



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr B Longland (Mayor)

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

# Agenda

## Planning and Regulation Reports

### **Ordinary Council Meeting**

### **Tuesday 13 December 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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## **REPORTS THROUGH THE GENERAL MANAGER**

### **REPORTS FROM THE DIRECTOR PLANNING AND REGULATION**

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

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

#### **MATTERS FOR CONSIDERATION**

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

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**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 November 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>	DA11/0164
<b>Description of Development:</b>	Partial demolition of existing flats and conversion to a three storey dwelling including alterations and additions
<b>Property Address:</b>	Lot 2 DP 55721 No. 26 Tweed Coast Road, Hastings Point
<b>Date Granted:</b>	17/11/2011
<b>Development Standard to be Varied:</b>	Clause 32B(4)(b) - overshadowing
<b>Zoning:</b>	2(b) Medium Density Residential
<b>Justification:</b>	The extent of the shadow is limited to the vegetated dunal area and does not extend to the beach. In addition, the shadowed areas comprise managed grasslands and are not embellished with playground equipment, picnic facilities, etc and are therefore not used intensively by the public. The shadow diagrams submitted are typical of development along the coastline.
<b>Extent:</b>	The extent of the shadow is limited to the vegetated dunal area and does not extend to the beach. In addition, the shadowed areas comprise managed grasslands and are not embellished with playground equipment, picnic facilities, etc and are therefore not used intensively by the public. The shadow diagrams submitted are typical of development along the coastline.
<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] Development Application DA11/0471 for a Boundary adjustment at Part Lot 5 DP 1000640; No. 423 Hopkins Creek Road, Hopkins Creek; Lot 2 DP 702661; No. 473 Hopkins Creek Road, Hopkins Creek**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA11/0471 Pt1**

**SUMMARY OF REPORT:**

The proposed development seeks Council consent for a boundary adjustment between Lot 5 DP 1000640 and Lot 2 DP 702661. The existing allotments have the following areas:

- Lot 5 DP 1000640 – 8.66 ha
- Lot 2 DP 702661 – 15.33 ha

It is intended to adjust the boundary to produce two lots resulting in the following configuration:

- Lot 5 (8.66 ha) will expand to proposed Lot 21 measuring 17.54 ha
- Lot 2 (15.33 ha) will be reduced to proposed Lot 20 measuring 6.44 ha

As the proposed subdivision will result in proposed Lots 21 and 20 being under the minimum allotment size they require a State Environmental Planning Policy No. 1 (SEPP 1) objection.

In respect of the planning standard identified within Clause 20 (2)(a) of the Tweed Local Environmental Plan (LEP), specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(a) zone. It is noted that all lots are currently undersized.

The SEPP 1 objection relates to proposed Lots 20 and 21 being below 40 hectares. Council has the authority to assume the Director-Generals Concurrence, as: no additional allotments are being created; no additional housing entitlement is being created; and Council is satisfied that any existing or potential agricultural use of the land will not be compromised.

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

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

**RECOMMENDATION:**

**That Development Application DA11/0471 for a boundary adjustment at Part Lot 5 DP 1000640; No. 423 Hopkins Creek Road, Hopkins Creek; Lot 2 DP 702661; No. 473 Hopkins Creek Road, Hopkins 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 Nos 21179 Sheet 1 of 1, Revision A prepared by Brown and Haan and dated 15.08.11, 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. If vegetation removal is necessary with the land zoned 1(a) Rural it is to be carried out in accordance with the provisions of the *Native Vegetation Act 2003*.**

- 4. Fencing shall not restrict the free movement of koalas that may traverse the site from time to time and shall allow a clearance of at least 30cm at the bottom to enable koalas to move under it. If post and wire fencing is used, the bottom strand must not be barbed.**

[GENNS01]

**DURING CONSTRUCTION**

- 5. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -**

- Noise, water or air pollution**
- dust during filling operations and also from construction vehicles**
- material removed from the site by wind**

[DUR1005]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

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

[PSC0825]

- 7. The creation of easements for services, rights of carriageway and restrictions as to user, including a Positive Covenant over the subject land to ensure that the required provisions of 'Planning for Bush Fire Protection 2006' guidelines and the General Terms of Approval for the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity as may be applicable under Section 88B of the Conveyancing Act.**

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

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

[PSC0835]

8. 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]

9. Prior to the issue of a subdivision certificate the applicant is required to lodge Section 68 applications to operate the existing on-site sewage management systems on existing lots 2 & 5, pay the appropriate fee and be issued with an approval. The existing systems shall be modified or upgraded as specified in that approval to the satisfaction of the General Manager or his delegate.

[PSCNS01]

10. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA) accredited BPAD certified practitioner must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.

[PSCNS02]

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

1. A 20 metre Asset Protection Zone shall be maintained around the existing dwellings. The APZs shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
2. Property access roads shall have a minimum vertical clearance of 6 metres to any overhanging obstruction including tree branches.

3. A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
4. The existing dwellings are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable this includes the openable portion of the windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

**REPORT:**

**Applicant:** Brown & Haan  
**Owner:** Mr Benjamin J Peach & Ms Jenne A Kriz  
**Location:** Part Lot 5 DP 1000640; No. 423 Hopkins Creek Road, Hopkins Creek; Lot 2 DP 702661; No. 473 Hopkins Creek Road, Hopkins Creek  
**Zoning:** 1(a) Rural, 7(d) Environmental Protection (Scenic/Escarpment)  
**Cost:** N/A

**BACKGROUND:**

The proposed development seeks Council consent for a boundary adjustment subdivision involving two allotments. The existing lot configurations are as follows:

- Existing Lot 5 DP 1000640 has an area of 8.66 ha and contains an existing house. Lot 5 currently has a frontage of approximately 250m and is accessed directly from Hopkins Creek Road;
- Existing Lot 2 DP 702661 has an area of 15.33 ha and contains an existing house. Lot 2 is accessed via an existing right of carriageway over Council road reserve from Hopkins Creek Road.

The proposed subdivision will result in the following configuration:

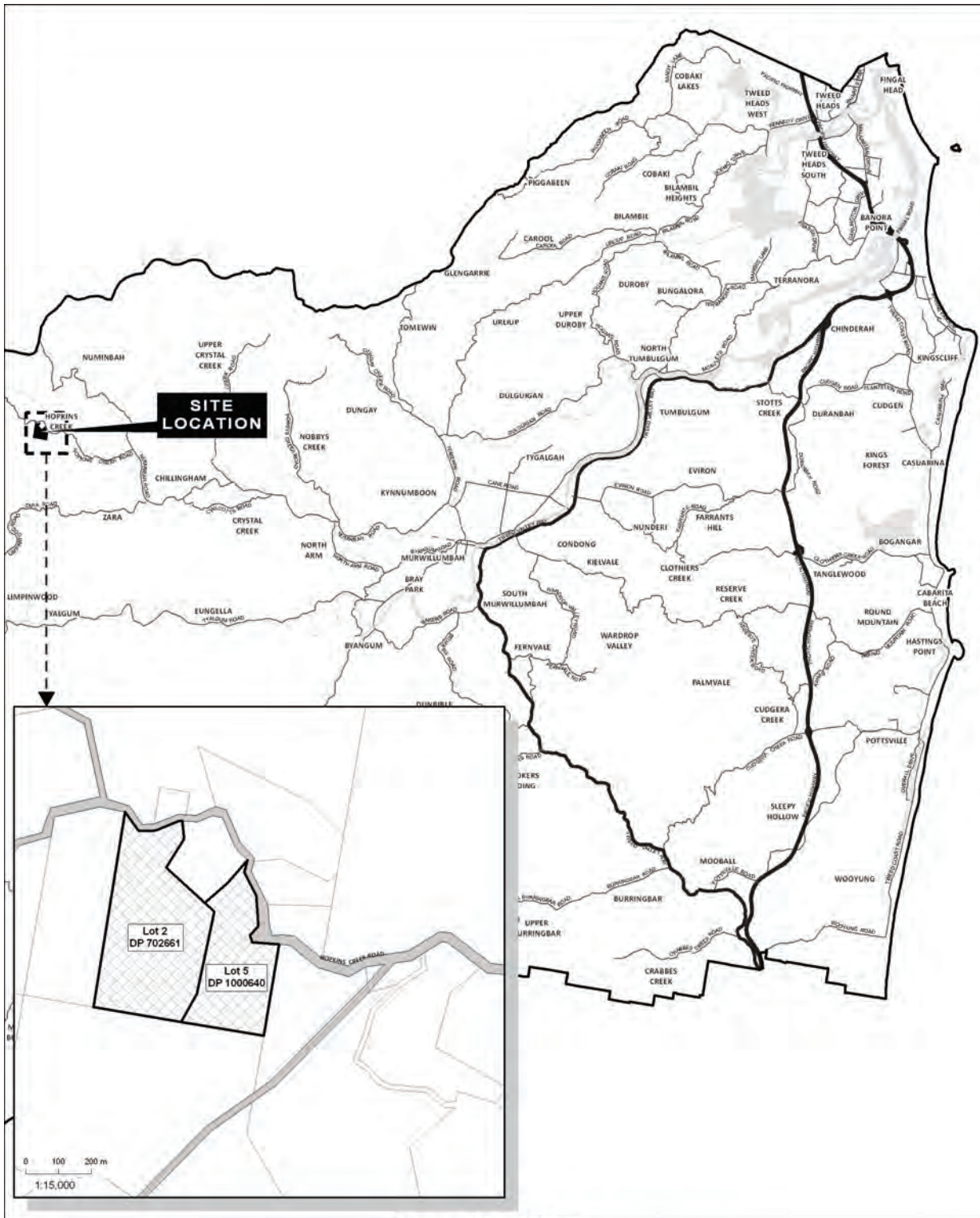
- Existing Lot 5 (8.66 ha) will expand to proposed Lot 21 measuring 17.54 ha;
- Existing Lot 2 (15.33 ha) will be reduced to proposed Lot 20 measuring 6.44 ha.

The shape of Lot 20 has been designed to allow permanent access to Lot 162 DP 755696 located to the south that is zoned 7(d) Environmental Protection (Scenic Escarpment). The applicant also advises that Lot 21 has been increased to allow boundaries to more closely follow ridge lines and to improve the use of cleared land by cattle grazing. This configuration would also allow for access to spring water on the site.

The subject land is located at Hopkins Creek in the locality of Chillingham. Council's records indicate that the existing dwelling house on Lot 2 DP 702661 was approved under Development Application 89/554. Council's records indicate that the dwelling house and machinery shed on Lot 5 DP 1000640 was approved under Building Application 1456/92 and Building Application 47/96, respectively.

The site topography ranges from 200m AHD at the north of the site, adjacent to Hopkins Creek Road, to 330m to the south of the site adjacent to the 7(d) Environmental Protection – Scenic Escarpment zone.

**SITE DIAGRAM:**

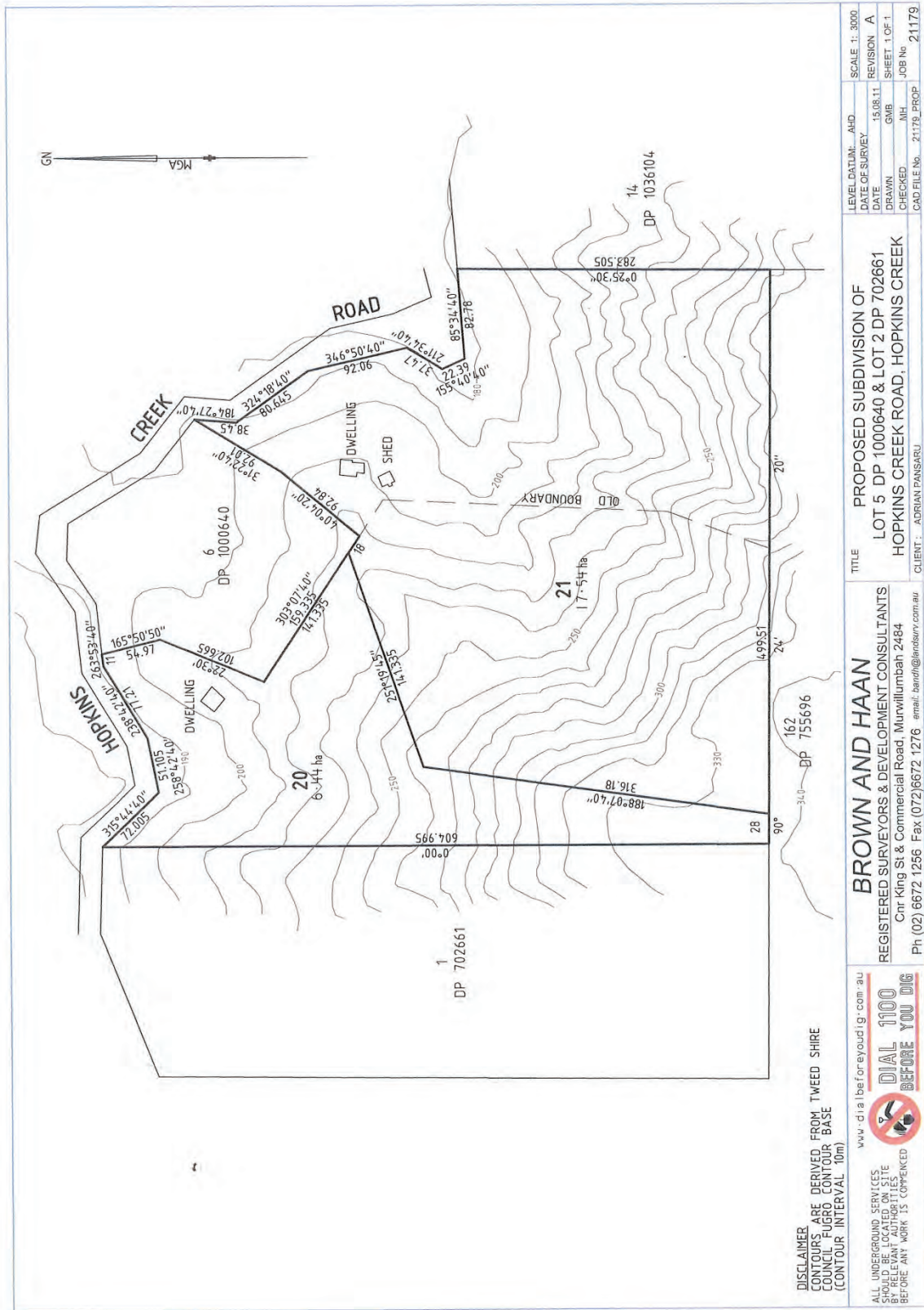


**Locality Plan**

Lot 5 DP 1000640; No.423 Hopkins Creek Road, Hopkins Creek  
 Lot 2 DP 702661; No.473 Hopkins Creek Road, Hopkins Creek

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any transactions a 'Field to File' enquiry must be made by calling 1310. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 30 November, 2011                  © Land and Property Management Authority (LPMA) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p>	<p>1:150,000 @ A4 Portrait                  100 METRE SCALE                  COPY ONLY - NOT CERTIFIED</p> <p>Map projection: Universal Transverse Mercator                  Horizontal datum: Geocentric Datum of Australia 1984                  Grid: Map Grid of Australia Zone 56</p>	<p>Civic and Cultural Centre                  3 Tumbulgum Road                  Murwillumbah NSW 2484</p> <p>PO Box 916                  Murwillumbah NSW 2484</p> <p>T   (02) 6970 2400   1300 292 872                  F   (02) 6970 2429                  W   www.tweed.nsw.gov.au                  E   planning@twmsh.nsw.gov.au</p> <p><b>TWEED SHIRE COUNCIL</b></p>
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**SUBDIVISION PLAN:**



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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed development is considered to be consistent with the aims of the Tweed LEP. The proposed development is considered to be consistent with the vision of the shire 'to manage growth so that the unique natural and developed character of the Tweed Shire is retained'.

Clause 5 - Ecologically Sustainable Development

Portions of the southern boundaries of each lot are densely vegetated and surrounded by other largely undisturbed and vegetated areas. On this basis the lots are considered to be of very high ecological importance, as detailed in Figure 1 below.



**Figure 1 - Subject site with dense vegetation to the southern boundary zoned 7(d) Environmental Protection – Scenic Escarpment**

The application did not provide details of whether the boundary adjustment would necessitate the removal of vegetation or construction of fencing. Clarification was



requested with this regard whereby Council has been advised by the applicant's consultant that: 'there is no intention by them [the owners] to vary the existing fencing or landuse'.

Whilst Council's Ecologist has expressed some concern for the potential for vegetation clearance as a result of increased agricultural activities, the land owners may already lawfully carry out routine agricultural maintenance activities (RAMAs) without approval under the *Native Vegetation Act 2003*. Therefore Council is unable to condition that no vegetation clearance or fencing shall occur on the site without prior approval.

Therefore, on the basis of the submitted information, the proposed development is considered to have minimal impact on the environment and is in keeping with the precautionary principle; inter generational equity and the conservation of biological diversity and ecological integrity.

#### Clause 8 – Consent Considerations

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

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

In this instance, the subject site is zoned 1(a) Rural, with a small section of the southern boundary of both Lots being zoned 7(d) Environmental Protection – Scenic Escarpment. The primary objectives for zone 1(a) and 7(d) are detailed below.

The proposed boundary adjustment subdivision is considered to be consistent with the primary objective of the 1(a) Rural zone as no development is proposed and it will not change the status quo.

Provided that the use of the land for cattle grazing does not result in the extensive removal of vegetation, other than that otherwise permitted under the *Native Vegetation Act 2003*, it is considered that the proposed boundary adjustment would be consistent with the 7(d) Environmental Protection (Scenic Escarpment) zone.

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

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

Clause 11 – Zone Objectives

The subject land is zoned 1(a) Rural, with a small section to the south of both Lots being zoned 7(d) Environmental Protection – Scenic Escarpment.

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

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

The secondary objective is:

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

The applicants have advised that the purpose of the boundary adjustment is to increase the capacity for cattle grazing on already cleared land and that no other works are proposed in order to facilitate the boundary adjustment. On this basis it is considered that the proposed development will increase the potential for agricultural activity and retain rural character. The development is considered to be consistent with the objectives of the 1(a) Rural zone.

The primary objective of the 7(d) Environmental Protection – Scenic Escarpment zone is:

- *To protect and enhance those areas of particular scenic value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas, and maintain the visual amenity of prominent ridgeline areas.*

The secondary objective of the zone is:

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

As previously detailed within this report, the applicants have advised that the boundary adjustment will not result in vegetation clearance, fencing or the like.

The proposed boundary adjustment will therefore not alter the status quo of the land. On this basis it is considered that the proposed development is consistent with the objectives of the zone.

#### Clause 15 - Essential Services

Council's GIS indicates that reticulated water supply is not available to the area. Council sewage disposal is also not available in the area however Council's Environmental Health Services have advised that a Section 68 approval for sewage management does not exist for either existing allotment.

Council's EHO has advised that an inspection of the existing On Site Sewage Management (OSSMF) system at Lot 5 DP 1000640 did not provide any indication of failure and that adequate land area is available if the system requires upgrade. Access to inspect the OSSMF on Lot 2 DP 702661 was not available. On this basis Council's Environmental Health Officer has recommended a condition is applied to any development consent, to ensure that prior to the issue of a subdivision certificate the applicant is required to lodge a Section 68 application to operate the existing OSSMF on existing lots 2 and 5.

Electricity and telecommunication services are currently provided to the area and shall also not be affected by the proposed boundary adjustment.

#### Clause 20 - Subdivision

The objective of Clause 20 of the LEP is:

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

The proposal will not affect the continuance or aggregation of sustainable agricultural units or generate pressure to allow residential or other development given both lots will remain below the minimum lot size. No new dwelling entitlements are created by the proposed subdivision.

The proposal only involves an alteration to boundary lines and, on the basis of the submitted information, is considered unlikely to alter the ecological or scenic values of the land or affect water supply.

Furthermore, this clause requires a minimum allotment size of 40 hectares in the 1(a) zone. Proposed lots 20 and 21 would not comply with this development standard, however they are already under the minimum development standard for

the zone. An objection under State Environmental Planning Policy No. 1 has been prepared by the applicant in this regard and is addressed later in this report.

### Other Specific Clauses

#### Clause 39 – Remediation of Contaminated Land

A review of previous land uses on the site has revealed that the site has the potential to be contaminated. On this basis this clause applies to the subject site.

The objective of the clause is to ensure that contaminated land is adequately remediated prior to the development occurring. The application has been referred to Council's Environmental Health Services who has advised that as both allotments contain an existing dwelling and that the application does not propose any changes of use; rezoning; or the creation of any additional dwelling entitlement and; as the nearest cattle dip site is approximately 1.1km, that no further consideration with this regard is required.

#### Clause 39A – Bush Fire

The application was referred to the NSW RFS, pursuant to section 91 of the *EP & A Act 1979*. NSW RFS provided a bushfire safety authority pursuant to s100B of the *Rural Fires Act 1979*, issued subject to recommended conditions.

#### Clause 57 – Protection of Existing Dwelling Entitlement

The objective of this clause is to protect existing dwelling entitlements if on an allotment lawfully created before the commencement of Tweed LEP 2000. As the proposed boundary adjustment is a new subdivision it will not result in an allotment lawfully created before the introduction of the Tweed LEP 2000. Accordingly this boundary adjustment will effectively remove the two previous dwelling entitlements. The boundary adjustment will however allow the two existing houses on the affected lots to remain in accordance with existing use rights provisions.

### State Environmental Planning Policies

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

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

Clause 12 provides that consideration must be given to the likely impact of the proposed development on the use of the adjoining or adjacent agricultural land; whether the development will cause loss of prime agricultural land, prime crop or pasture land.

As detailed in Figure 1, portions of the north of both lots have been cleared of vegetation and have the potential for cattle grazing although at present, neither lots have sufficient grazing area to support extensive farming. The application details that proposed Lot 21 'has been increased to allow boundaries to more closely follow ridge lines, make better use of cleared land by cattle grazing and

give access to spring water' and that there will be an 'increase in the number of cattle grazing after the variation of boundary takes place'.

It is considered that the proposed boundary adjustment will not result in a loss of prime agricultural land and may improve the opportunity for cattle grazing on proposed Lot 21.

