Access to Premises – Buildings Standards training. Lee informed Committee that in other Council jurisdictions Equal Access Advisory Committees were funding a Committee member to attend the training which cost \$550. The next training is in Lismore on 17 October 2011. Lee will forward information to Karen Collins for consideration.
6. Cr Holdom tabled a letter printed in the Daily News on 15 June 2011 regarding the decommissioning of the public toilet in Queen Street, Murwillumbah. Cr Holdom gave an overview explaining the reasoning behind Council's recent decision to decommission several and build new toilets throughout Tweed Shire where required including the accessible facility mentioned in General Business Item 1 above.

**Next Meeting:**

The next meeting of the Equal Access Committee will be held on Wednesday, 17 August 2011 at 10am at the Coolamon Cultural Centre.

The meeting closed at 12.00pm

**EXECUTIVE MANAGEMENT TEAM COMMENTS:**

**10. Beach Wheelchair**

Subsequent to this meeting of the Equal Access Committee, Council officers have advised that the cost of works to house a beach wheelchair at the Cabarita Beach Surf Life Saving Club is estimated at \$3,500.

**EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:**

**10. Beach Wheelchair**

That \$3,500 be made available to the Cabarita Beach Surf Life Saving Club for the provision of a facility to house a beach wheelchair at the Surf Life Saving Club and to be funded from the Access Program.

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**46 [SUBCOM] Reports from Subcommittees and/or Working Groups - Not Requiring Council Decision**

The following lists reports from subcommittees and/or working groups not requiring a decision:

**UNDER SEPARATE COVER:**

1. Minutes of the Tweed Coast Koala Advisory Group Committee Meeting held Tuesday 24 May 2011
  2. Minutes the Community Cultural Development Advisory Committee Meeting held Thursday 26 May 2011 (ECM 34672626)
  3. Minutes of the Aboriginal Advisory Committee Meeting held Friday 3 June 2011 (ECM 35012110)
  4. Minutes of the Tweed Coastal Committee Meeting held Wednesday 8 June 2011 (ECM 35209807)
  5. Minutes of the Community Cultural Development Advisory Committee Meeting held Thursday 23 June 2011 (ECM 35505473)
  6. Minutes of the Local Traffic Committee Meeting held 23 June 2011 (ECM 35553379)
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**ORDERS OF THE DAY**

- 47 [NOR-Crs W Polglase, J van Lieshout and P Youngblutt] Wilsons Park, Banora Point Tennis Court**

**NOTICE OF RESCISSION:**

Councillor W Polglase, Councillor J van Lieshout and Councillor P Youngblutt move that the resolution from meeting held Tuesday 17 May 2011 at Minute Number 302, Item 25 Wilsons Park, Banora Point Tennis Court being:

..... that the Banora Point Upgrade Alliance be requested to demolish the Wilsons Park tennis court and reinstate it as parkland to match the approved park upgrade.

**be rescinded.**

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- 48 [NOM-Cr W Polglase] Wilson Park, Banora Point Tennis Court**

**NOTICE OF MOTION:**

Councillor W Polglase moves that Council initiates a meeting between the Executive of Banora Point Residents' Association and East Banora Point Residents' Group to resolve the best outcome for Wilson Park Tennis Court.

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- 49 [NOM-Cr P Youngblutt] Tweed Valley Wildlife Carers**

**NOTICE OF MOTION:**

Councillor P Youngblutt moves that Council provides a contribution of \$5,000 per annum to the Tweed Valley Wildlife Carers to assist in the provision of medication and care for injured animals within the Tweed Shire. A suitable allowance be made at the next quarterly budget review and any necessary policy amendments are put forward at that time.

Note: This proposed contribution is a result of the increase in care required for animals resulting from actions being undertaken through the introduction of Reporting Injured Wildlife Signage on Council roads that includes a telephone number for contact, which is the contact number for Tweed Valley Wildlife Carers.

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**50 [NOM-Cr K Milne] Sustainability Development Control Plan**

**NOTICE OF MOTION:**

Councillor K Milne moves that a report be brought forward on developing a Development Control Plan to provide for enhanced sustainability outcomes for new developments in the Shire, and examining the policies and practices of leading councils and their potential to be used for the benefit of the Tweed Shire Council and the community.