The surrounding land is used for pasture and associated agricultural purposes. It is considered that the boundary adjustment subdivision will not result in any land use conflict as the proposal will not change the status quo.

### SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard identified within Clause 20 (2)(a) of the Tweed LEP, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(a) zone.

The SEPP 1 objection relates to proposed lots 20 and 21 being below 40 hectares. A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

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

**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**

*The applicant contends that the standard is unreasonable in this circumstance where the larger non-complying lot of 15.33ha is to be reduced to 6.44ha, and the smaller non-complying lot expands to 17.54ha. The boundary adjustment proposed is for the purposes of including additional area into proposed Lot 5 to enable more useable grazing land and to access spring water which currently is not being used for stock. The boundary alteration is to enable boundaries to more closely follow ridge lines.*

It is considered that the standard is unreasonable and unnecessary in this instance as the current lot sizes of the lots will remain below the development standard (40 hectares) and the purpose of this subdivision is in response to increasing the area available for cattle grazing and to more closely follow ridge lines. There are also no additional lots or dwellings proposed.

**2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be**

**unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*;**

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 boundary adjustment subdivision between two lots. The existing lot configuration reduces the potential for cattle grazing and it is considered that the proposed lot configurations may increase the agricultural viability of proposed Lot 21 by increasing the area of already cleared land for potential cattle grazing. It is therefore considered that the proposal is consistent with the objects specified in s 5(a)(i) and (ii).

**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 is not considered to raise any matter of significance for State or Regional planning.

There would also be little public benefit in maintaining the development standard in this case as proposed Lots 20 and 21 already do not comply with the 40 hectare minimum lot size. The purpose of the subdivision is to increase the supply of land available for cattle grazing as well as to better follow ridge lines and allow a supply of water to proposed Lot 21.

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

In addition, the Director-General's Concurrence is not required for the relaxation of the 40 hectare minimum lot size development standard as:

- No additional allotments are being created;
- No additional housing entitlement is being created; and
- The Council is satisfied that any existing or potential agricultural use of the land will not be compromised.

On this basis it is considered that the SEPP 1 objection is reasonable and that the proposed development is satisfactory.

SEPP No. 44 - Koala Habitat Protection

Council's GIS records indicate that portions of the lot contain Secondary Koala Habitat (Category B) and therefore this Policy applies. The aims of the SEPP are to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

As previously detailed within this report, the applicants have advised that the boundary adjustment and subsequent use of land for cattle grazing will not require fencing or result in the loss of vegetation. A condition shall be applied to any Development Consent to ensure that should any vegetation removal be necessary in the future, that it is carried out in accordance with the provisions of the *Native Vegetation Act 2003*. Council's Ecologist has requested that a condition be applied in relation to fencing if required to allow for the free movement of Koalas across the site.

#### SEPP (Rural Lands) 2008

The subject land is within the 1(a) Rural Zone and the provisions of this SEPP apply to the proposed development.

#### **Clause 7 Rural Planning Principles**

The Rural Planning Principles are as follows:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The proposed development is compliant with the rural subdivision principles in the SEPP as the subdivision will not affect the continuance and potential productive sustainable activities to be undertaken. The existing lots at present have limited capacity for agricultural activities whereas the proposed boundary adjustment will increase the cattle grazing capacity for proposed Lot 21.

As previously detailed the site is of high ecological value and surrounded by densely vegetated areas. The applicants have advised that the proposed boundary adjustment will not affect the status quo; involve any clearance of vegetation or fencing. It is therefore considered that the proposed development will not impact on the ecological values of the allotments.

### **Clause 8 - Rural Subdivision Principles**

The Rural Subdivision Principles are as follows:

- (a) *the minimisation of rural land fragmentation,*
- (b) *the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*
- (c) *the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*
- (d) *the consideration of the natural and physical constraints and opportunities of land,*
- (e) *ensuring that planning for dwelling opportunities takes account of those constraints.*

There will be no conflicts of rural land uses given the existing lots already comprise a dwelling house on each and have the capacity for low-scale cattle grazing. It is considered unlikely that any potential increase in cattle numbers on proposed Lot 21 will impact on surrounding residential land uses. No new dwelling entitlements are proposed.

The proposal will have no impact to the nature of existing agricultural holdings or the planned future supply of residential land as the proposal will not alter the existing natural formations of the lots.

### **Clause 10 - Matters to be considered in determining development applications for rural subdivisions or rural dwellings**

The matters to be considered in determining a development application are stated and addressed as follows:

- (1) *This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.*
- (2) *A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:*
  - (a) *subdivision of land proposed to be used for the purposes of a dwelling,*
  - (b) *erection of a dwelling.*
- (3) *The following matters are to be taken into account:*
  - (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).*

As stated previously in this report, the proposed boundary adjustment subdivision will not change the status quo; no additional lots or new dwelling entitlements will be created. It is considered that the proposed new lot configurations will not affect the current orderly and economic use of the land, although there may be the potential for increased agricultural viability at proposed Lot 21.

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

There are no Draft Environmental Planning Instruments considered relevant to the proposal.

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

Tweed Development Control Plan

A5-Subdivision Manual

Council's Development Engineer has reviewed the application with respect to the provisions of Section A. The application is considered satisfactory subject to number of conditions of consent.

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

Bushfire

The application required an Integrated Referral to the NSW Rural Fire Service due to the bushfire prone nature of the land. In a response dated 17 November 2011, a Bushfire Safety Authority was granted subject to certain General Terms of Approval applied to any Development Consent.

**(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 applicants have advised that vegetation clearance is not proposed, nor is the construction of fencing. The proposed boundary adjustment will therefore not alter the status quo.

No alterations are proposed to the existing access arrangements and it is considered unlikely that there will be any significant alteration in appearance to either allotment as a result of the boundary adjustment. Whilst there may be an increase in cattle grazing on proposed Lot 21, it is considered unlikely to significantly impact on the existing character of the lot or to the surrounding area.

#### Access, Transport and Traffic

The existing driveways that serve the dwellings on existing lots 2 and 5 are sealed. Council's Development Engineer has advised that no upgrade is required with this regard.

#### Flora and Fauna

As previously detailed portions of the site are considered to be of very high ecological status, encompassing a number of threatened species and providing secondary Koala habitat. The applicants have advised that vegetation clearance is not required in order to carry out the boundary adjustment. Conditions are to be applied to any development consent to ensure that any necessary removal of vegetation is carried out in accordance with the provisions of the *Native Vegetation Act 2003* and to ensure that any fencing allows the free movement of Koalas across the site.

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

#### Surrounding Landuses/Development

As discussed the development is not considered to impact on surrounding land uses or development, given the proposal seeks a boundary adjustment to better follow the land contours and increase the capacity for cattle grazing on proposed Lot 21.

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan. On this basis it is considered that the proposal is consistent with the rural residential character of the locality.

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

The application did not require notification under Council's Notification Policy.

### **(e) Public interest**

The application is not considered contrary to the public interest as the application satisfies the objectives of the Tweed Local Environmental Plan 2000.

### **OPTIONS:**

1. Approve the application in accordance with the recommended conditions.

2. Refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposal seeks to make better use of existing cleared land for cattle grazing, thereby improving the agricultural capabilities of Proposed Lot 21, without the requirement for vegetation clearance. It is therefore considered that the proposal will not result in any adverse cumulative impacts and will not change the status quo of the land. The proposed development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and relevant policies and therefore 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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**9 [PR-CM] Development Application DA10/0666 for a Two (2) Lot Subdivision and Erection of a Dwelling House at Lot 22 DP 1080322, Joshua Street, Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0666 Pt1**

**SUMMARY OF REPORT:**

Consent is sought for a two (2) lot subdivision and construction of a single dwelling at Lot 22 DP 1080322, Joshua Street, Murwillumbah.

The subject application seeks to separate the childcare centre from the remaining portion of the site which is vacant 'farmland', as well as construct a dwelling within the 1(b2) portion of the site, under Clause 14 of the Tweed Local Environmental Plan 2000 (TLEP2000, Development Near Zone Boundaries).

Lot 22 has an area of 6.7 hectares and is covered by the 1(b2) Agricultural Protection zone as well as the 2(c) Urban Expansion zone under the (TLEP2000).

The applicant has submitted a SEPP 1 Objection to address the shortfall in the minimum allotment size permissible in the 1 (b2) zone under the TLEP 2000. In this regard, Council has received concurrence from the Department of Planning to proceed with determining the application.

The application would result in the following lot sizes:

- Proposed Lot 23 (contains the childcare centre) – 2319m<sup>2</sup>.
- Proposed Lot 24 (vacant farmland, containing an existing garage) – 6.463 hectares to contain a new dwelling (inclusive of an area of 450m<sup>2</sup> within the 2(c) Urban Expansion zone though this area cannot accommodate a dwelling).

Assessment of the application raised a number of issues related to the siting of the dwelling (including noise and odour impacts) which have now been resolved though it is noted that this required the applicant to seek legal advice and detailed specialist reports, as well as amend the application (and pay additional fees) to incorporate the construction of a dwelling such that Clause 14 of the LEP was able to be utilised. A last outstanding issue relates to the preparation of a Habitat Restoration Plan for a 50m riparian buffer to the Rous River (which forms the northern boundary of the site) and dedication of the buffer to Council as per the provisions of DCP A5.

Recent discussions indicate that the applicant is amenable to the dedication of the land to Council, however the additional expense of the plan preparation itself is not agreed to (see excerpt below):

*"Our client has reviewed Council's request regarding the riparian boundary (Rous River frontage) buffer of 50m dedication to Council at no cost, and advise that they are willing to accept this condition.*

*However, with regard to the preparation of the Habitat Restoration Plan (HRP) for the riparian buffer our client would prefer that Council attend to this matter based on the following reasons:*

- 1. The scale of the subdivision being extremely minor in nature and cost prohibited to the development;*
- 2. It is considered that our client is being extremely generous in the dedication of buffer land to Council at no cost, which equates to approximately 3ha of land.*
- 3. The additional expense in multiple acoustic reports our client has had to endure, due to the faulty ventilation fan contain within the Council owned and maintained sewer pump station;*
- 4. The additional expense in solicitors fees our client has had to pay in the clarification of development near zone boundaries clause clarification;*
- 5. The addition of the buffer dedication to Council will now require the survey of the riparian boundary as part of the Deposited Survey Plan, which again will add to the cost of the subdivision.*
- 6. The said buffer is within close proximity to the Riva View Estate to the east and Council preparation of the HRP could ensure consistency and connectivity of the riparian buffers, which ultimately would be the better outcome for the environment.*

*Therefore, our client would respectfully prefer that Council would consider attending to this Habitat Restoration Plan”.*

Whilst the above matters relating to cost are noted, Council’s Ecological and Natural Resources staff have expressed a strong desire for riparian connectivity in this location which can link up with successful restoration which is currently underway at the adjacent RivaVue site. It is also noted that in most cases, Council would also require the applicant to carry out the works as identified by the Habitat Restoration Plan. In this instance, preparation of the plan and dedication of the land ONLY has been requested, acknowledging that the subdivision is minor and saving the applicant additional expense in carrying out the works which could likely be funded by Council’s Natural Resources Unit through grant funding.

As such, Council planning staff remain of the opinion that the two conditions requiring preparation of a Habitat Restoration Plan and dedication of the 50m buffer to Council should remain as follows:

#### General

1. In accordance with Tweed DCP A5, the applicant must dedicate, at no cost to Council, the riparian buffer 50m wide fronting the Rous River.

#### Prior to Subdivision Certificate

2. A Habitat Restoration Plan for the riparian buffer must be prepared by a person qualified in Bush Regeneration or Ecological Restoration and submitted to Director Planning and Regulation or delegate for approval prior to issue of the subdivision certificate. The plan shall include:
  - i. an appraisal of the present condition of remnant vegetation;
  - ii. a plan overlaying an aerial photograph of the site which divides the regrowth into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate;
  - iii. a management strategy for each of the zones, including the approach, methods and techniques to be used for vegetation restoration;

- iv. a schedule of native plant species to be used for planting;
- v. a program of works to be undertaken to remove invasive weed species.

The recommendation reflects the above, noting that an additional option has also been supplied should Council wish to remove the above conditions (though this option is not favoured by Council planning or Ecological staff).

The application is being reported to Council due to the extent of the SEPP 1 Objection (i.e.: greater than 10% variation from the prescribed 40ha control for the 1(b2) zone).

**RECOMMENDATION:**

**That Development Application DA10/0666 for a two (2) lot subdivision at Lot 22 DP 1080322, Joshua Street Murwillumbah be approved in accordance with Option 1 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.

Title	Prepared by	Dated
Proposed Subdivision Plan 18444D	B & P Surveys	3.9.2010
Location Plan 18445D, Revision B	B & P Surveys	23.8.2011
Site Plan (11-308, Sheet 1 of 5) REV B (as amended in red)	ThreeSixtyDegrees (Aust) Pty Ltd	31.08.2011
Floor Plan (11-308, Sheet 2 of 5) REV B (as amended in red)	ThreeSixtyDegrees (Aust) Pty Ltd	31.08.2011
Elevation Plan (11-308, Sheet 3 of 5) REV B	ThreeSixtyDegrees (Aust) Pty Ltd	31.08.2011
Section Plan (11-308, Sheet 4 of 5) REV B	ThreeSixtyDegrees (Aust) Pty Ltd	31.08.2011

[GEN0005]

2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

4. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then application shall be made to Council's Community and Natural Resources Division for approval of such works.

[GEN0155]

5. Council advises that the land is subject to inundation in a 1 in 100 year event to the design flood level of RL 4.9m AHD.

[GEN0195]

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. The subdivision is to be completed and evidence of registration of the plan of subdivision is to be provided, prior to the issue of a construction certificate for the dwelling.

[GENNS01]

8. The proposed acoustic barrier, to be constructed on the boundary between the existing child care centre and the proposed dwelling, is not a requirement of the subdivision. This will need to be erected in conjunction with construction of the dwelling – although it can be erected any time prior.

[GENNS02]

9. In accordance with Tweed DCP A5, the applicant must dedicate, at no cost to Council, the riparian buffer 50m wide fronting the Rous River.

[GENNS03]

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

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

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

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

[PCC0275]

11. 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]



12. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate for subdivision civil works, 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]

13. 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 to create the nominated driveway and manoeuvring area for Lot 24, is to be undertaken as part of the subdivision civil works, and shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with the construction certificate application for the subdivision civil works.

[PCC0485]

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 for the dwelling. Such plan must be consistent with the landscaping provisions of Council's Development Control Plan Section A1 - Residential Development Code (Part A - Single Dwelling Houses).

[PCC0585]

15. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:
- (a) Design flood level of RL 4.9m AHD.
  - (b) The minimum habitable floor level for the building is RL 5.4m AHD.
  - (c) All building materials used below Council's design flood level must not be susceptible to water damage.
  - (d) 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.

[PCC0705]

16. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

**OTHER**

- (a) Bulk earthworks / site filling: for construction of the nominated driveway access and manoeuvring area for Lot 24.

- (b) **Sewer**: the provision of sewer main infrastructure to service Lot 24. In this regard the applicant is advised to investigate the most appropriate of the following options:
- A sideline junction from the existing sewer main which is within adjoining Lot 11 DP 793985. Adjoining owner's consent would be required to facilitate this work, as this section of sewer infrastructure is not covered by an easement. This connection would require a lengthy internal house service line to reach the proposed dwelling location, but would likely have lower construction and restoration costs. The depth of the existing sewer line (if too shallow) may however make this option unfeasible.
  - Construction of a new section of sewer main infrastructure (dead end line), coming from the manhole near the front of the child care buildings (BP/3) and terminating within the access handle for Lot 24. This would be much closer to the dwelling site but construction and restoration costs (due to trenching across the car park area) are likely to be higher than the previous option. Once again however, the depth of the existing manhole (if too shallow) may make this option unfeasible.
  - A further alternative, if previously mentioned existing invert levels are prohibitive, is to construct a new short dead-end line directly from manhole BP/1 (immediately upstream of the existing sewer pump station) on adjoining Lot 20 DP 873920. This would require adjoining owner's consent.
- (c) **Water**: extension of the existing water main infrastructure in Joshua Street to service Lot 24.

[PCC0875]

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

(a) copies of compliance certificates relied upon

(b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:

- earthworks
- stormwater drainage
- water supply works
- sewerage works
- landscaping works (for fill batters)
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

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

[PCC0985]

18. **A construction certificate application (for dwelling construction) 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.**

**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.**

[PCC1145]

19. **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]

20. **Prior to issue of the construction certificate the applicant shall provide certification from a suitably qualified acoustic consultant stating the design of the dwelling has been undertaken in accordance with the recommendations of the Noise Impact Assessment prepared by CRG Traffic & Acoustics Pty Ltd dated 1 August 2011 (CRGref: 11057a Letter 1\_08\_11), resubmitted to Council 3 November 2011 with acoustic barrier location updated.**

[PCCNS01]

21. **Prior to the issue of a construction certificate for the dwelling, the depicted encroachment of the dwelling in to the existing 3m wide Easement to Drain Water is to be addressed by either of the three (3) options nominated hereunder. It is noted that the rear stairs and eave overhang (north-western corner) encroach in to the easement.**

- (i) **Council's preferred option is to relocate the dwelling approximately 0.5m to the east, to ensure no part of the structure will encroach in to the easement.**

- (ii) Retain the dwelling in its nominated location, but relocate the stairs to the eastern side of the rear landing to avoid encroaching in to the easement. For this option Council raises no objections to the encroachment of the eave overhang in to the easement area.
- (iii) Retain the dwelling in its nominated location, but firstly physically locate and mark any existing stormwater pipes and pits within the easement, and ensure the proposed stairs will be a minimum of 1m clear of any such stormwater infrastructure.

The applicant is however made aware of the risk that Council reserves the right to remove any such obstructions from within the easement, if at any time in the future any repair or maintenance work etc needs to be undertaken within the easement, and that no recourse or compensation will be available. The owner and/or occupier may have little or no notice of such actions, if emergency works need to be undertaken.

For this option Council raises no objections to the encroachment of the eave overhang in to the easement area.

[PCCNS02]

- 22. Prior to the issue of a construction certificate for the dwelling, the design and particularly the depth of any concrete edge beam slab foundations must take into consideration the dwelling's location in a high flow (flood) area. The ground level interface with the slab foundations will be prone to high erosion potential and appropriate safeguards are to be accordingly incorporated in to the foundation design.

[PCCNS03]

- 23. Detailed design of the acoustic barrier shall be submitted to Council's General Manager or delegate for approval prior to issue of a Construction Certificate for the dwelling. The design shall include a full schedule of colours, materials and landscaping to soften any visual impact of the fence and must be consistent with the recommendations of the Noise Impact Assessment prepared by CRG Traffic & Acoustics Pty Ltd dated 1 August 2011 (re-submitted to Council 3 November 2011 with acoustic barrier location updated).
- 24. Prior to issue of Construction Certificate for the dwelling, a comprehensive detailed, scaled site plan shall be submitted to Council's General Manager or delegate for approval, showing the accurate position of the dwelling, driveway and acoustic fence on the site.

[PCCNS04]

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

- 25. 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]
- 26. Prior to the commencement of subdivision civil 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]

27. 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]

28. 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]

29. 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]

30. 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]

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

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

[PCW0375]

32. 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) to assume the responsibility for certifying the compliance of the completed public infrastructure, 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 civil works.

For subdivisions creating 5 new allotments or less, AND the value of new public infrastructure is less than \$30,000, then the SWAC may be substituted for an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with NPER registration.

(iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,

(iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and

(c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

33. 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]

34. 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]

35. 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

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

[DUR0005]

37. 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]

38. 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]

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

[DUR0245]

40. 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]

41. 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]

42. 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]

43. 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]

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

[DUR0445]

45. 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 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 and to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

46. 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]

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

[DUR0815]

48. 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]

49. 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]

50. 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]

51. 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]

52. 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]

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

[DUR1045]

54. A certificate is to be submitted by a Registered Surveyor certifying that all habitable floor areas are constructed above RL 5.4 metres AHD. Certification of those levels by a registered surveyor must be submitted to the Principal Certifying Authority prior to proceedings past floor level to ensure that the floor is above flood level.

[DUR1365]

55. Subject to the requirements of the local electricity authority, all electrical wiring, power 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 shall be provided with earth leakage devices.

[DUR1415]

56. 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]

57. 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/access works and earthworks**

- (a) Pre-construction commencement erosion and sedimentation control measures**
- (b) Completion of earthworks**
- (c) Final inspections - on maintenance**

**Water Reticulation, Sewer Reticulation, Drainage**

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

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

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

[DUR1895]

- 58. 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]

- 59. 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]

- 60. 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]

**61. 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]

- 62. 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]

- 63. 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]

- 64. The construction of the dwelling shall be undertaken in accordance with the recommendations of the Noise Impact Assessment prepared by CRG Traffic & Acoustics Pty Ltd dated 1 August 2011 (CRGref: 11057a Letter 1\_08\_11), resubmitted to Council 3 November 2011 with acoustic barrier location updated.**

[DURNS01]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

- 65. 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]

- 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 issue of the occupation certificate the applicant shall provide certification from a suitably qualified acoustic consultant stating the construction of the dwelling has been undertaken in accordance with the recommendations of the Noise Impact Assessment prepared by CRG Traffic & Acoustics Pty Ltd dated 1 August 2011 (CRGref: 11057a Letter 1\_08\_11), resubmitted to Council 3 November 2011 with acoustic barrier location updated.

[POCNS01]

## USE

70. 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]

71. 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]

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]

The building is to be used for single dwelling purposes only.

[USE0505]

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

[USE0735]

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

75. 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]

76. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP2:	1.2 ET @ \$11571 per ET	\$13885.20
Sewer Murwillumbah:	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.

[PSC0165]

78. **Section 94 Contributions**

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the

Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$1166 per Trips \$7579

(\$1060 base rate + \$106 indexation)

S94 Plan No. 4

Sector9\_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 issue of a construction certificate or subdivision certificate, whichever occurs first. 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)

$\text{\$Unit}$  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

(b) Open Space (Casual):

1 ET @ \$526 per ET \$526

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

S94 Plan No. 5

(c) Open Space (Structured):

1 ET @ \$602 per ET \$602

	<b>(\$575 base rate + \$27 indexation)</b>	
	<b>S94 Plan No. 5</b>	
<b>(d) Shirewide Library Facilities:</b>		
	<b>1 ET @ \$792 per ET</b>	<b>\$792</b>
	<b>(\$792 base rate + \$0 indexation)</b>	
	<b>S94 Plan No. 11</b>	
<b>(e) Bus Shelters:</b>		
	<b>1 ET @ \$60 per ET</b>	<b>\$60</b>
	<b>(\$60 base rate + \$0 indexation)</b>	
	<b>S94 Plan No. 12</b>	
<b>(f) Eviron Cemetery:</b>		
	<b>1 ET @ \$120 per ET</b>	<b>\$120</b>
	<b>(\$101 base rate + \$19 indexation)</b>	
	<b>S94 Plan No. 13</b>	
<b>(g) Community Facilities (Tweed Coast - North)</b>		
	<b>1 ET @ \$1325 per ET</b>	<b>\$1325</b>
	<b>(\$1305.6 base rate + \$19.4000000000001 indexation)</b>	
	<b>S94 Plan No. 15</b>	
<b>(h) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>		
	<b>1 ET @ \$1772.82 per ET</b>	<b>\$1772.82</b>
	<b>(\$1759.9 base rate + \$12.9199999999998 indexation)</b>	
	<b>S94 Plan No. 18</b>	
<b>(i) Cycleways:</b>		
	<b>1 ET @ \$451 per ET</b>	<b>\$451</b>
	<b>(\$447 base rate + \$4 indexation)</b>	
	<b>S94 Plan No. 22</b>	
<b>(j) Regional Open Space (Casual)</b>		
	<b>1 ET @ \$1042 per ET</b>	<b>\$1042</b>
	<b>(\$1031 base rate + \$11 indexation)</b>	
	<b>S94 Plan No. 26</b>	
<b>(k) Regional Open Space (Structured):</b>		
	<b>1 ET @ \$3656 per ET</b>	<b>\$3656</b>
	<b>(\$3619 base rate + \$37 indexation)</b>	
	<b>S94 Plan No. 26</b>	

[PSC0175]



**79. Section 94 Contributions**

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

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.

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 the subdivision 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

[PSC0185]

**80. 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]

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

The submission shall include copies of all undertaken test results.

[PSC0395]

82. 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]

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

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

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

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

[PSC0735]

84. A Subdivision Certificate will not be issued by the General Manager until such time as all relevant conditions of this Development Consent, relating to the proposed subdivision, have been complied with.

[PSC0825]

85. 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) Easement to Drain Water – over the existing stormwater pipe and pit that comes from an existing kerb inlet pit at the northern end of Joshua Street, and traverses the SE corner of the site.

Also a check of the existing child care centre's stormwater discharge line(s) will be necessary, to determine if any Drainage Easements will be required over any stormwater line that crosses into the adjoining lot.

- (c) An Easement to Drain Sewage – over any extension of Council's existing sewer infrastructure, which would be necessary to service Lot 24.

- (d) Right of Way over the access handle of Lot 24, favouring Lot 23 (for current use, but for future emergency and service vehicle egress).
- (e) A (temporary) Right of Way over the existing ingress driveway (Lot 23) favouring Lot 24.

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]

- 86. 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]

- 87. 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]

- 88. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-
  - (a) Compliance Certificate - Water Reticulation
  - (b) Compliance Certificate - Sewerage Reticulation
  - (c) Compliance Certificate - Bulk earthworks / site filling

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]

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

[PSC0925]

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

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

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

[PSC1065]

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

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

[PSC1115]

92. 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]

93. **Electricity**

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

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

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

[PSC1185]

94. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the Developer is required (at the Developer's expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO's Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services.

[PSC1205]

95. A Habitat Restoration Plan for the riparian buffer must be prepared by a person qualified in Bush Regeneration or Ecological Restoration and submitted to the General Manager or delegate for approval prior to issue of the subdivision certificate. The plan shall include:
- i. an appraisal of the present condition of remnant vegetation;
  - ii. a plan overlaying an aerial photograph of the site which divides the regrowth into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate;
  - iii. a management strategy for each of the zones, including the approach, methods and techniques to be used for vegetation restoration;
  - iv. a schedule of native plant species to be used for planting;
  - v. a program of works to be undertaken to remove invasive weed species.

[PSCNS01]

## REPORT:

**Applicant:** Ms CLA Bayliss  
**Owner:** Ms CLA Bayliss  
**Location:** Lot 22 DP 1080322, Joshua Street, Murwillumbah  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$180,000 (Dwelling)

## BACKGROUND:

On 9 November 2003, consent was granted for the development of a childcare centre and an attached dual occupancy on Lot 12 DP 793985 (the parent lot). Lot 12 was subdivided in 2004 (via DA04/0761) to separate the childcare centre and the dual occupancy. This subdivision created Lots 21 and 22 in DP 1080322.

The subject application relates to Lot 22 and seeks to separate the childcare centre from the remaining portion of the site which is vacant 'farmland', and construct a dwelling on the residual allotment.

A Section 96 application relating to the childcare centre (D93/0314.02) was approved in 2010 which extended the opening hours (6.30am – 6.30pm) and increased the number of children at the centre (from 58 to 63). This application has no bearing on the subject application for subdivision.

Lot 22 has an area of 6.7 hectares and is covered by the 1(b2) Agricultural Protection zone as well as the 2(c) Urban Expansion zone under the Tweed Local Environmental Plan 2000 (TLEP2000). The 2(c) portion of the site houses an approved child care centre and garage.

The Department of Planning have issued their concurrence (necessary as one of the lots to be created is beneath the 40ha requirement under the TLEP2000) and Council's Environmental Health Officer and Development Assessment Engineer have reviewed the application, returning no objections.

## PROPOSAL

Consent is sought for a two lot subdivision to create the following lots:

- Lot 23 – 2319m<sup>2</sup>, zoned 2(c) Urban Expansion.
- Lot 24 – 6.463 hectares, zoned 2(c) Urban Expansion and 1(b2) Agricultural Protection. Approximately 450m<sup>2</sup> of proposed Lot 24 will remain under the 2(c) Urban Expansion zoning (located at the rear of the childcare centre).

The applicant originally submitted plans showing a dwelling envelope (envelope only, no construction) within the 2(c) portion of the site (which affords the site a dwelling entitlement). This was investigated by Council staff with the site found to be unsuitable for a dwelling (due to impacts from noise and odour – see further detail later in report).

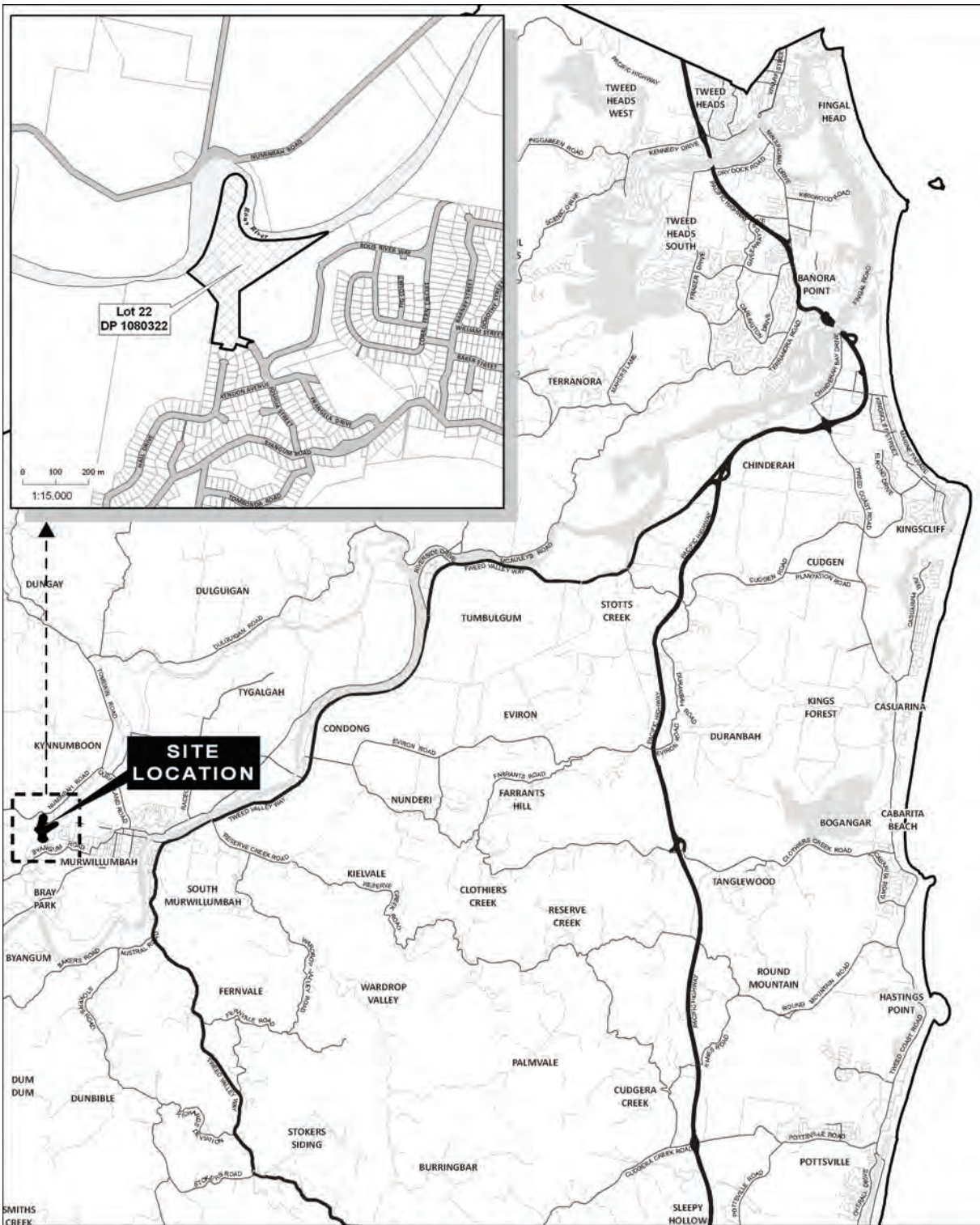
Additional detail was then lodged by the applicant to effect the construction of a dwelling under Clause 14 of the Tweed Local Environmental Plan (Development Near Zone Boundaries) within the 1(b2) zone, 50m from the 2(c) zone boundary. Use of Clause 14 is necessary as sufficient area does not exist within the 1(b2) portion of the site for a dwelling due to the minimum lot size not being met.

The proposed dwelling is of single storey, standard brick and tile construction, comprised of four bedrooms, single garage, kitchen, dining, living and bathroom (including ensuite off main bedroom). The driveway requires up to 2m of fill in a small section and to comply with acoustic

requirements, an acoustic fence is also required to be constructed between the proposed dwelling and the childcare centre.

This fence shall be 1.8m high, constructed of either lapped timber, masonry, concrete panels or similar materials (as detailed within the acoustic report). Further information on the fence is supplied later in this report.

**SITE DIAGRAM:**



**Locality Plan**  
 Lot 22 DP 1080322  
 Joshua Street, 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 declines all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dig before you dig" enquiry must be made by calling 8100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 28 November, 2011  
 © Land and Property Management Authority (LPMA) & Tweed Shire Council.  
 Boundaries shown should be considered approximate only.

0 1 2 Km  
 1:110,000 @ A4 Portrait  
 COPY ONLY - NOT CERTIFIED



Map is over the Universal Transverse Mercator (UTM) datum, GDA94, located in the Eastern Hemisphere. Map is of Australia, Zone 56.

Civic and Cultural Centre  
 3 Tumbulghum Road  
 Murwillumbah NSW 2484

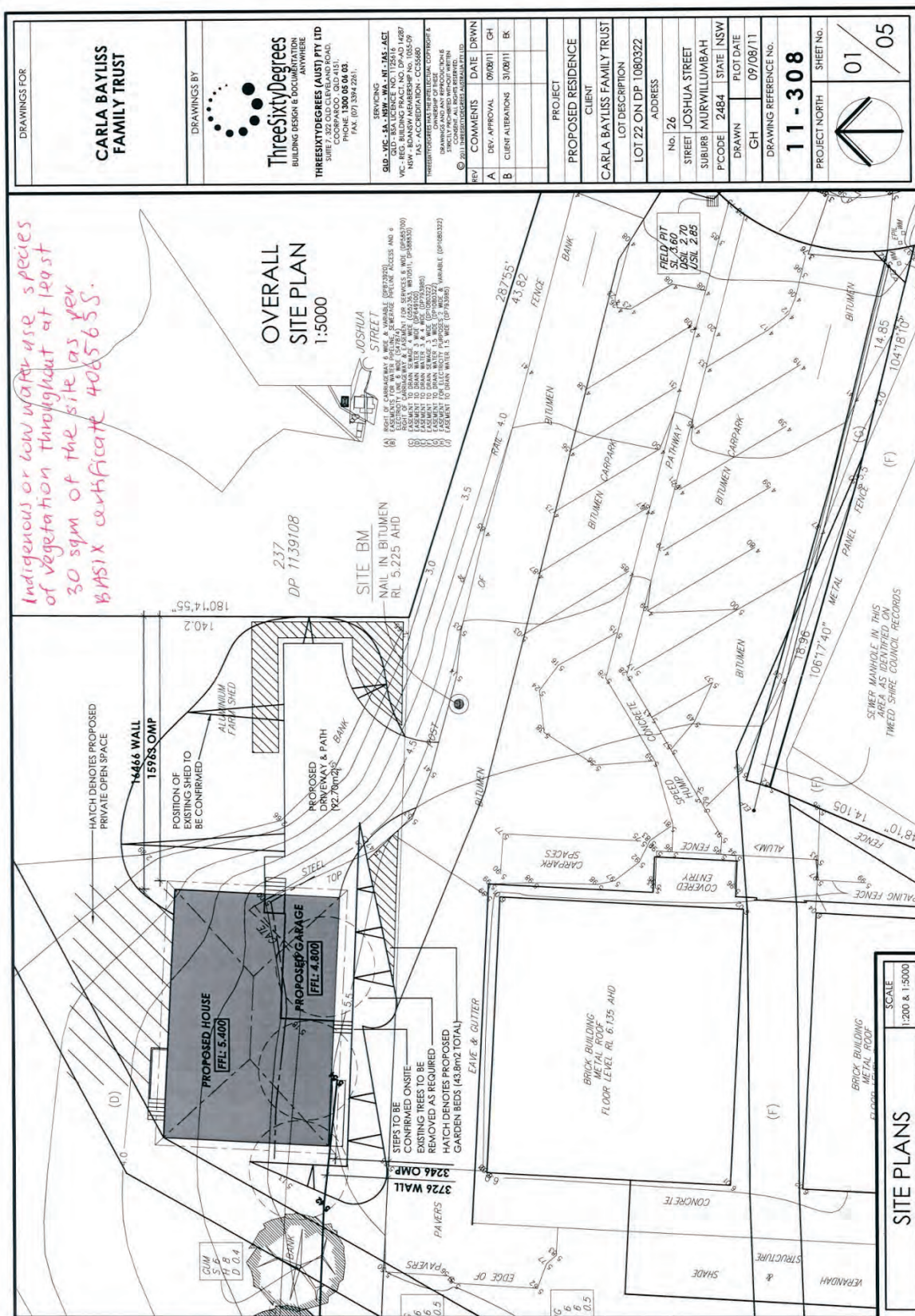
PO Box 816  
 Murwillumbah NSW 2484  
 T | (02) 6670 2400 | 1300 292 872  
 F | (02) 6670 2429  
 W | www.tweed.nsw.gov.au  
 E | planningref@tweed.nsw.gov.au

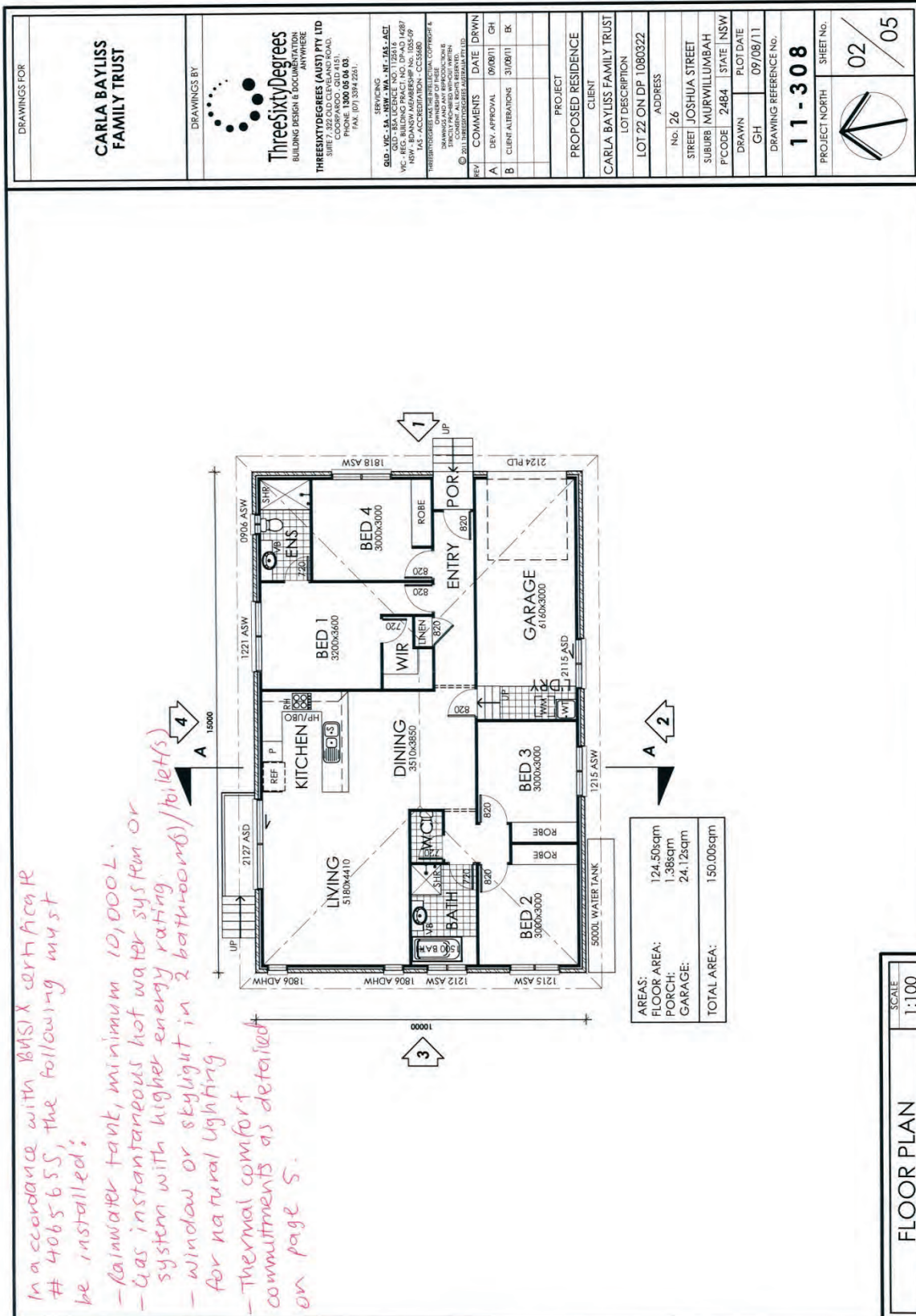


**TWEED**  
 SHIRE COUNCIL



# DEVELOPMENT PLANS:





In accordance with BASIX certificate # 4065655, the following must be installed:

- Rainwater tank, minimum 10,000L.
- Gas instantaneous hot water system or system with higher energy rating.
- Window or skylight in 2 bathrooms/toilets for natural lighting.
- Thermal comfort commitments as detailed on page 5.

DRAWINGS FOR

**CARLA BAYLISS FAMILY TRUST**

DRAWINGS BY

**ThreesixtyDegrees**  
 BUILDING DESIGN & DOCUMENTATION ANYWHERE

THREESIXTYDEGREES (AUST) PTY LTD  
 3/111 COOPERAROCK - GPO 4151,  
 SYDNEY NSW 1500  
 PHONE: 1300 05 04 03,  
 FAX: (07) 3394 2261

SID - VIC - SA - NSW - WA - NT - TAS - ACT  
 QLD - QLD - NT - ACT - TAS - VIC - NSW - SA - WA - NT - TAS - ACT  
 NSW - EDASNSW MEMBERSHIP No. 1035-09  
 TAS - ACCREDITATION - CC53880  
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REV	COMMENTS	DATE	DRWN
A	REV. APPROVAL	09/08/11	GH
B	CLIENT ALTERATIONS	30/08/11	ER

PROJECT: PROPOSED RESIDENCE  
 CLIENT: CARLA BAYLISS FAMILY TRUST


LOT DESCRIPTION: LOT 22 ON DP 1080322  
 ADDRESS: No. 726  
 STREET: JOSHUA STREET  
 SUBURB: MURWILLUMBAH  
 PCODE: 2484 STATE: NSW  
 DRAWN: GH PLOT DATE: 09/08/11  
 DRAWING REFERENCE NO.: 11-308

PROJECT NORTH SHEET NO. 02 / 05

DRAWINGS FOR

**CARLA BAYLISS FAMILY TRUST**

DRAWINGS BY



**ThreeSixtyDegrees**  
BUILDING DESIGN & DOCUMENTATION ANYWHERE

THREESIXTYDEGREES (AUST) PTY LTD  
SUITE 7, 302 OLD CLEVELAND ROAD,  
MURWILLUMBAH NSW 2484  
PHONE 1300 65 04 03,  
FAX (07) 3394 2261.

**REV COMMENTS DATE DRAWN**

A DEV. APPROVAL 09/08/11 GH

B CLIENT ALTERATIONS 31/08/11 EK

**PROPOSED RESIDENCE**

**CLIENT**

CARLA BAYLISS FAMILY TRUST

**LOT DESCRIPTION**

LOT 22 ON DP 1080322

**ADDRESS**

No. 126  
STREET JOSHUA STREET  
SUBURB MURWILLUMBAH  
PCODE 2484 STATE NSW  
DRAWN PLOT DATE  
GH 09/08/11  
DRAWING REFERENCE NO.