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**51 [NOM-Cr K Milne] NSW Environmental Planning and Assessment Act requests for Amendments**

**NOTICE OF MOTION:**

Councillor K Milne moves that Council writes to the NSW Minister for Planning, requesting that:

1. Council's determination role includes modifications to Part 3A Concept plans.
2. Legislation determining the commencement of Development Approvals more than five (5) years old is reviewed to ensure that outdated practices are not continued unless *significant* physical development has commenced.
3. BASIX requirements be updated and reviewed to provide for minimum rather than maximum standards.

Council provides a motion to the Local Government Shires Association requesting the same.

Note: The Minister's approval for Concept Plan modifications are currently not required if the project is consistent with the concept plan and no public notification is required.

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**52 [NOM-Cr K Milne] - Speed Limits Reductions**

**NOTICE OF MOTION:**

Councillor K Milne moves that Council writes to the Minister for Roads to request greater flexibility for Council's to reduce speed limits for human safety and wildlife corridors.

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**53 [NOM-Cr K Milne] Peak Oil**

**NOTICE OF MOTION:**

Councillor K Milne moves that a report be prepared to examine the potential impacts of Peak Oil on:

1. The Tweed Shire Council
2. Tweed Shire Businesses
3. The Tweed Shire community

and that the report further examine some of the policies and practices of leading councils in addressing Peak Oil and report on their potential to be used for the benefit of the Tweed Shire Council and the community.

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**54 [NOM-Cr B Longland] Murwillumbah Museum - Extensions**

**NOTICE OF MOTION:**

Councillor B Longland moves that given the controversy surrounding the affordability of the originally planned two storey extension of the Murwillumbah Museum, that Council urgently calls for expressions of interest from Tweed architects to submit plans and cost estimates for a two storey extension to the Murwillumbah Museum that is in keeping with the architectural design of the existing building. The estimates are to include any refurbishment costs for the existing building and be provided by 30 September 2011.

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**QUESTIONS ON NOTICE**

**55 [QoN-Cr D Holdom] Sustainable Population Strategy**

**QUESTION ON NOTICE:**

Councillor D Holdom asked would it be possible to place the link to the Federal Government's home page 'Sustainable Population Strategy' on Councils website?

<http://www.environment.gov.au/sustainability/population/index.html>

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**56 [QoN - Cr K Milne] Follow Up of the s430 Investigation Woodward 2005**

**QUESTION ON NOTICE:**

Councillor K Milne asked can the General Manager describe how Council has responded to the recommendations of the s430 Investigation by Ross Woodward, particularly in relation to the urgent back zoning recommended, and why the 'Promoting Better Planning Practice' Review has not occurred as yet?

**UNDER SEPARATE COVER:**

Section 430 Investigation - Tweed Shire Council (ECM 25832139)

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**57 [QoN - Cr K Milne] 'Acceptable Level of Service' for Water Management**

**QUESTION ON NOTICE:**

Councillor K Milne asked can the Director of Community and Natural Resources provide estimates of how reductions in Council's 'Acceptable Level of Service' standards may affect Council's predicted secure yield for the current planning horizon (ie if there was no further damming)?

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**58 [QoN - Cr K Milne] Funding for Water Conservation Projects**

**QUESTION ON NOTICE:**

Councillor K Milne asked can Council advise what funding grants or incentives are available for Council or developers for water conservation projects for new developments, particularly dual reticulation or grey water reuse?

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**59 [QoN - Cr K Milne] Regional Open Space**

**QUESTION ON NOTICE:**

Councillor K Milne asked can Council provide advice as to why there is such a large difference in the projected Regional Open Space plans for structured open space of approximately \$50,000,000 compared Regional Casual Open Space of only approximately \$15,000,000?

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**60 [QoN - Cr K Milne] Update of Progress of Council's Motions to the Local Government and Shires Association**

**QUESTION ON NOTICE:**

Councillor K Milne asked can Council provide advice on progress of Council's previous motions advanced through the LGSA?

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## CONFIDENTIAL ITEMS FOR CONSIDERATION

### REPORTS THROUGH GENERAL MANAGER IN COMMITTEE

#### REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES IN COMMITTEE

##### 1 [CNR-CM] Sale of Lot 11 in DP520017 - 209 Byangum Road, Murwillumbah

#### REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (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

#### REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES IN COMMITTEE

##### 2 [CNR-CM] Share Farming Proposal on Council Land - Lot 602 DP 1001049 Duranbah

#### 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

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