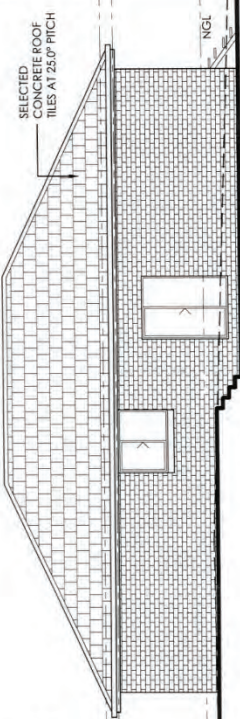
**PROJECT**

11-308

**SHEET No.**

03 / 05

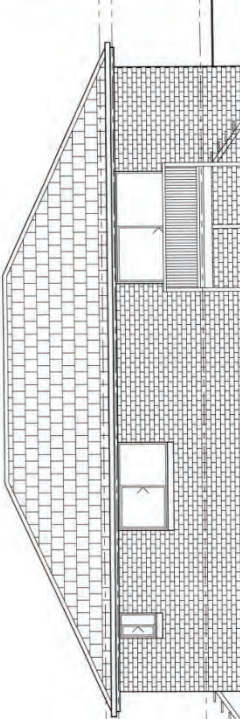


SELECTED CONCRETE ROOF TILES AT 25.0° PITCH

COLORBOND METAL GUTTER & FASCIA SYSTEM

FOR COATED ALUM. SLIDING WINDOW & DOORS

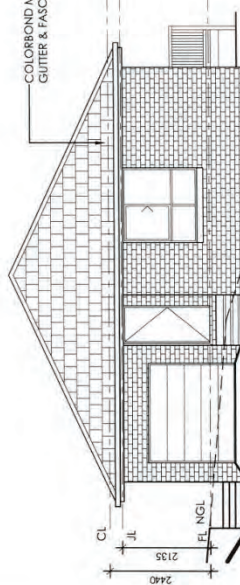
1 | ELEVATION



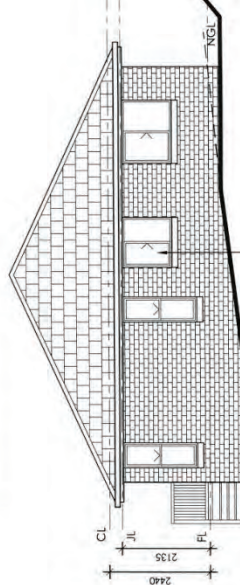
SELECTED FACE BRICKWORK

2 | ELEVATION



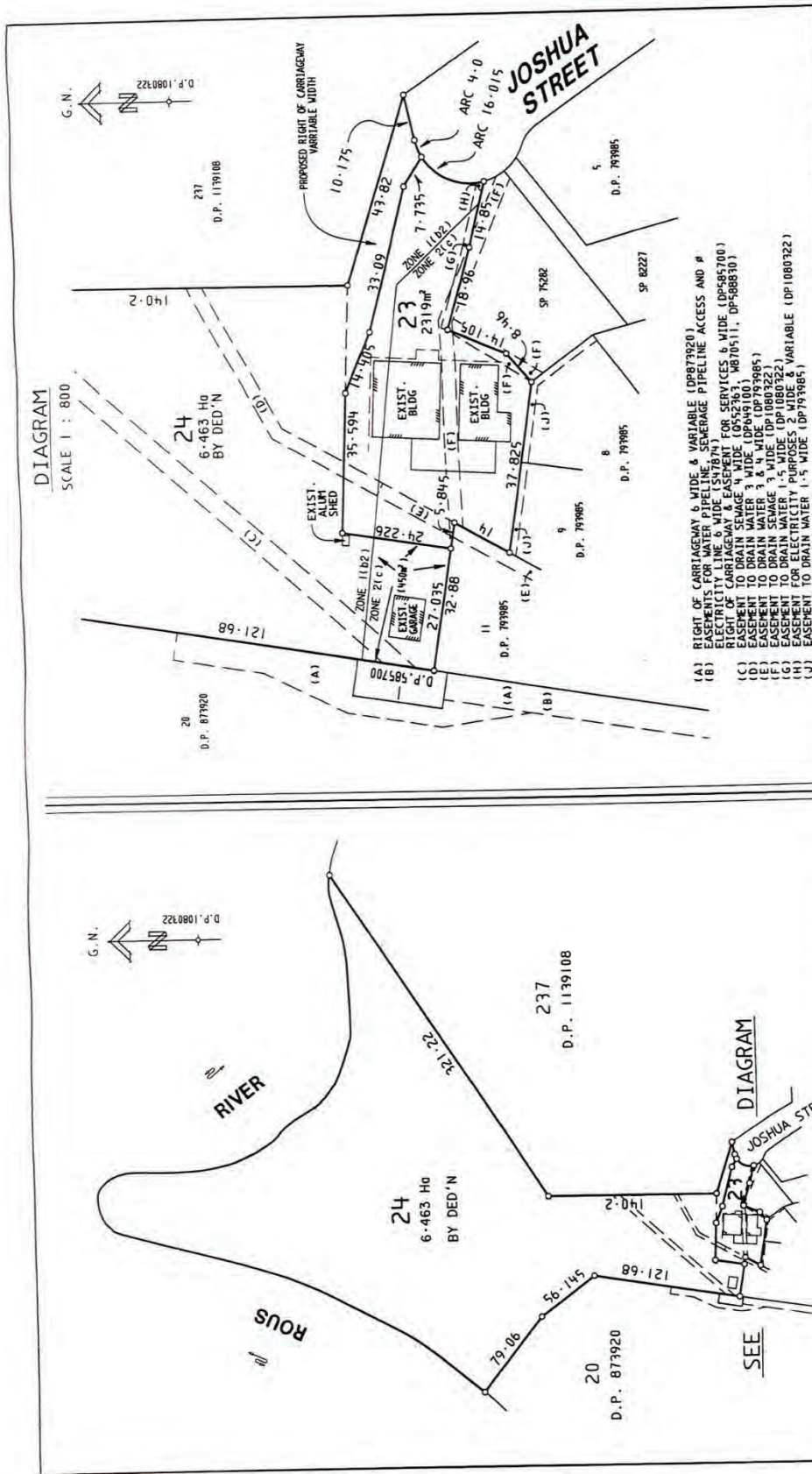
3 | ELEVATION



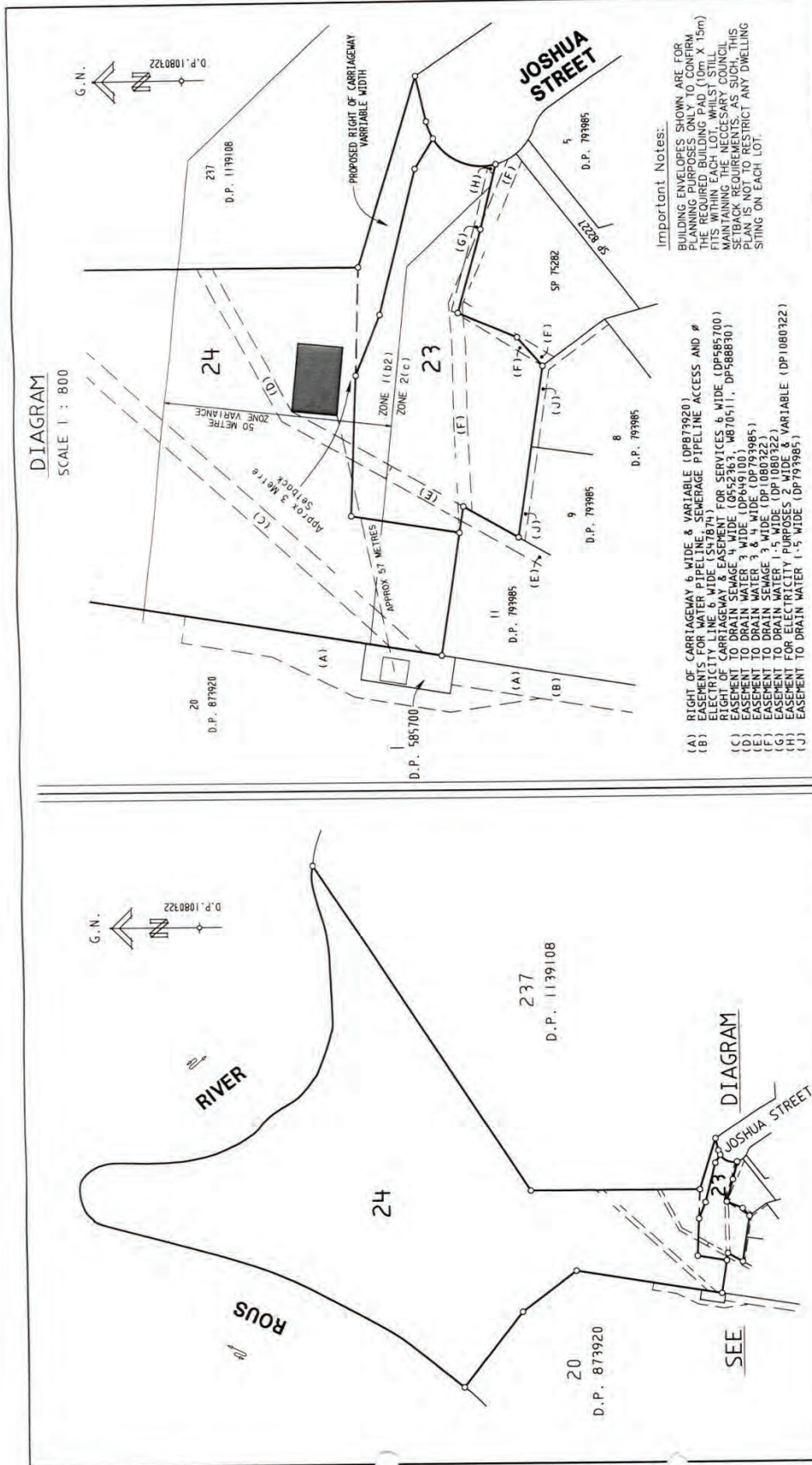
4 | ELEVATION

ELEVATIONS

SCALE 1:100



<p><b>Important Notes:</b> (THIS NOTE IS AN INTEGRAL PART OF THIS PLAN)</p> <p>THE PROPOSED BOUNDARIES AS SHOWN HEREON ARE PRELIMINARY ONLY AND ARE SUBJECT TO FINAL DESIGN, LOCAL AUTHORITY APPROVAL AND REGISTRATION IN THE LAND AND PROPERTY MANAGEMENT AUTHORITY.</p> <p>FOR LEVEL AND DETAIL INFORMATION SEE B &amp; P SURVEY'S DRAWING NUMBER 183658</p> <p>ROUS RIVER BOUNDARY HAS BEEN DIGITISED FROM SUBJECT DEPOSITED PLAN 1080322 AND AS SUCH IS TO PLOTTING ACCURACY ONLY</p>	
<p>Revision</p> <p>Registered Proprietor</p> <p><b>CATHARINA LEONARDA AGNES BAYLISS</b></p>	<p>Chkd</p>
<p><b>PROPOSED SUBDIVISION</b></p> <p>Of Lot 22 in DP 1080322</p> <p>26 Joshua Street, Murwillumbah</p> <p>Parish of MURWILLUMBAH County of ROUS</p> <p>J:\mbohn\Jobs\31637\18444D.pro</p> <p>Scale 1 : 3000 @ A3</p>	
<p>Level Bottom</p> <p>F.Bk</p> <p>Level Top</p> <p>Level Bottom</p> <p>F.Bk</p> <p>Level Top</p>	<p>Level Bottom</p> <p>F.Bk</p> <p>Level Top</p> <p>Level Bottom</p> <p>F.Bk</p> <p>Level Top</p>
<p>Ref. No.</p> <p>M31637</p>	<p>Date</p> <p>03-08-2010</p>
<p>Drawing No./Size</p> <p>18444 D</p>	<p>Rev.</p>
<p><b>B &amp; P SURVEYS CONSULTING SURVEYORS</b></p> <p>ABN 55 00197236</p> <p>30 Beryl Street, 2485 Auldsville Tweed Heads, NSW 15536 3701</p> <p>Telephone (07) 55336 3701</p> <p>Mobile (07) 55336 3701</p> <p>Email: tweed@bpsurveys.com.au</p> <p>Webpage: www.bpsurveys.com.au</p> <p>Offices Also At: Surfers Paradise Murwillumbah Ph. (07) 55330499 Ph. (02) 66721924</p>	



**Important Notes:**  
BUILDING ENVELOPES SHOWN ARE FOR PLANNING PURPOSES ONLY TO CONFIRM THE REQUIRED BUILDING PAD (10m X 15m) FITS WITHIN EACH LOT, WHICH IS STILL SUBJECT TO ALL LOCAL COUNCIL MAIN TAINING REQUIREMENTS AS SUCH, THIS PLAN IS NOT TO RESTRICT ANY DWELLING SITING ON EACH LOT.

- (A) RIGHT OF CARRIAGEWAY 6 WIDE & VARIABLE (DP873920)
- (B) EASEMENTS FOR WATER PIPELINE & SEWERAGE PIPELINE ACCESS AND #
- (C) EASEMENT FOR CARRIAGEWAY & EASEMENT FOR SERVICES 6 WIDE (DP585700)
- (D) EASEMENT TO DRAIN SEWAGE 4 WIDE (DP552363, W870511, DP588830)
- (E) EASEMENT TO DRAIN WATER 3 WIDE (DP649100)
- (F) EASEMENT TO DRAIN WATER 3 & 4 WIDE (DP793985)
- (G) EASEMENT TO DRAIN SEWAGE 3 WIDE (DP1080322)
- (H) EASEMENT FOR ELECTRICITY PURPOSES 2 WIDE & VARIABLE (DP1080322)
- (I) EASEMENT TO DRAIN WATER 1.5 WIDE (DP793985)
- (J) EASEMENT TO DRAIN WATER 1.5 WIDE (DP793985)

**B & P SURVEYS**  
CONSULTING SURVEYORS  
ABN 55 0017236  
30 Beryl Street  
Tweed Heads, NSW, 2485, Australia  
Telephone (07) 5536 3701  
Email: tweed@bpsurveys.com.au  
Webpage: www.bpsurveys.com.au  
Offices Also At: Surfers Paradise, Murwillumbah  
Ph: (07) 55390499 Ph: (02) 6672 1924

**LOCATION PLAN**  
Showing Indicative Building Envelope  
Lot 22 in DP 1080322  
26 Joshua Street, Murwillumbah  
Parish of MURWILLUMBAH County of ROUS  
J:\mbah\Jobs\31637\18445D-B.prio  
Level Datum  
Scale 1 : 3000 @ A3  
Drawn Chk'd  
L.B.K. -  
F.B.K. -  
M31637 23/8/11 18445 D B

**Important Notes:** (THIS NOTE IS AN INTEGRAL PART OF THIS PLAN)  
THE PROPOSED BOUNDARIES AS SHOWN HEREON ARE PRELIMINARY ONLY AND ARE SUBJECT TO FINAL DESIGN, LOCAL AUTHORITY APPROVAL AND REGISTRATION IN THE LAND AND PROPERTY MANAGEMENT AUTHORITY.  
ROUS RIVER BOUNDARY HAS BEEN DIGITISED FROM SUBJECT DEPOSITED PLAN 1080322 AND AS SUCH IS TO PLOTTING ACCURACY ONLY.

NOTES INDICATIVE 10m X 15m BUILDING PAD AS REQUIRED BY TWEED SHIRE COUNCIL

Rev B - Altered Building Location - 23/8/11  
Rev A - Altered Building Location - 31/5/11  
Revision  
Client: THE CARLA BAYLISS FAMILY TRUST  
Chk'd

**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 two lot subdivision and dwelling construction is consistent with the aims of the Tweed Local Environmental Plan.

Clause 5 - Ecologically Sustainable Development

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

Clause 8 – Consent Considerations

The subject site is zoned 1(b2) Agricultural Protection and 2(c) Urban Expansion.

Dwelling construction was originally sought in the 2(c) zone however this site was found to be unsuitable due to unacceptable noise and odour impacts for any future residents.

Dwelling construction is now sought in the 1b(2) zone via Clause 14 of the Local Environmental Plan which permits prohibited development under certain circumstances when in proximity to a zone boundary.

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

Primary:

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

Secondary :

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

The proposed development relates to a predominantly agriculturally zoned allotment which is already below the prescribed minimum lot size (being 40ha). The proposed subdivision and dwelling construction will not further reduce the available agricultural land within this zone nor render it unusable or unviable for future agricultural use, with the proposed dwelling affording an opportunity for more intensive management of the site (which is presently poorly kept grassland). The development is considered to accord with the primary objective.

In terms of the secondary objective, the proposed subdivision and dwelling house are considered to be compatible with agricultural activities as, as discussed, neither development will prejudice the site from being used for agricultural pursuits. As such, the development is consistent with the secondary objective.

It is noted that the proposed subdivision and dwelling construction are considered consistent with the aims and objectives of the 2(c) zone (though dwelling construction is not sought in this zone) which allow for a greater density of development than that prescribed by the 1(b2) zone.

In terms of the other matters prescribed by Clause 8, the proposed development is consistent with the aims and objectives of the TLEP 2000 in general and is not anticipated (in either zone) to have an unacceptable cumulative impact given the unique circumstances of the site.

### Clause 11 – Zone Objectives

The subject site is zoned 1(b2) Agricultural Protection and 2(c) Urban Expansion.

Dwelling construction was originally sought in the 2(c) zone however this site was found to be unsuitable due to unacceptable noise and odour impacts for any future residents.

Dwelling construction is now sought in the 1b(2) zone via Clause 14 of the Local Environmental Plan which permits prohibited development under certain circumstances when in proximity to a zone boundary.

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

Primary:

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

Secondary:

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

The proposed development relates to a predominantly agriculturally zoned allotment which is already below the prescribed minimum lot size (being 40ha). The proposed subdivision and dwelling construction will not further reduce the available agricultural land within this zone nor render it unusable or unviable for future agricultural use, with the proposed dwelling affording an opportunity for more intensive management of the site (which is presently poorly kept grassland). The development is considered to accord with the primary objective.

In terms of the secondary objective, the proposed subdivision and dwelling house are considered to be compatible with agricultural activities as, as discussed, neither development will prejudice the site from being used for agricultural pursuits. As such, the development is consistent with the secondary objective.

With regard to the 2(c) zoning over a small portion of the subject site, the following objectives are noted:

Primary

- To identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.

Secondary

- To allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.
- To ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.
- To enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.

The development is consistent with the primary objective in that it proposes residential development in an area in proximity to other residential development with negligible perceived environmental impacts.

The development is generally consistent with the secondary objectives of the zone though no non residential development is proposed.

The development is consistent with Clause 11.

#### Clause 14 – Development Near Zone Boundaries

This clause provides flexibility where detailed investigation of a site and its surroundings indicates that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site.

The zone boundary between 2(c) and 1(b2) bisects the site.

The applicant contends that construction of a dwelling is possible in the 1(b2) zone under this clause as the previously sought dwelling site (in the 2(c) zone) is unsuitable because of unacceptable noise and odour impacts.

Clause 14 can be used to effect a prohibited development on land within 50m of a boundary between land zoned 2(c) and 1(b2). The submitted site plan shows the proposed dwelling located approximately 12m from the zone boundary which accords with this control.

The remaining part of the control requires the consent authority to be satisfied that *“the proposed development (i.e.: dwelling house) is more appropriate, due to planning, design, ownership, servicing or similar criteria”* than the development which would otherwise be allowed.

It is important to note that a dwelling house is permissible in the 2(c) zone located at the rear of the site. Investigation of this dwelling site has indicated that it is unsuitable for a dwelling, mainly because of its close proximity to a Council pump station which meant that noise criteria could not be satisfied without unreasonable restrictions on future occupants.

With this in mind, it is evident that the proposed subdivision will not result in any greater dwelling potential than that which is currently allowed (albeit with unreasonable restrictions). The purpose of the application in its entirety is to separate the management of the residual rural lands from the running of the childcare centre which is not working effectively at present and is evident from the unmanaged nature of the rural portion of the site. Approval of the application would enable improved management (and possibly more intensive agricultural use) of the site consistent with its zoning by enabling a resident or caretaker to live on site. This is considered to be a benefit of allowing the proposed dwelling under Clause 14 and provides support for the application on the basis of improved planning and site design. It is also relevant that the land parcel occurs in the 1(b2) Agricultural Protection zone (as opposed to the standard Rural 1a zone), and as such, it appears that a significant benefit could result from returning the site to agricultural use, contributing to sustainability and food security in the shire.

As such, the dwelling house is considered to be worthy of support, subject to conditions.

#### Clause 15 - Essential Services

Essential services are available to both allotments. Connection would be required for the dwelling on proposed Lot 24. Conditions have been applied, noting the more detailed comments supplied in this regard below.



#### Clause 16 - Height of Building

The proposed dwelling is single storey in design with a maximum height of 6.1m which is consistent with the 3 storey height limit of the site.

#### Clause 17 - Social Impact Assessment

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

#### Clause 19 – Subdivision Generally

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

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

This clause prescribes the 40ha minimum lot size for allotments zoned 1(b2). The applicant has submitted a SEPP 1 Objection to Clause 20 to enable the proposed subdivision to be undertaken. This is assessed further under SEPP 1 – Development Standards below.

The subdivision proposes to create Lot 24, predominantly zoned 1(b2), with an area of approximately 6.463 hectares. Approximately 450m<sup>2</sup> of the site will remain under the 2(c) Urban Expansion zoning (located at the rear of the childcare centre) which meets the minimum lot size for the erection of a dwelling.

Clause 20 aims to:

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

With regard to the above, it is noted that the subject allotment is already undersize and no further reduction is proposed by the subject application. As such, this application does not result in further fragmentation of agricultural land beyond the boundaries of the existing site. No physical changes are proposed which would impact the ecological or scenic values of the land, nor would the proposed subdivision impact on water quality in the Rous River (which is not Tweed's identified water supply).

The proposal is subsequently considered to be consistent with Clause 20, notwithstanding the SEPP 1 Objection which is addressed elsewhere in this report. In this instance, it is considered that strict application of the 40ha lot size control is unreasonable and the SEPP 1 Objection is worthy of support.

#### Clause 31 – Development Adjoining Waterbodies

The subject site is bounded by the Rous River to the North. Clause 31 aims to protect and enhance scenic quality, water quality, aquatic ecosystems, biodiversity and wildlife habitat and corridors.

The proposed development makes no physical change to the subject site that would impact on water quality or aquatic ecosystems in the Rous River, nor does it limit public access to the foreshore. No impacts are foreseeable as a result of the subject application on stream flow and the proposal does not contravene any plan of management.

The clause also enables the consent authority to impose conditions relating to the rehabilitation of land adjoining the waterbed to create a vegetated riparian zone or wetland, or works to stabilise the bank or shoreline. Conditions requiring the applicant to prepare a habitat restoration plan and dedicate a 50m riparian buffer to Council (commensurate with the requirements of DCP A5 as has been discussed below) have been applied which will ensure satisfaction with Clause 31.

#### Clause 34 – Flooding

The subject site is affected by flooding with a design flood level (1 in 100 year flood) of 4.9m AHD. It is also covered by the Probable Maximum Flood. The floor level of the proposed dwelling is identified as 5.4m AHD – which is 500mm above the 1 in 100 year flood. Flooding matters are further addressed under DCP A3 below. With regard to Clause 34, it is noted that the application is not considered to create any adverse flooding impacts or impact adversely on the flood potential of the locality. As such, the proposed development is considered to be consistent with the provisions of Clause 34. It is also noted that Council's Development Assessment Engineer has reviewed the proposed subdivision with regard to flooding and returned no objections.

#### Clause 35 - Acid Sulfate Soils

The subject site exhibits Class 1, 3, 4 and 5 acid sulphate soils, with the dwelling site located in the Class 3 area. Council's Environmental Health Officer has raised no objection with regard to ASS.

#### Clause 54 – Tree Preservation Order

The site is partially covered by Council's 1990 Tree Preservation Area. Minor vegetation removal is required to facilitate dwelling and driveway construction, including three (3) gums, two 'rubber trees' and some camphor laurel.

No objections are raised to the removal of these trees noting that a detailed landscaping plan will be required to be submitted and no threatened species are recorded as being present on the site.

There are no further ramifications with regard to Clause 54.

### **State Environmental Planning Policies**

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

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

The proposed development is not considered to impact adversely on agricultural activities. According to the applicant, the site has not been used for agricultural purposes for a considerable period of time. The proposed subdivision will not create any adverse impacts for nearby agricultural properties, (notably on the northern side of the Rous River), nor cause a loss of prime crop or pasture land, noting that improved management of the site would likely result from approval of the proposed dwelling house.

The proposed development is consistent with Clause 12.

Clause 15: Wetlands or Fishery Habitats

No works are proposed within the application with the potential to impact adversely on wetlands or fishery habitats in the Rous River. Water quality, quantity and flow will not be affected.

The proposal is consistent with Clause 15.

Clause 29A: Natural areas and water catchment

Minor vegetation clearing is required to facilitate the dwelling construction, as outlined above.

The extent of vegetation clearing has been assessed and is considered to be appropriate, noting that it is well away from the waterline and would not result in any measurable impact on ecological values at the site. Further, recommended conditions of consent require the preparation of a habitat restoration plan for a 50m riparian buffer along the Rous River and dedication of this buffer to Council which will result in an appropriate outcome in terms of Clause 29A.

Clause 32B: Coastal Lands

The NSW Coastal Policy does not apply.

Clause 43: Residential development

The site is in proximity to local transport networks and the Murwillumbah Town centre and is consistent with Clause 43.

Clause 81: Development adjacent to the ocean or a waterway

The proposed development does not contravene Clause 81.

SEPP No. 1 - Development Standards

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

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

The applicant has submitted a SEPP 1 Objection as the 1(b2) portion of the site does not meet the 40ha minimum lot size, having a proposed area of only 6.463 hectares. This lot is proposed to contain a dwelling house, sited within the 1(b2) zone under the provisions of Clause 14 of the TLEP 2000.

The basis of the applicant's SEPP 1 Objection is that the 40ha minimum lot size for the 1(b) 2 zone is unreasonable and unnecessary in the circumstances because:

- The subject land has always been less than 40 hectares;

- The proposal will not alter or effect this part of the subject land;
- The existing topography, land uses and existing vegetation is not considered consistent with agricultural use; and
- The proposal seeks to separate the uses to enable proper operation and maintenance of the residue lands.

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

Though not stated by the applicant, the subject SEPP 1 Objection seems to rest upon point two above, in that the objectives of the 1(b2) zone are not relevant to the proposed subdivision as agricultural use of the subject allotment has not

occurred for some time, neither is this preferable due to the proximity of residential development.

Notwithstanding, given that no changes are made to the 1(b2) portion, nor is its size further reduced, the proposed subdivision is not considered to impact adversely on proposed Lot 24 in terms of its ability to be used for small scale agricultural pursuits e.g.: grazing or small crops.

As such, the objection is considered to be well founded, as existing Lot 22 is already well below the required 40ha minimum lot size and the proposed subdivision will not further reduce its size.

In addition to being satisfied that the SEPP 1 Objection is well founded, the consent authority must also be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls.

The aims of the policy are as follows:

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

Sections 5(a) (i) and (ii) are as follows:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land.*

With respect to Sections 5(a) (i) and (ii) the proposed subdivision is not considered to hinder the proper management, development and conservation of any resources, in particular the subject agricultural land and residential development surrounding the subject site. The proposal is considered to have minimal environmental impacts whilst enabling orderly and economic use of the subject site by separating the management of 'farmland' and a childcare centre. Further, non compliance with the development standard is not considered to raise any matters of significance for State or regional environmental planning.

The proposed subdivision is considered to be consistent with the aims of SEPP 1.

Based on the above, support of the subject SEPP 1 Objection is considered appropriate in this instance.

#### SEPP (Rural Lands) 2008

The SEPP outlines the following 'Rural Planning Principles':

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas;*

#### **Planning Comment:**

The proposed subdivision will allow for separate management of the agricultural land which is considered to potentially increase productive use of proposed Lot 24 which may in turn generate economic activity.

- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State;*

**Planning Comment:**

The subject proposal facilitates the continuation of agricultural activities on the subject allotment.

- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development;*

**Planning Comment:**

The subject proposal maintains the rural use of part of the subject site and may facilitate agricultural use of the site which has the potential to provide social and economic benefits through the employment of local workers and generation of profit for the landholders

- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community;*

**Planning Comment:**

The proposed development is minor and is not considered to impact on the social, economic and environmental interests of the broader community.

- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land;*

**Planning Comment:**

The subject proposal, if approved, is unlikely to pose a detrimental impact on any natural resource in the vicinity. It is noted that separation of the management of the rural land from the management of a childcare facility may result in more targeted land management with the potential to increase productive use of the lands without impacting on natural resources.

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities;*

**Planning Comment:**

The proposed development is minor and is not considered to have any significant impacts on the local community in terms of social and economic welfare. It is noted that a dwelling envelope is proposed in the subdivision plans (subject to future consent) which may facilitate targeted management of the agricultural land and rural lifestyle opportunities.

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing.*

**Planning Comment:**

The proposal is minor and does not have any ramifications for broad scale rural housing.

Based on the above, the proposal is considered to entirely accord with SEPP (Rural Lands) 2008.

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

The DRAFT shirewide LEP 2010 maintains the current dual zoning of the site, with RU1 – Primary Production and R2 – Medium Density Residential.

The minimum lot size for each zone remains the same, though Clause 4.2 allows for subdivision of RU1 land less than the minimum lot size, as long as no dwelling is situated on the lot.

Dwelling potential within the R2 zone remains.

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

Tweed Development Control Plan

A1 – Residential Development Code

A detailed A1 assessment is available on file. Notably, the size of the allotment enables all site design controls to be easily met, however the design of the dwelling itself is fairly standard.

Notably, fill that exceeds Council's controls is required to facilitate the driveway construction, with up to 2m (approximately), within proposed Lot 24. This area is mostly beyond the Right-of-Carriageway but will merge with the existing driveway, and half of it will be located on the existing batter slope. The filled driveway area is intended to batter down to the existing boundary.

This driveway area exceeds the maximum fill height (of 1m) and is within the minimum proximity-to-boundary (1.5m for fill) requirements of TSC DCP A1, however it is considered to be an acceptable variation to those requirements – being necessary to provide appropriate vehicular access to an otherwise satisfactorily relocated dwelling position. Furthermore, the proposed fill is considered to be a short and justifiable extension (with regard to the proposed development on the site) of the existing fill and batter arrangement, and covers much less than the allowable 15% of the lot area – as per the 'variation' allowance in DCP A1.

Council's Development Assessment Engineer has reviewed this issue, and raised no objections to the excess fill, and is also accepting of the minor earthworks being undertaken as 'bulk earthworks' during the subdivision civil works phase of the development noting that this is actually preferable and would allow for better monitoring of the overall site works, including verification of compaction. Appropriate conditions have been applied.

It is unknown if a balance of cut and fill will be achieved, but it is likely that some fill will need to be imported for the driveway works. Therefore standard 'fill' conditions have been applied, including a TRCP contribution.

A2-Site Access and Parking Code

Council's Development Assessment Engineer has reviewed the application in detail and supplied the following detailed advice:

The property currently gains access via two (2) separate driveways that service the existing on-site car park associated with the approved child care centre. These driveways are for single ingress and egress only and comprise of concrete

aprons within the footpath area, with internal access and manoeuvring areas being bitumen sealed.

The proposed subdivision will appropriately provide for individual street access for both proposed lots. Lot 24 will be a 'battle-axe' lot that attains a street frontage via a narrow but compliant access handle width (the minimum access leg width for one or two lots is 4m) – with a minimum (scaled) width of approximately 5.6m at its narrowest point. This is appropriate for Lot 24 as excess width would be necessary to cater for any farm machinery that may need to access the site – although no agricultural use has been made of the 1(b2) zoned land for many years. Nevertheless the capability will be there. The existing sealed egress driveway will be utilised and no further access construction (apart from site filling for the dwelling's manoeuvring area) will be necessary for the subdivision. The street frontage of 14.175m for Lot 24 is compliant but numerically deceptively large as it is skewed to the direction of access.

A consequence of providing individual access points for the two lots of the subdivision is that the current dual driveway access servicing the child care centre car park will need to be modified to a single entry / exit point. Internal modifications to the car parking layout to facilitate this single ingress / egress are feasible however this will also necessitate creation of a Right-of-Carriageway over the access handle for Lot 24, to cater for emergency and service vehicle egress from Lot 23.

The existing (southern) access driveway footpath crossing will also need to be widened to at least 6m to cater for two-way access.

However, these modifications to the existing child care centre's car park and access provisions are not intended to be undertaken immediately. The applicant intends to defer this work and will seek separate approval via an amendment of the child care centre development consent (D93/0314) "*once the two lot subdivision is in place*" – and possibly dwelling construction also.

This deferment is workable but will create an area of conflict due to the child care centre needing to utilise the egress driveway (Lot 24's access) for access to car parking spaces as well as site egress. Lot 24 would normally use this driveway for 2-way vehicle movement – thereby creating the conflict.

A suitable short term solution (until the child care centre car park is modified) is for Lot 24 to utilise the same separated ingress / egress driveway system as per the child care centre, and have this legally covered by a Right of Way over Lot 23. This Right of Way would need to be extinguished once the car park modifications are completed. This can be imposed as a condition of the (future) amendment to the child care centre consent. The applicant has agreed to this scenario via e-mail advice dated 3.11.2011.

The above demonstrates that the proposal achieves an acceptable outcome with regard to DCP A2, noting also that an enclosed garage forms part of the proposed dwelling design.

### A3-Development of Flood Liable Land

The subject site is flood liable with a design flood level of 4.9m AHD (minimum floor level of 5.4m AHD). The site is also covered by the Probable Maximum Flood (PMF) and is identified as experiencing high flood velocity (mostly over the 1(b2) portion of the site).



DCP A3 has detailed controls relating to habitable development in mapped high flow areas. In this regard, Council's Development Assessment Engineer has supplied the following assessment:

The site is considered flood liable. The Design Flood Level (DFL) for this area is RL 4.9m AHD.

Most of the rural zoned 1(b2) land is subject to inundation – with most of this also being in the 'High Flow' hazard area, however much of the 2(c) zoned land is above the Design Flood level. The existing child care centre buildings on proposed Lot 23 are at levels of 6.135m AHD and 6.145m AHD, with the external play area and also part of the car park being above the Design Flood Level also.

#### Proposed dwelling

The revised application now includes construction of a dwelling on Lot 24, immediately north of the existing child care centre buildings, on land that has already been partially filled.

The proposed dwelling footprint straddles the informal boundary between being clear of flood liability and the 'High Flow' region adjoining Rous River, due to its location on a batter slope. The dwelling will be constructed on a concrete slab that will be partly cut in to the batter slope and partly on high thickened edge beams (up to 2m high) for the downslope portion.

Although part of the dwelling is within the 'High Flow' area, it is permissible per the controls nominated under A3.2.5. Furthermore, that portion of the dwelling below the DFL is filled and fully enclosed by the deep concrete edge beams of the floor slab, and therefore the 50m<sup>2</sup> maximum floor area criterion per A3 does not apply.

Although the dwelling will be a solid and sturdy structure, the depth of the concrete slab foundations into the existing ground level warrants attention from a structural design viewpoint. Due to the dwelling's location being in a high flow area (although not with drastically high velocities), the ground level interface with the slab foundations would be prone to high erosion potential and appropriate safeguards should be incorporated in the slab / footing design. This will be flagged as a condition of consent.

The proposed habitable floor level is RL 5.4m AHD, which is the required minimum floor level for this area. The garage level will be RL 4.8m AHD which is acceptable.

The proposed development is therefore consistent with the relevant provisions of DCP A3.

#### A4-Advertising Signs Code

No changes are proposed to existing advertising signage for the childcare centre.

#### A5-Subdivision Manual

##### Physical Constraints

The subject property appears generally free from physical constraints, despite being flood prone. The site is relatively flat and unaffected by bushfire. The site is bounded by the Rous River.

The proposed dwelling would be connected to Council's reticulated water and sewer systems.

### Rural Watercourses and Drainage

The subject site is bounded by the Rous River to the north. Council's Development Assessment Engineer has indicated that the proposal has nil implications for external catchments or the downstream drainage network. It is noted that only minor works are required to facilitate access to the subdivision (mostly via S96 application to 93/314) which are predominantly contained within the 2(c) portion of the site.

In addition to the above, Section A5.5.3 provides guidance in relation to rural watercourses and drainage. This section states that rural subdivisions must be designed to protect rural watercourses and drainage systems and requirements for Waterways; water bodies; riparian areas and riparian vegetation should be undertaken "As per A5.4.6" which relates to urban subdivisions. Specifically this section requires the following:

*Development in or adjacent to waterways, water bodies, wetlands or within their catchments must:*

- *Ensure preservation of fish and aquatic habitat;*
- *Not create barriers to fish passage;*
- *Ensure development does not result in pollution or adversely effect quality or quantity of flows of water into the water way, water body, wetland or habitat;*
- *Provide public foreshore reserves and public access to those reserves;*
- *Provide a riparian buffer of 50m along major streams (Tweed River, Rouse River, Oxley River, Cudgen Ck, Cudgera Ck, Mooball Ck and major tributaries) and a width along other streams in accordance with Table 4.23;*
- *Conserve native vegetation surrounding waterways, water bodies, wetlands by the retention of riparian buffers.*

Further:

- *Riparian buffers along major streams shall be dedicated to Council and placed under active management in accordance with a plan of management submitted by the applicant and approved by Council.*
- *Riparian buffer zones shall be revegetated and fences or other appropriate barriers provided to prevent transverse crossing of the riparian buffer (except in designated areas).*

Therefore, the DCP requires dedication of a 50m buffer to the river and that this buffer should be revegetated and fenced.

The requirement for dedication was discussed with Council's Ecologist and Natural Resource Management (NRM) Unit who accepted the value of such a parcel in terms of its connection to other reserves. The question as to whether the applicant should be required to revegetate the buffer raised the question of nexus in relation to only two lots being created and the cost burden placed on the landowner arising from the dedication. The NRM Unit advised that if a plan of management were provided, it was likely that grant funding could be sought for project works on the site. It is considered that a restoration plan is an achievable result without excess cost burden to the applicant.

As such, the following conditions have been applied:

General

*'In accordance with Tweed DCP A5, the applicant must dedicate, at no cost to Council, the riparian buffer 50m wide fronting the Rous River'.*

Prior to Subdivision Certificate

*'A Habitat Restoration Plan for the riparian buffer must be prepared by a person qualified in Bush Regeneration or Ecological Restoration and submitted to Director Planning and Regulation or delegate for approval prior to issue of the subdivision certificate. The plan shall include:*

- i. an appraisal of the present condition of remnant vegetation;*
- ii. a plan overlaying an aerial photograph of the site which divides the regrowth into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate;*
- iii. a management strategy for each of the zones, including the approach, methods and techniques to be used for vegetation restoration;*
- iv. a schedule of native plant species to be used for planting;*
- v. a program of works to be undertaken to remove invasive weed species'.*

Whilst the applicant has indicated they do not wish to fund the preparation of the Habitat Restoration Plan, Council officers contend that the opportunity for restoration and improved connectivity in this location is extremely important and that the application provides an excellent opportunity to seek improvements in this area. As such, the recommended conditions shall require preparation of the plan and dedication to Council, noting that leniency has already been applied by relaxing the requirement for the applicant to actually carry out the restoration works – with this to be carried out by Council at such time as appropriate grant funding becomes available.

Such an approach is considered to accord with the principles of DCP A5.

Rural Subdivision Structure

The objectives of Clause 5.3 aim to facilitate rural subdivision which is consistent with zone objectives, provides for uses that are suitable for agricultural areas and protects rural character and amenity. The proposed 2 lot subdivision (which makes no change to the current size of the land within each zone) is considered to be consistent with the objectives of the 1(b2) zone and will not further fragment agricultural land.

Rural Subdivision and Lot Layout

A house site has been nominated (and dwelling construction proposed) within the 1(b2) portion of proposed Lot 24. The location is consistent with the Rural Subdivision and lot layout provisions though it is noted that the dwelling location in this area is only possible through utilisation of Clause 14 of the TLEP 2000.

Rural Movement Network

The existing road network is adequate for servicing the new subdivision according to Council's Development Assessment Engineer. Appropriate conditions with regard to necessary 88B instruments have been applied.

DCP A5 is considered to be satisfied by the proposed development, inclusive of the recommended conditions.

A7-Child Care Centres

No changes are proposed to the design of the childcare centre (aside from modification to parking arrangements as discussed above – to be undertaken via S96 application to Development Consent 93/314).

The subject application has no ramifications for DCP A7.

A11-Public Notification of Development Proposals

The application did not require advertising or notification and no submissions were received.

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

Clause 92(a) Government Coastal Policy

The site is not affected by the Government Coastal Policy.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

This application does not propose a change of building use and Clause 93 is not relevant.

Clause 94 Buildings to be upgraded

This application does not propose the rebuilding, alteration, enlargement or extension of an existing building. Clause 94 is not relevant to the proposal.

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

Context and Setting

The proposed development is consistent with the surrounding residential context of the area.

Acoustic Fence

Due to proximity to the childcare centre, the submitted acoustic report requires the provision of an acoustic fence to enable the proposed dwelling to achieve the relevant noise criteria. This fence would be located on the boundary between the new lot and the lot which contains the childcare centre. The fence is required to be 1.8m high to achieve the required noise reduction and materials would be either lapped timber, concrete panels, masonry, toughened glass or a combination of these materials (as per the recommendations of the acoustic report). A detailed design has not been proposed by the applicant at this stage and a condition has been applied to the effect that design and construction details of the fence shall be submitted to council for approval prior to issue of the construction certificate for the dwelling to enable appropriate consideration of visual and amenity impacts and allow colours, materials and landscaping to be regulated.

Flora and Fauna/Natural Environment

The site is generally cleared of all vegetation with much of the subject site classified as 'highly modified/disturbed' under the Tweed Vegetation Management Strategy 2004. Council's records do not contain any occurrences of threatened

flora or fauna on the site and no disturbance of the natural environment is necessary to facilitate the proposal, notwithstanding minor vegetation removal which has been outlined above.

It is noted however that two (2) threatened flora species (Southern Ochrosia and Red-fruited Ebony) are located on the northern side of the Rous River, within approximately 280m of the subject site. Negligible impacts on such species are envisaged as a result of the subject application.

The restoration plan required by DCP A5 above is considered to ensure that the proposed subdivision results in an acceptable outcome in terms of environmental matters and no adverse impacts are anticipated on flora and fauna as a result of the subject proposal.

#### Contaminated Land

Council's Environmental Health officer has reviewed the proposed development with regard to contaminated land. Two statutory declarations were provided by previous land owners indicating cropping activities may have been undertaken on the lower portions of the subject property adjacent to Rous River (away from the proposed dwelling house). A significant buffer exists of approximately 300m between the river front (previous cropping activities) and the proposed dwelling site. Aerial photography provided by the applicant dated March 1980 (Department of Lands – X3660-1) indicates the land was utilised for cattle grazing. This is further supported by Council's historical aerial photographs dated 1961, 1987 and 1991. A dwelling like structure and awning utilised by the childcare facility currently occupies a portion of the site, however the statutory declarations indicate that these structures have not been for the storage or decanting of chemicals. No cattle dip sites exist within 300m of the subject site. No further contaminated land considerations were deemed necessary.

#### Noise

The proposed dwelling site was originally located immediately adjacent to an existing child care facility and sewer pump station. An Environmental Noise Impact Report has been prepared by CRG Traffic & Acoustics Pty Ltd dated 4 March 2011 (crgref:11057a report). The report demonstrates that with the proposed mitigation measures (which are considered to be unreasonable) there will be significant exceedances in the adopted noise criteria set in accordance with the NSW EPA Industrial Noise Policy. This dwelling location was not supported.

The applicant resubmitted a revised dwelling location to mitigate noise and odour concerns. The amended dwelling location is supported by a revised Noise Impact Assessment prepared by Traffic & Acoustics Pty Ltd dated 1 August 2011. The ventilation fan which raised concerns in the initial assessment has been decommissioned by Council. This has been confirmed by Council's Water Unit. The recommendations of the report have been applied as conditions of development consent – noting that the recommendations also incorporate an acoustic fence which has not been shown on the revised site plan. A condition requiring submission of a comprehensive site plan has been applied, prior to issue of construction certificate.

#### Odour/Buffers from Sewer Pump Station (SPS)

Council has a Design Specification (D12 – Sewerage System) which specifies that the distance to any residential or commercial lot boundary from a sewer

pump station (SPS) is to be maximized to prevent odour, noise and nuisance issues. Council strongly prefers to locate pump stations in public open space with at least a **50m** buffer between pump stations and property boundaries. The original dwelling site incorporated a buffer zone of less than 5 meters and significant odour, noise (see above) and nuisance issues were anticipated.

The revised dwelling location has been reviewed by Council's Environmental Health Officer with regard to odour. Council's Water Unit has advised that the existing sewer pump station has not been subject to historical odour complaints from adjacent land uses and has raised no objections to the proposed development, noting that the new dwelling site has a buffer of approximately 57m to the SPS. The proposed dwelling location maximizes the available buffer distance to the existing sewer pump station and is superior to the previously proposed location.

#### Timing

The subdivision will need to be completed (i.e. – Subdivision Certificate issued) prior to submission of a Construction Certificate for dwelling construction.

Upon completion of the subdivision and dwelling, the applicant intends to alter the car parking arrangements for the child care centre via a separate Sec.96 application.

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

#### Surrounding Landuses/Development

The proposal is minor and is considered to remain consistent with surrounding land uses, much of which is low density residential development and pasture land (across the Rous River).

It is noted that the adjoining site to the east, Lot 332 DP 1158142, is the subject of a current Planning Proposal (rezoning) to change the zoning from 1(b2) to urban uses. If that proposal is successful, it is possible that this site may also pursue a similar venture which is independent of the development assessment process.

#### Essential Services/Water and Sewer Connection

##### Water

Council's reticulated potable water supply is available to the area. Council's GIS shows an existing 100mm diameter water main in Joshua Street that terminates approximately 7m short of the existing property boundary. A short extension of this water main will be necessary to service proposed Lot 24.

Conditions of consent shall require the provision of service in accordance with Council's standards. Sec.64 contributions will be levied for the new lot being created.

##### Effluent disposal

Council's piped effluent disposal infrastructure is available within the area. An existing 225mm diameter gravity main transects the site, between the two child care centre buildings. This is covered by a 3m wide Easement to Drain Sewage.

The site is also encumbered by a 250mm diameter sewer rising main (SRM), which is appropriately covered by a 4m wide Easement to Drain Sewage. It is noted that separate works will shortly be undertaken by Council to duplicate this

SRM and slightly relocate the easement to cover both SRM's. This work is well clear of any of the subdivision or dwelling construction works proposed by this application.

Proposed Lot 23 will utilise the existing sewer connection, however proposed Lot 24 will require construction of new (minor) sewer infrastructure. The applicant has two basic choices to service Lot 24: either a short sideline junction directly from the main OR a new dead end sewer line. The invert levels of the existing sewer infrastructure will firstly need to be determined, to confirm that the new dwelling can be serviced by a gravity system from the nearby infrastructure. Then the applicant will need to determine the route of least disturbance and associated restoration costs. Options are:

- A sideline junction from the existing sewer main which is within adjoining Lot 11 DP 793985. Adjoining owner's consent would be required to facilitate this work, as this section of sewer infrastructure is not covered by an easement. This connection would require a lengthy internal house service line to reach the proposed dwelling location, but would likely have lower construction and restoration costs. The depth of the existing sewer line (if too shallow) may however make this option unfeasible.
- Construction of a new section of sewer main infrastructure (dead end line), coming from the manhole near the front of the child care buildings (BP/3) and terminating within the access handle for Lot 24. This would be much closer to the dwelling site but construction and restoration costs (due to trenching across the car park area) are likely to be higher than the previous option. Once again however, the depth of the existing manhole (if too shallow) may make this option unfeasible.
- A further alternative, if nearby existing invert levels are prohibitive, is to construct a new short dead-end line directly from manhole BP/1 (immediately upstream of the existing sewer pump station) on adjoining Lot 20 DP 873920. This would require adjoining owner's consent, but this option is unlikely to be a necessity.

Conditions of consent shall require the applicant to provide a service in accordance with Council's standards. Sec.64 contributions will be levied for the new lot being created.

#### Easement encroachment

The proposed dwelling is shown as slightly encroaching into an existing 3m wide Drainage Easement. The encroachment is the eave overhang and external (attached) stairs.

The easement (created per DP 649100) is an extension of a prior Drainage Easement (created 8.1.1990 per DP 793985), which was to cover public stormwater infrastructure coming off the end of Hall Drive, but little other information is available.

The extension of this easement (the part in question) is likely to contain a stormwater line that (probably) discharges into the cane drain on adjoining Lot 332 DP 1158142, running adjacent to the eastern boundary of Lot 22. However no stormwater lines or pits (at changes of direction) have been picked up by survey.

Nevertheless the easement is there and should be avoided, but if the applicant seeks to build partially over it, the onus will be placed on them to verify all proposed work (footings for the stairs in particular) will be at least 1m clear of any existing pipe work that could be contained within the easement. Council would however, have the right to remove the encumbrance at any time in the future, if any work needs to be undertaken within the easement.

The eave overhang, especially at its elevated level above the existing ground level, is not considered to be a significant hindrance – and no objections were raised to this scenario by Council's Development Assessment Engineer.

A condition will be imposed that provides three options:

1. Council's preferred option would be to relocate the dwelling approximately 0.5m to the east, to avoid any encumbrance.
2. Retain the dwelling in its proposed location, but relocate the stairs to the eastern side of the rear landing, to avoid the easement.
3. Retain the dwelling and stairs in their nominated location, but firstly locating and marking any existing stormwater pipes and pits to ensure a minimum of 1m clearance is achieved. The risk of possible future removal of the stairs will be stated.

With regard to the above, the condition has been applied with the onus placed on the applicant to discern an appropriate way forward in terms of moving the building or locating the pipework.

#### Dwelling Construction

In addition to the acoustic fence, the acoustic report contains recommendations as to the location of an outdoor recreation area to the north of the dwelling (such that the dwelling itself screens noise from the childcare centre and sewer pump station) as well as the provision of air conditioning or mechanical ventilation for all habitable rooms facing the south, west and east boundaries. Specifically, this would entail Bedrooms 2, 3 and 4 being fitted with air-conditioning or sealed mechanical ventilation.

Appropriate conditions have been applied and it is noted that the site plan shows a dedicated private open space area in a location commensurate with the recommendations of the noise report (though this plan does not show the required acoustic fence and a separate condition has been applied in this regard).

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

No submissions were received during the assessment process except the issuance of concurrence by the Department of Planning as per the SEPP 1 Objection.

#### **(e) Public interest**

The proposed subdivision is considered to be consistent with all applicable planning controls and the SEPP 1 Objection to Clause 20 of the Tweed Local Environmental Plan is considered to be well founded and warranted based on the circumstances of this particular case. The proposal is considered to be generally in the public interest as it will facilitate improved management of a remnant agricultural parcel whilst providing for the continued operation of an approved childcare facility with negligible environmental impacts.



**OPTIONS:**

1. Approve the application in accordance with the recommended conditions.
2. Approve the application subject to the deletion of Condition 95 which relates to the preparation of a Habitat Restoration Plan for the 50m buffer to the Rous River.
3. Refuse the development application for specified reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The subject application is considered to generally comply with statutory and policy requirements. Strict application of Clause 20 – Subdivision of the Tweed Local Environmental Plan 2000 is considered unreasonable and unnecessary in this instance and the SEPP 1 objection is considered to warrant support. The impacts of the proposal have been investigated and the conclusion drawn that negligible impacts are foreseeable and the subject site is suitable for the proposed development. The proposed development is not considered to have a significant impact on agricultural activities in the locality nor impact upon the social, cultural and environmental characteristics of the local area.

Therefore the proposed development is recommended for conditional approval in accordance with Option 1 above.

**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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**10 [PR-CM] Development Application PTV11/0013 for the Clarrie Hall Dam Spillway Upgrade at Lot 1, 6 and 14 DP 260821 Doon Doon Road, Doon Doon**

**ORIGIN:**

**Development Assessment**

**SUMMARY OF REPORT:**

This proposal is for the upgrade of the Clarrie Hall Dam spillway capacity, to ensure that the dam can safely pass extreme flood events. The dam was opened in 1984, having been constructed in compliance with engineering standards of the day. Safety standards have since been upgraded by the NSW Dams Safety Committee, which establishes safety requirements for all dams in NSW.

The proposed works include:

- Extending the existing spillway by widening and extending the spillway entrance at the upstream end by 35m;
- Raising the parapet wall by approximately 2m; and
- Strengthening the flip bucket downstream of the spillway, which provides energy dissipation for water discharged down the spillway.

The proposed works will not alter the normal full supply level of the dam and will not preclude any possible future raising of the dam wall.

The application has been assessed under Part 5 of the Environmental Planning & Assessment Act as determined by Division 7 (Flood Mitigation Work) of the SEPP (Infrastructure) 2007. Tweed Shire Council is the determining authority under Section 110A of the Environmental Planning & Assessment Act 1979. Section 111 of the Act states that the determining authority shall examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

The proposed activity is not considered to impact upon the environment including critical habitat or threatened species, populations or ecological communities, or their habitats to an unacceptable level. Accordingly, an Environmental Impact Statement is not required.

**RECOMMENDATION:**

**That Development Application PTV11/0013 for the Clarrie Hall Dam spillway upgrade at Lot 1, 6 and 14 DP 260821 Doon Doon Road, Doon Doon be approved subject to the following conditions:**

- 1. The development shall be completed in general accordance with the Review of Environmental Factors (REF) prepared by NSW Public Works dated October 2011 and Addendum dated November 2011, except where varied by these conditions.**

[PTV0010]

2. **Prior to commencement of work all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the General Manager or his delegate. Erosion and sedimentation control devices shall be designed and installed in accordance with Council's Design Specification D7 – *Stormwater Quality* and Council's Construction Specification C211 – *Control Of Erosion and Sedimentation*.**

**All erosion and sedimentation controls shall be maintained throughout the period of construction.**

[PTV0020]

3. **All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.**

[PTV0030]

4. **All necessary precautions shall be taken to minimise impact from dust during construction operations on site and also from construction vehicles servicing the site.**

[PTV0040]

5. **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 Friday 7.00am to 6.00pm**

**Saturday 8.00am to 1.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[PTV0050]

6. **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.**

[PTV0060]

7. **All relevant licences and permits from State Agencies must be obtained prior to commencement of works.**

[PTVS01]

8. A Construction Environmental Management Plan (CEMP) must be prepared in accordance with all identified mitigation measures and requirements of the approved REF and Addendum and other relevant guidelines, to document all management measures to be implemented during the upgrade works. The CEMP must be submitted and approved by Council's General Manager or delegate prior to the commencement of works.

[PTVNS02]
9. An adequate and suitable potable water supply shall be provided to the construction compound and associated facilities to the satisfaction of Council's Director Planning & Regulation or his delegate.

[GENNS01]
10. Commercial food preparation or operation of a 'food van' shall not be undertaken without separate prior approval from Council's Environmental Health Unit.

[GENNS02]
11. A registered spotter-catcher must be present on site during all tree removal operations.

[GENNS02]
12. Terrestrial and aquatic vegetation clearing must be limited to that strictly necessary to undertake the works as described.

[GENNS03]
13. The construction compound areas will be limited to the red bordered areas illustrated in Figure 5.2.1 *Possible Site Areas* in Addendum to REF by Tweed Shire Council dated 14/11/2011. External to those areas or in the blue bordered areas illustrated, further assessment and approval by Council will be required, except for known environmental weed species..

[GENNS04]
14. Water levels are not to be lowered during the Comb-crested Jacana (*Irediparra gallinacea*) breeding season (currently regarded as September to April). Monthly surveys are to be undertaken at Clarrie Hall Dam prior to works commencing, which may refine and reduce the breeding period specific to the north coast.

[GENNS05]
15. Any alteration to the existing on-site sewage management facilities must be approved to the satisfaction of Council's General Manager or delegate.

[PCW1125]
16. Should an on-site sewage management facility or collection well be installed a Section 68 approval to install/operate shall be obtained from Council prior to commencement of works.

[PCWNS01]
17. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Council's General Manager or delegate to neutralise any offensive odours.

[DUR0235]

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

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

[DUR0645]

19. 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]

20. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be:

- (a) Roofed;
- (b) Provided with a sealed floor; and

Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-labile and shall be provided with pump out facilities.

[DUR1635]

21. The proponent 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]

22. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the NSW Department of Environment and Climate Change.

[DUR2215]

23. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l unless varied by the approved construction environmental management plan.

[DUR2435]

24. The proponent shall undertake reasonable measures during construction to minimise the risk of loose or disturbed materials being washed downstream.

[DURNS01]

## REPORT:

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council  
**Location:** Lot 1, 6 and 14 DP 260821 Doon Doon Road, Doon Doon  
**Zoning:** 1(a) Rural, 7(l) Environmental Protection (Habitat), Uncoloured Land  
**Cost:** N/A

## BACKGROUND:

The Clarrie Hall Dam spillway project aims to upgrade the spillway capacity to ensure that the dam can safely pass extreme flood events.

A dam break study was undertaken in 2007 which identified that the dam needed to be upgraded to safely pass the Probable Maximum Flood (PMF) for an Extreme Flood Consequence Category Dam.

The dam currently has a High A to Extreme consequence category in accordance with NSW Dams Safety Committee (DSC) guidelines, and as such is required to pass the PMF.

A Review of Environmental Factors (REF) has been prepared in accordance with NSW legislative requirements to assess the potential environmental impacts associated with the construction and operation of the proposed spillway upgrade.

The applicant has provided detail on five (5) options, as listed below:

- Option 1 – No increase to the existing spillway width and raise the inlet;
- Option 2 – Widen the existing spillway crest to 28m;
- Option 3 – Widen the existing spillway crest to 35m;
- Option 4 – construct a secondary (auxiliary) spillway; and
- Option 5 – provision of gates on the existing spillway.

The REF notes the following with regard to the evaluation process and the criteria used to assess the options:

*'Options 1, 2 and 3 had a similar score. Options 4 and 5 had a much higher score which indicates that although feasible from an engineering perspective, they were not considered to be cost effective.*

*The outcome of the options assessment was that options 1, 2 and 3 were considered to be feasible. Option 3 was generally preferred. The costs of option 1, 2 and 3 were generally similar'.*

Noting that a sixth option (the “do nothing” option) presents an unacceptable risk to the people and property located downstream of Clarrie Hall Dam in an extreme flood event, it was not considered a feasible option. As a result, the proposed design of the spillway upgrade has been based on **Option 3**.

The proposed works to upgrade the dam will involve:

- Extending the existing spillway by widening and extending the spillway entrance at the upstream end by 35m;

- Raising the parapet wall on the dam embankment by 2m. Precast concrete L shaped units would be placed on the existing embankment crest behind the existing parapet wall and dowelled in place. The current viewing area and shelter on the left hand side of the dam wall may need to be raised due to the extension of the parapet wall; and
- Strengthening the flip bucket downstream of the spillway. The flip bucket provides energy dissipation for water discharged down the spillway. The works would involve installing anchor bars in the concrete to enable the flip bucket to take additional water load from the upgraded spillway.

The parapet wall across the dam crest would be raised to prevent water from flowing over the dam wall in an extreme flood event and would enable the water to be released safely through the spillway. The parapet wall would not increase the water storage capacity of the dam and the dam storage would remain at current levels.

It is envisaged that the proposed works will take six (6) months to complete, with works expected to start in early 2013.

### **Construction Issues**

Details of potential construction issues for the proposed works are discussed below:

#### Construction Sequence

The sequencing of the works has been estimated as follows:

- Establishment including setting up the construction compound areas, fencing of the construction sites etc;
- Installing a cofferdam upstream of the spillway to enable the construction area of the spillway to be dewatered;
- Dewater the cofferdam area;
- Excavation of the existing concrete (e.g. existing spillway crest to be removed) and preparation of surfaces for the concreting works;
- Concreting of the spillway, floors, crest and walls for the extended spillway;
- Installation of the precast-cast units on the embankment;
- Rehabilitation of the embankment crest;
- Concurrently undertake strengthening works at the flip bucket. This would involve installing a temporary downstream crossing, likely to be a box culvert, downstream of the spillway on Doon-Doon Creek, and
- Undertake site rehabilitation including removal of box culverts, restoration or road dilapidation and compound areas.

#### Water Levels During Construction

The REF notes that the water level of the dam may be dropped for a period of time to enable works to be undertaken. This situation may occur in combination with or without a coffer dam. The decision will be dependent on a more detailed assessment of risks by the contractor, the cost of installation, and the prevailing weather conditions and the dam water level prior to construction.

#### Flooding and Water Management During Construction

Flood protection works would be required for the proposed works, in the event that the spillway needs to be used to discharge flood waters during construction.



The purpose of the flood protection works is to:

- Maintain normal storage flows and small floods above FSL outside of the works area in order to prevent interruption to construction operations;
- Protect the investment in constructed works from damage during larger floods; and
- Safeguard downstream interests from potential failure during construction.

It is predicted that the construction contractor would provide a cofferdam around the entrance of the spillway to ensure that the works were carried out in the dry.

To establish the likely height of the cofferdam, flood frequency and flows would need to be considered by the construction contractor. The REF provides estimates for various flood scenarios and for a single or two staged cofferdam.

The proposed spillway upgrading works would involve predominantly the demolition of the existing concrete at the spillway crest and the supply and placement of new concrete and steel reinforcement. If flooding were to occur during construction, some damage to the placed concrete not yet dry would be incurred. However, the REF states that this would be repairable following the passing of the flood and subsequent dewatering of the site.

As the works would not involve any modification to the dam intake or outlet infrastructure, water would still be able to be released during the construction phase in compliance with the operating licence and water sharing plan.

#### Cofferdamming Scenarios and Flood Flows

The REF notes that the arrangement of cofferdam and water level during construction are not known at this stage of the project and two possibilities for coffer dam scenarios have been considered. The construction contractor would need to identify specific details and methodology for cofferdamming during construction, with the final configuration of a cofferdam and the dam water level during construction determined after discussions with construction contractors.

The REF acknowledges that any cofferdam situated across the entrance to the spillway channel would result in some additional inundation of areas around the storage rim, upstream of the dam particularly during large storm events. The REF includes potential measures to mitigate the impact of this additional upstream inundation on surrounding property.

A single stage cofferdam would extend fully across the spillway entrance sealing off all flows into the channel. A two stage cofferdam would extend over half the width of the spillway entrance leaving the other half exposed to the passage of flood flows. While a single stage cofferdam would be significantly cheaper, it would create issues with flood water backing up in the storage upstream of the dam. A two stage cofferdam significantly reduces the level of water backing up in the storage since it allows the passing of small events and flood flows during construction.

Council's Specialist Planner / Ecologist notes the following:

*'Impacts potentially arising from the proposal will primarily occur during the construction period. It is considered that water quality impacts are largely able to be avoided using known best practice measures in-stream and such measures have been conditioned by others. Little terrestrial habitat is proposed to be cleared and thus land-based flora and fauna are at small risk from the development.*

*Risk occurs primarily to those species reliant upon the aquatic fringing vegetation through some direct loss but primarily through indirect loss if the dam storage is*

*significantly raised or lowered during the construction phase as the lilies and other fringing vegetation cannot adapt quickly to rapidly fluctuating levels. The fauna species most at risk from loss or damage to fringing aquatic habitat is considered to be the Comb-crested Jacana, particularly when the species is breeding and raising young and thus restricted to the site. For this reason it is considered warranted to nominate the dewatering method least likely to result in significant fluctuations in water level, i.e. a two stage coffer dam, or restrict the timing of works to outside of the breeding season'.*

After considerable discussions with Council's Water Unit, it has been recommended to restrict the timing of the works to outside the breeding season of the Comb-crested Jacana. This is considered to be the most appropriate method (to limit the impact to the aquatic habitat of the Comb-crested Jacana), as to impose a specific construction method would likely hamper innovative approaches to methodology with the tendering process.

### Demolition Works

The proposed works involve demolition of existing concrete at the ogee crest. This would involve excavation approximately 300m<sup>3</sup> of concrete, which is to be taken off site.

### Concrete Works

The supply and construction of new reinforced concrete for the spillway crest, floor and walls would be required to be supplied by the Contractor. Given the limited concrete requirements and site constraints (limited space and unsuitable topography); the REF considers it likely that the concrete will be imported from external suppliers rather than establishing an on-site batching plant. Precast concrete units for the parapet walls are likely to be brought to the site on trucks and unloaded onto the embankment following completion of the spillway crest operations.

### Construction Access

Access to undertake the proposed works would be via the existing access road and along the main embankment crest prior to placing the precast concrete units. The additional anchorage for the spillway bucket would require temporary access across Doon Doon Creek immediately downstream of the dam. This would likely be a box culvert structure which would not restrict flows.

Access to the dam embankment and picnic areas would not be available to the public during the construction phase for safety and amenity reasons.

### Construction Environmental Management Plan

The proposed works will be undertaken in accordance with a Construction Environmental Management Plan (CEMP), which will be prepared by the construction contractor and reviewed by Council prior to the commencement of works.

The REF notes that the CEMP would incorporate all individual management plans and would include all mitigation measures identified in the REF, as well as any conditions imposed and required licences / approvals.

### **Construction Impacts**

The REF included an assessment of construction impacts, some of which are noted below:

### Construction Noise

There are several rural dwellings within one (1) kilometre of the dam wall, with the closest being approximately 430m from the spillway entrance. The report includes a list of equipment for the construction works (e.g. excavator, dump truck, jack hammer, rock breaker etc) which are identified as noise generators.

The REF also notes that the proposed works may also result in vibration due to use of saw cutting, or jack hammering to break up concrete.

Mitigation measures for both noise and vibration have been listed within the REF. As well as limited the construction hours, a Construction Noise Management Plan is to be prepared by the contractor and reviewed by Council prior to the commencement of works.

Council's Environmental Health Unit provided the following comments with regard to noise impacts:

*'Noise monitoring has not been undertaken, however Part 3.7 of the REF indicates background noise levels are likely to be about 40 dB(A). There are three rural properties located within 500m of the work area, with the nearest being 430m away. A ridgeline separates the nearest dwelling from the works and provides a natural noise barrier. Part 5.2.11 of the REF indicates work hours will be 7am to 6pm Monday to Friday, 8am to 1pm Saturday and no work on Sundays and public holidays (complies with Part 2.2 of the Interim Construction Noise Guideline, Department of Environment and Climate Change NSW (DECC), July 2009 (ICNG) - restrictive condition to be applied).*

*The ICNG permits noise levels to exceed background by 10dB(A) during standard construction hours and 5dB(A) outside these hours. The REF indicates that the maximum predicted noise levels at the boundary of the nearest affected residence are not anticipated to exceed the respective limit of 50dB(A).*

*It is proposed that a Noise Management Plan will be implemented during construction (including construction practices to lower noise impacts) and will form part of the approved CEMP.*

*No blasting is proposed, however vibration may be caused. The REF indicates that given the isolated nature of the site vibration dose values are not expected to exceed acceptable levels established under Assessing Vibration: A Technical Guideline, DECC 2006. Mitigation measures will be included in the approved CEMP'.*

### Traffic and Access

The REF has acknowledged that there will be an increase in traffic during the construction phase of the proposed works, which is likely to impact upon the movement of local traffic. It is also noted that the additional traffic associated with the construction works is unlikely to impose a significant additional load upon the existing local road network. Access to the dam wall and picnic areas would not be available to the public for the six month construction period.

Mitigation measures for traffic and access have been listed within the REF. A Traffic Management Plan (TMP) is to be prepared by the contractor and reviewed by Council prior to the commencement of works. The TMP would include measures to minimise traffic impacts to ensure public safety. A dilapidation report for the construction route along Clarrie Hall Dam Road would be undertaken, and road rehabilitation works would be undertaken post construction if required.

### Air Quality

The REF notes that dust suppression methods will be applied in order to prevent dust from the construction works (excavation, concrete works etc) being transported off site. The proposed work would also result in air emissions from construction equipment and vehicle exhausts. Mitigation measures include (but are not limited to): maintenance of vehicles and equipment; avoiding excessive use of vehicles and powered construction equipment; monitoring of dust generation potential; and dust suppression methods to be applied when required.

### Waste Management

The REF has acknowledged that the construction works would result in the generation of various wastes. These include: the excavation of 300m<sup>3</sup> of concrete; trimming of some trees for construction access; removal of aquatic plants at spillway entrance; general building waste; and portable toilets etc. All waste which is not suitable for reuse on site would be taken off site to Council's waste facility for disposal. Mitigation measures would be detailed in a Waste Management Plan.

Council's Environmental Health Unit provided the following comments with regard to effluent disposal:

*'Part 6.2.4 of the REF states "as the picnic area would be closed during construction it is likely that the existing toilet facilities on the site would be able to be used by the contractor. Any portable toilets used by the contractor would be required to be located away from waterways and regularly maintained (i.e. pump out by truck)". There may also be wastewater generated by the 'lunch room'.*

*The Manager Water has advised that the successful tenderer will be required to furnish detailed information in the CEMP which addresses this issue and requested that suitable conditions be imposed'.*

### Water Quality, Erosion and Sediment Control

The REF notes that there is a risk of impacting water quality during construction, detailing potential impact from the following activities:

- Installation of the cofferdam and dewatering of the cofferdam area;
- Excavation of the spillway and construction of the spillway extension;
- Construction compounds and storage of materials;
- Vehicle movements;
- Downstream creek crossing;
- Downstream releases; and
- Wastewater from washing concrete faces.

A detailed Soil and Water Management Plan would be prepared, describing the site specific measures to be implemented for all works areas to prevent sediment loss and water quality impacts.

### Ecological Impacts

Blackwood Ecological Services undertook an ecological assessment of the proposed works around the dam wall. The Blackwood report notes that vegetation removal may occur for the following activities:

- Clearing aquatic vegetation for the extension of the spillway and the temporary downstream box culvert crossing;
- Clearing of vegetation on the right hand side of the dam wall for the extension of the parapet wall;
- Trimming of vegetation to enable construction access; and
- Clearing for the establishment of construction compounds.

As a result of the proposed work activities, the report lists the following potential ecological impacts:

- Removal of aquatic vegetation around the spillway entrance;
- Altered flow regime for the duration of the works as a result of the cofferdam and box culvert;
- Clearing / trimming of vegetation along existing roads;
- Concreting / disturbance of rock walls along the spillway;
- Disturbance of sediments and benthic habitats on the floor of the reservoir where the cofferdam is to be installed;
- Transport of materials and personnel to the site;
- Disturbance of soils, including increased potential for erosion and sedimentation;
- Short term impacts associated with construction noise, vibration and activity;
- Accidental spill of fuel or chemicals;
- Weed incursion and / or spread due to importation and / or movement of construction machinery;
- Spills or loss of materials as a result of flooding of the work area during the construction period; and
- Removal of existing landscaped and regrowth vegetation along the eastern bank near the dam wall and extension of the dam wall and raising of the road and lookout to RL 7.0m.

The report covers appropriate mitigation measures for: the design and timing of the proposed works; vegetation management; fauna management; management of soils and disturbed areas; and minimisation of disturbance to fauna species.

Council's Specialist Planner / Ecologist provided the following initial comment:

*'Impacts on aquatic flora and fauna including wading birds will occur through changes in downstream flow, removal of water lily habitat immediately upstream of the spillway, potential lowering of the dam level during construction, installation of a coffer dam immediately upstream of the spillway and potential increase in turbulence and sediment transport. Whilst the latter issue is considered able to managed through best-practice erosion and sediment control measures, the loss of water lily habitat coupled with reduction in dam levels has potential to impact on the threatened species dependent on these habitats, primarily the Comb-crested Jacana.*

*The report states that the species is known from the dam site where the spillway upgrade is to occur, as well as other areas of the dam including Crams Farm, and that the species is considered relatively common in the immediate area. This statement was not informed by targeted survey and the species is very rarely seen in the Tweed, thus the importance of the dam habitat cannot be underestimated.*

*With this in mind, targeted survey from the water was undertaken by the DAU Ecologist and Senior Environmental Scientist. The survey recorded Comb-crested*

*Jacana and numerous other water-dependent species throughout the dam area. Although no juveniles were observed, it is possible they were well hidden or dived during disturbance, or alternatively breeding may occur later in the season. In any case, the survey was sufficient to determine that the patch of aquatic habitat near the spillway was not of paramount importance to the species as it occurred in many other parts of the dam and was seen frequently moving between various habitat patches. Concern then arises more from the potential for much of the fringing vegetation to dry out should the dam be lowered by 1.5m fairly suddenly as it occurs only within the shallower areas of the dam and would be unlikely to be replaced in the short term. The preferred approach is to avoid dam lowering or increased inundation upstream as far as possible in order to maintain a reasonable fringing littoral zone. This matter has been conditioned. Alternatively the condition could apply to the breeding season (Spring/Summer) only as this is the time when birds rely on the habitat and cannot move off without abandoning young.*

*Assessments of significance (7 part tests) was completed (by Blackwood Ecological Services) for a number of species of threatened flora, fauna and ecological communities recorded on the site or considered possible occurrences on the site or downstream of the dam over time. The report concluded that the proposed development is unlikely to result in a significant impact on any threatened species, populations or ecological community listed under the Threatened Species Conservation Act 1995 and the Fisheries Management Act 1994. As such, a Species Impact Statement was not prepared. This position is agreed so long as major changes do not occur within the littoral zone during the breeding season'.*

During the assessment of the application, further research was undertaken with regard to local water lily species and the breeding season for the Comb-crested Jacana (including contacting a local shorebird expert). The following comments were provided by Council's Specialist Planner / Ecologist:

*'A local shorebird expert (David Rohweder pers.comm. 16 November 2011) advised that Comb-crested Jacana have been recorded in almost all of the larger storages regionally (e.g. Vintage Lakes at Banora Point, Banora Point golf course lakes, Toonumbar Dam, Hines Dam and Little Nerang Dam). Thus, whilst Clarrie Hall Dam is very likely an important refuge, it is not the only refuge available in the region. Species profiles indicate that the Comb-crested Jacana is rather sedentary (i.e. not migratory) but movement patterns over shorter distances are not well documented. Therefore, there is no assurance that the birds on Clarrie Hall Dam would move to these other storages if water lilies receded dramatically. It is known that the 2002/2003 drought resulted in severe reduction of vegetation around the shoreline of Clarrie Hall Dam, yet the species is present in 2011 and has been recorded by the Bird Observers since most years from 1999 up to 2009 (latest survey available), including August 2002 and October 2003.*

*Research undertaken on the species outside the local region indicates significant fluctuation in Jacana numbers at water storages in response to wetter and drier years. Range contraction has occurred from the former southern extremity of Hawkesbury River area in the past (1940's and 50's) due to the combined influences of severe drought and flood but sightings as far south as Hunter Valley were recorded two years ago. There is some thought that the increase in water storages and dams has increased habitat for the Jacana. In contrast, however, other research has concluded that 1 to 2 ha of lilies is around the minimum necessary area for the species to be*

*present, and that all water bodies less than 1ha searched in one study did not record Jacanas.*

*Research on the precise breeding season locally is sparse and response has not been received to date from the two experts contacted. Overall, it is considered that the processes that shape population distribution are still not well understood, in particular in the southern part of the species range which includes CHD.*

*The local water lily species vary in their regeneration and propagation potential but all propagate vegetatively most readily from rooted rhizomes and stolons. Good potential exists for harvest and replanting of propagules as a fail-safe option; however, this is likely to be expensive and could bring the costs to a par with the coffer dam options. Similarly, potential exists for bunding and continual pumping of water into a refuge area in the vicinity of Crams Farm as a fail-safe option but this would not be a simple matter to manage. The ability of lilies to recover after prolonged drought exists but is recognised as a slow colonisation such that habitat is likely to be limited for a number of years post-drought conditions'.*

Late advice from the local shorebird expert has indicated that the breeding season for the north coast Jacana may well be significantly reduced from the current September - April period. A suitable condition of consent has been applied to require monthly surveys to be undertaken to try to narrow down the actual breeding season time frame. Nevertheless, the conditions do not allow lowering of the water level during the breeding season.

#### Site Installation Areas

An Addendum to the REF identifies areas on Council owned land which are available for site installations. These areas are intended only to be relatively level areas within those sites, since the steeper vegetated slopes are unusable.

The Addendum also notes that some minor clearing of vegetation and amenities would be required on those more level areas to enable site installations together with access between levels. The objective is to reduce tree clearing to the minimum required. Where clearing is required outside the area, Council's Senior Environmental Scientist would be consulted to determine whether specific restrictions on individual trees that are threatened species may apply.

Council's Specialist Planner / Ecologist has provided the following comment:

*'The construction compound area has been defined and illustrated within Figure 5.2.1 submitted by the Water Unit. Such a footprint allows for the removal of environmental weeds, non-native species and small Brushbox trees to a height of 3m without the need for further survey or approval. It also defines specific patches of rainforest and regrowth with potential to contain threatened species that will require survey and approval if clearing becomes necessary. The relevant condition has been altered to reflect this outcome and reference the additional plan'.*

#### **Operational Impacts**

The REF included an assessment of operational impacts, some of which are noted below:

##### Downstream Flows and Erosion

The REF notes that the proposed works would have no impact on the normal operation of the dam and that all releases from the outlet would continue as per the current operation of

the dam and would not be impacted by the proposed works. There would be no impact on the implementation of the Tweed Water Sharing Plan due to the proposed works.

In order to determine the downstream impacts, downstream flooding has been modelled for the 5 year flood event, the 100 year event and PMF to compare the existing spillway operation to the proposed upgraded spillway and to demonstrate the range of differences as a consequence of upgrading the spillway. The REF concludes that changes in water inundation impacts downstream of the dam would be very minor due to the proposed modifications of the spillway.

Council's Flooding & Stormwater Engineer requested the applicant to undertake further modelling (such as the Q500 or Q1000) to determine the difference in peak levels and timeframe downstream to assess the impact of the proposed new spillway.

Rather than undertaking further modelling, the applicant's revised REF (October 2011) noted that...*'smaller flood events were chosen as they have a higher frequency whereby the potential impact and relevance to the community is greater. It would also appear that they represent a reasonable reference for the impact as Tweed River flows as well as additional downstream inflows significantly dilute spillway differences'*.

Council's Flooding & Stormwater Engineer was satisfied with the revised REF, noting that it...*'has addressed all of the issues I have raised'*.

#### Upstream Impacts

The REF states that the proposed works would not alter the full supply level of the dam. During an extreme flood the raised parapet wall would result in the water being raised within the storage on a temporary basis, as the parapet would prevent the water overtopping the dam wall. The flood waters would be temporarily held, while the water passes down the spillway. This would only be for a short period (24 to 48 hours) and therefore would not have long term impact on vegetation or the edge of the storage area due to the temporary increased water level.

#### Visual Impacts

The REF notes that the extension of the spillway would have minimal visual impacts in regards to the dam structure itself. Currently the public are able to walk on the top of the dam wall. The dam wall provides views of the storage and surrounding landscapes. The raising of the parapet wall would mean that people would no longer be able to gain a view of the water within the storage from the dam wall.

The REF states that the existing viewing platform would be raised by approximately 1m to enable views across to the dam wall and storage to be maintained. A landscaping plan will be developed detailing restoration and revegetation works including replacement of the existing information shelter in a style consistent with similar Council facilities elsewhere in the Shire. All vegetation removed will be replaced with species endemic to the area, and mature specimens wherever possible.

#### Onsite Sewage Management System

The REF Addendum notes that during the assessment process, Council's Environmental Health Unit was asked to undertake an inspection of the existing On-site Sewage Management System (OSMS). As a result it has been recommended that the system be decommissioned and replaced with an OSMS that meets the AS1547/2000 and latest NSW Environmental Health and Protection Guidelines.



The Addendum states that replacement of the OSMS system will be undertaken at the completion of the Spillway Upgrade and removal of site installations as part of the restoration and landscaping works required in the picnic and parking areas.

Council's Environmental Health Unit is satisfied with the proposal to undertake the works upon completion of the spillway upgrade, noting that the OSMS works will need to be incorporated as part of the CEMP and will be subject to final approval by Council's Director Planning and Regulation prior to the commencement of works.

### **Legislative Requirements**

Approval from the following authorities will be required:

#### Department of Primary Industries (NSW Fisheries)

A permit to "*construct, alter or modify a dam, weir or reservoir on a waterway*" will be required from NSW Fisheries under the Fisheries Management Act 1994.

It should be noted that the applicant referred the application to NSW Fisheries for comment prior to lodgement. No response was received. Council's Development Assessment Unit also forwarded the application to NSW Fisheries and tried to contact the department several times during the assessment period. No reply has been received to date. However, it is noted that NSW Fisheries were part of the Steering Committee for this project. The Steering Committee was made up of all relevant stakeholders who then looked at the potential issues for the project and took into consideration all associated risks, prior to the REF being prepared.

Council's Specialist Planner / Ecologist noted the following:

*'The bottom of the spillway area is known to accumulate Australian Bass and other fish at times when they head upstream to breed and are not able to travel up the spillway, requiring rescue and relocation by volunteers.*

*The proposal offers a possible opportunity to improve fish passage up the spillway and both the spillway works and the installation of box culverts could require a dredging and reclamation permit under Part 7 of the Fisheries Management Act. The project was referred to DPI Fisheries but no response received. The general condition relating to other required permits is sufficient to cover any legislative requirements but is unlikely to allow improved passage except by intentional design at this early stage. However, this is a Fisheries issue and their advice as to potential for a fish ladder cannot be foreseen'.*

#### NSW Dam Safety Committee

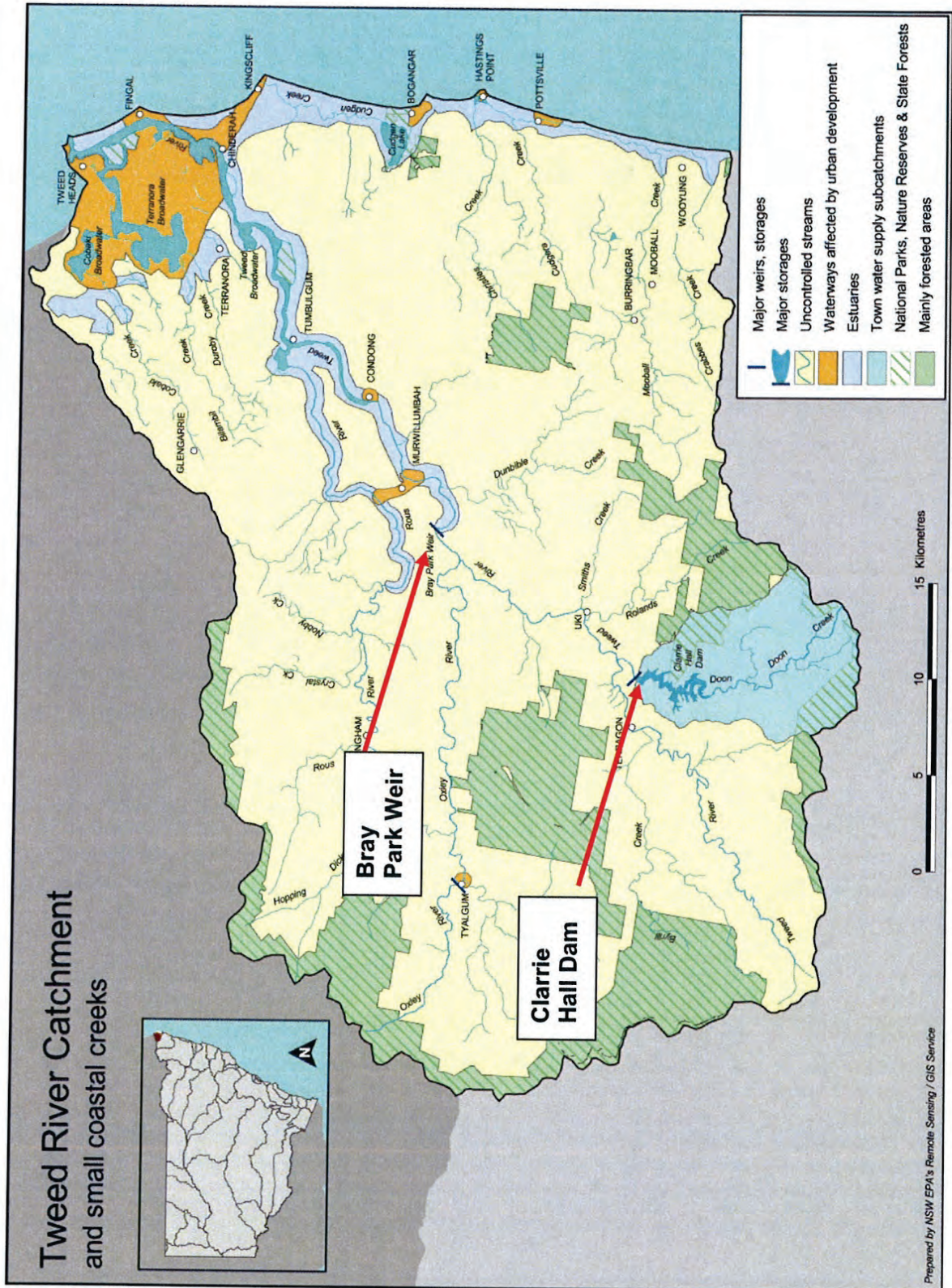
Approval will be required from the NSW Dam Safety Committee with regard to the works enabling the spillway to safely pass the PMF, in accordance with the provisions of the Dams Safety Act.

#### Department of Primary Industries (NSW Office of Water)

A S60 approval under the Local Government Act 1993 may be required. The NSW Office of Water are to confirm if the spillway upgrade works fall within the definition of the "*construct or extend a dam for impounding or diversion of water for public use or any associated works*".

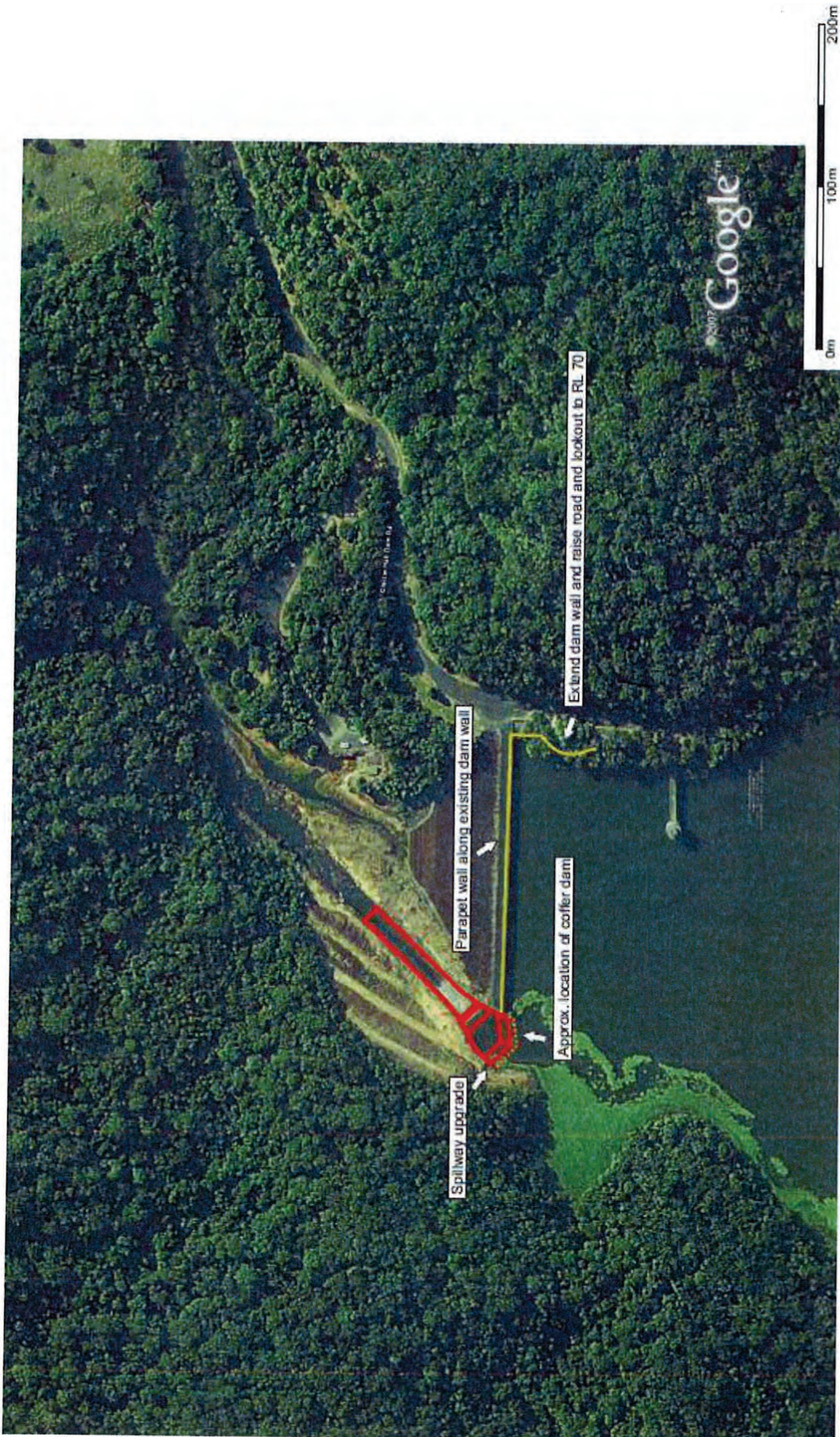


SITE DIAGRAM:



**Figure 1-1: Location Map of Clarrie Hall Dam (from NOEH website)**  
© State of New South Wales through the Office of Environment and Heritage

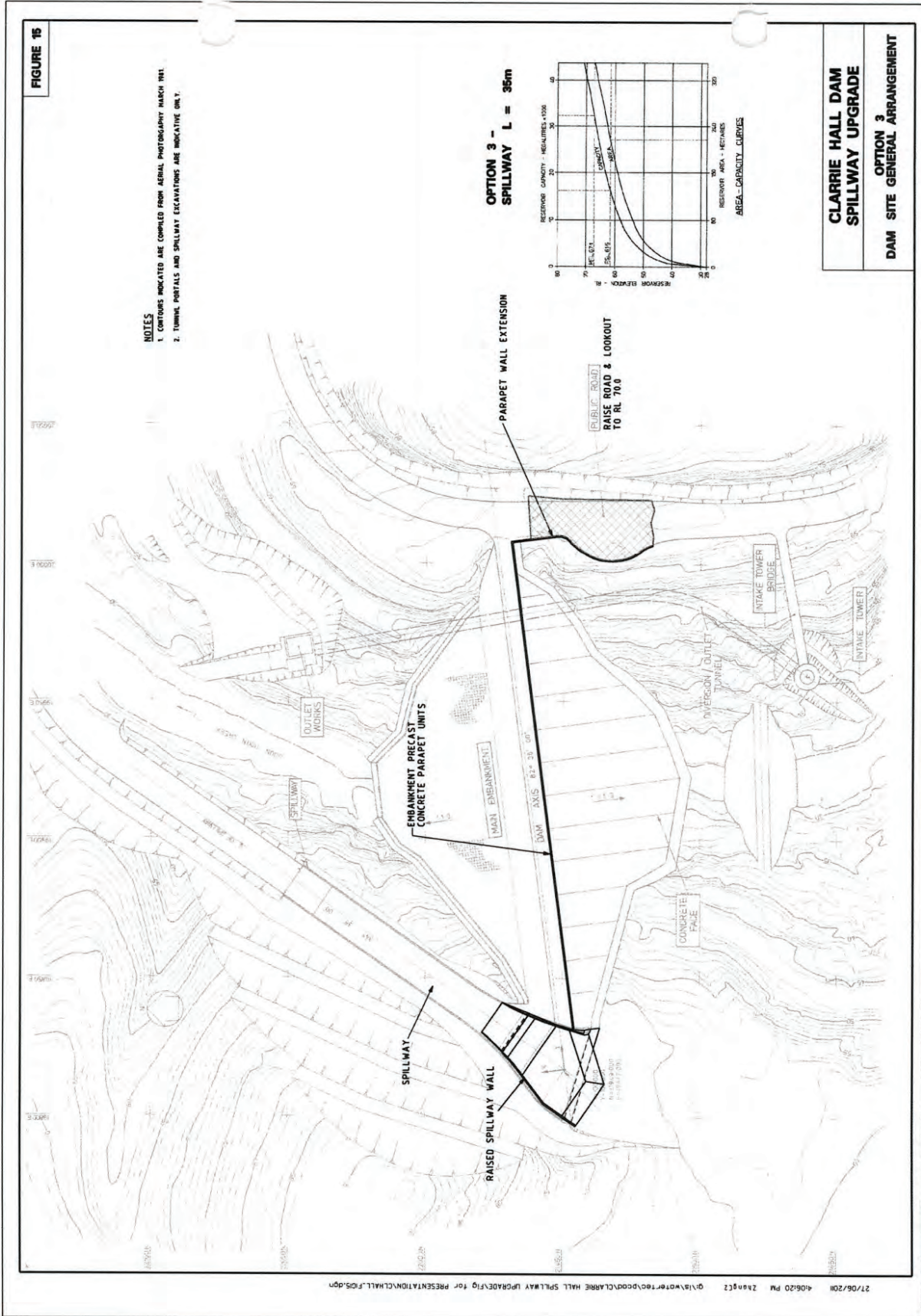
DEVELOPMENT PLANS:

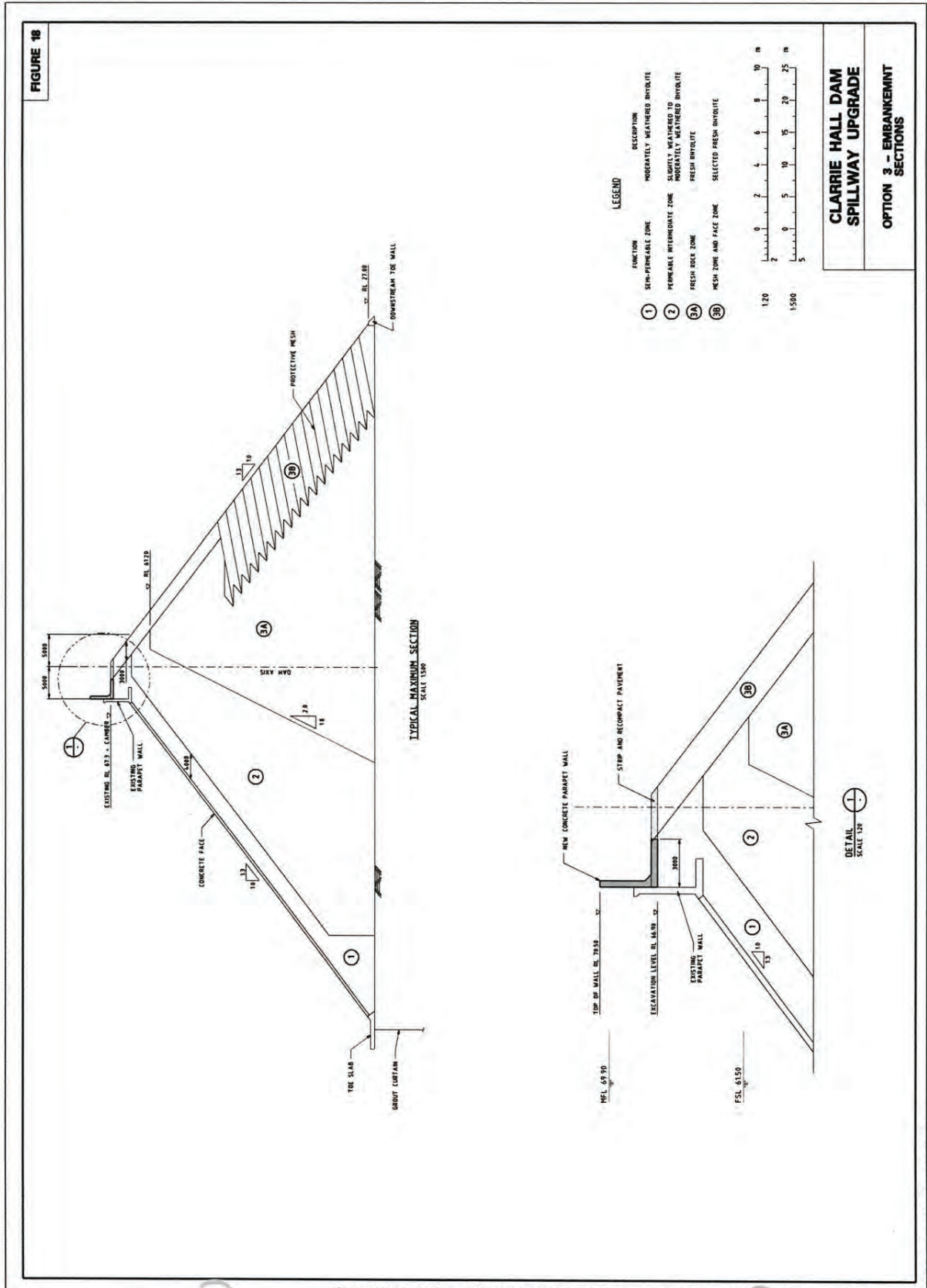


(Source: Blackwood Ecology)

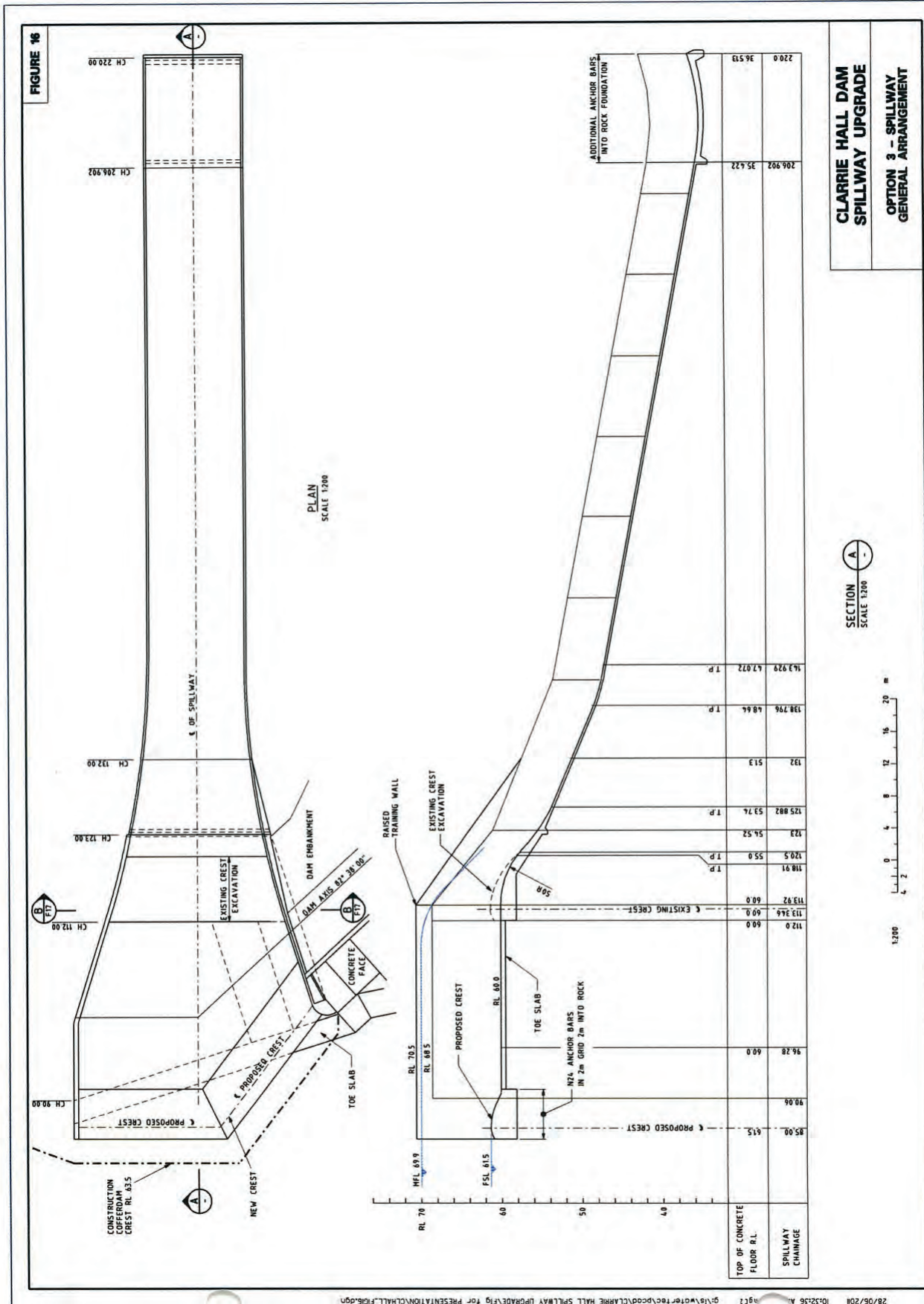
Figure 5-1: Location of Works







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## CONSIDERATIONS UNDER PART V OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

The proposed activity constitutes an assessment under Part 5 of the EP&A Act. Section 111 of the Act states that the determining authority must take into account a range of matters prescribed in Clause 228(2) of the Environmental Planning & Assessment Regulation 2000, in its decision to proceed with an 'activity' which does not require development consent. The applicant has provided a response to all of the matters raised under Clause 228(2), as noted below.

Factors taken into consideration	Comments
a) Any environmental impact on a community	<p><i>There is the potential for some traffic impacts. Mitigation measures would be implemented to minimise impacts and the community would be informed of the proposed works.</i></p> <p><i>In addition the picnic area would be closed for the duration of the construction works.</i></p> <p><i>Where possible the water storage would not be lowered during construction if it is at Full Supply Level when construction is occurring. Where possible works would be programmed to occur in periods of the year when rainfall is typical lower in the months August to January. Should the storage be lowered this would then trigger the water restrictions for the storage percentage full level. This could have temporary adverse impacts for residents in regards to the way in which water would be able to be used. Should the storage be lowered this would not likely be required for the whole of the construction period.</i></p>
b) Any transformation of a locality	<p><i>Following the completion of the works there would be minimal transformation of the locality.</i></p>
c) Any environmental impact on the ecosystems of the locality	<p><i>The REF contains an ecological assessment. With the implementation of mitigation measures there would not be a significant impact.</i></p>
d) Any reduction of the aesthetic, recreational, scientific, or other environmental quality or value of a locality	<p><i>The raising of the parapet wall would mean that people would no longer be able to gain a view of the water within the storage from the dam wall. Council would investigate as part of the detailed design process whether it is feasible to construct a viewing platform near the spillway.</i></p> <p><i>The parapet wall would be required to extend around the right hand side of the dam wall. This would restrict views to the storage from this location. The existing viewing platform would be raised by approximately 1 m to enable views across to the dam wall and storage to be maintained.</i></p>

Factors taken into consideration	Comments
e) Any effect on the locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations	<i>None identified.</i>
f) Any impact on the habitat of protected fauna (within the meaning of the National Parks and Wildlife Act 1974)	<i>The REF contains an ecological assessment. Although the proposed works would impact on the habitat of threatened fauna, including threatened water birds where habitat would be removed, it has been assessed that the impacts would not be significant subject to the implementation of mitigation measures.</i>
g) Any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air	<i>Appendix E contains an ecological assessment. There would be some impact through the clearing of native vegetation. It has been assessed that the impacts would not be significant subject to the implementation of mitigation measures.</i>
h) Any long term effects on the environment	<i>The long term effect on the environment is expected to be positive through the reduction in risk of the dam overtopping in an extreme flood event.</i>
i) Any degradation of the quality of the environment	<i>Temporary degradation may occur during the upgrade works due to the excavation of sediment and associated dust impacts.</i>
j) Any risk to the safety of the environment	<i>There is potential that flooding may occur during the construction works and wash loose, excavated material downstream.  The implementation of appropriate safeguards in accordance with best practice guidelines is predicted to minimise any risk to the environment.</i>
k) Any reduction in the range of beneficial uses of the environment	<i>None identified.</i>
l) Any pollution of the environment	<i>With the implementation of mitigation measures there should be no pollution of the environment.</i>
m) Any environmental problems associated with the disposal of waste	<i>Waste would be tested and classified in accordance with DECCW Waste Classification Guidelines and would be disposed of accordingly.</i>
n) Any increase demands on resources (natural or otherwise) that are, or are likely to become in short supply	<i>None identified.</i>

Factors taken into consideration	Comments
o) Any cumulative environmental effect with other existing or likely future activities	<i>None identified.</i>
p) Any impact on coastal processes and coastal hazards, including those under projected climate change conditions	<i>None identified.</i>

With regard to considerations under Clause 228(2) of the Environmental Planning & Assessment Regulation 2000, Council's Specialist Planner / Ecologist has provided the following comment:

*'It is considered that the project as described, with the imposition of conditions as discussed should not result in a significant impact upon any of the listed matters.'*

### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EP&A ACT)**

*Section 111(2) - A determining authority shall consider the effect of an activity on:*

- a. any conservation agreement entered into under the National Parks and Wildlife Act 1974 and applying to the whole or part of the land to which the activity relates;*
- b. any plan of management adopted under that Act for the conservation area to which the agreement relates;*
- c. any joint management agreement entered into under the Threatened Species Conservation Act 1995.*
- d. any biobanking agreement entered into under Part 7A of the Threatened Species Conservation Act 1995 that applies to the whole or part of the land to which the activity relates.*

A conservation agreement or plan of management (*National Parks and Wildlife Act 1974*) does not apply to the land on which the activity would be undertaken. There is no joint management agreement pursuant to the *Threatened Species Conservation Act 1995*. Furthermore, no biobanking agreement applies to the site.

*Section 111(3) - A determining authority shall consider the effect of an activity on any wilderness area (within the meaning of the Wilderness Act 1987) in the locality in which the activity is intended to be carried on.*

There is no designated wilderness area, pursuant to the Wilderness Act 1987, in the locality of the proposed spillway upgrade project.

*Section 111(4) - A determining authority must consider the effect of an activity on:*

- a. critical habitat; and*

The subject site is not identified as an area of critical habitat.

- b. *in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats; and*

Although the proposed works would impact on the habitat of threatened fauna, including threatened water birds where habitat would be removed, it has been assessed that the impacts would not be significant subject to the implementation of mitigation measures.

- c. *any other protected fauna or protected native plants within the meaning of the National Parks and Wildlife Act 1974.*

This matter has been considered in detail and discussed above. No significant impact is expected to arise with the protection and rehabilitation of offset sites.

### **Public Submissions**

Tweed Shire Council invited residents downstream of the dam (who are located within the 1 in 100 year flood level) to attend a presentation of information regarding downstream impacts due to the proposed works and the REF process. The meeting was held on 31 May 2011.

Tweed Shire Council has established a website with information on the proposed upgrade works. The website allows people to register to be kept informed of developments. An article on the proposed upgrade works was included in the Tweed Link weekly newspaper.

The application was also placed on public exhibition for a period of 28 days from Wednesday 31 August 2011 to Wednesday 28 September 2011, with a total of one (1) submission received.

An assessment of the issues raised in the submission is noted below:

#### Protection of significant species

*'We would consider the detail provided in Sections 6 and 7 concerning mitigating actions to protect the environment and minimise damage during operations as adequate....however we would expect that the Tweed Council and other organisations involved with the project would do their utmost to protect the significant species at the site'.*

The proposed works will be undertaken in accordance with a Construction Environmental Management Plan (CEMP). Appropriate conditions will be applied to ensure that the environment is protected and to protect the significant species at the subject site.

#### Weed Control

*'We would hope that weed control activities (s.7.1.6 p7-6) are indeed best-practice and undertaken by professional weed controllers who are capable of more sophisticated and diligent actions than the operators of the current lackadaisical "point-and-shoot" policy that is being currently undertaken along rural roadsides'.*

The applicant has confirmed that weed control would only be undertaken by a qualified (Cert III) restoration contractor.

### Landscaping

*'The trendy new landscaping options presented in Figure 6-3 are interesting, importing white sand and pandanus palms will certainly make the site more appealing, but is it really necessary to recreate a coastal scene in the hinterland?'*

The montage presented in Fig 6-3 is generic only. The applicant has confirmed that site specific landscaping will be carried out, which will be appropriate for the subject site.

### Raising Dam Wall

*'We would like to know the probability of undertaking further dam wall raising operations once the project is complete. Could the dam wall be raised at a future date to augment the water supply to increase the reservoir's capacity, or will this activity preclude that as a possible option? If the latter is the case, and the dam wall in fact cannot be further increased to meet anticipated future water demands, we consider that the council(lors) have squandered a golden opportunity for their future water supply.'*

The REF notes several times that the proposed works would not comprise any future possible dam raising. The REF also states that...*'It is possible that the parapet wall could be removed to accommodate future raising of the dam wall, if this is considered and assessed as an option in the future'*.

### Catchment Area

*'The catchment area above Clarrie hall Dam, Doon Doon Creek, may be one of the few (if not the only) drinking water reservoirs in Australia where cattle grazing and farming activities are still permitted. It is well established by Landcare Australia and the Northern Rivers Catchment Management Authority to name a few, that cattle grazing, its associated chemical pollution and erosion have a negative impact on the health of waterways. We acknowledge the farming history and traditions of the area but have to question the compatibility of such enterprises when they impact directly upon the main drinking water reservoir. What policies is council implementing in the Doon Doon catchment upstream of the dam to control runoff, effluent and erosion from this industry?'*

Although important, the issues raised regarding upstream catchment area are not considered to be relevant to the proposed works for the spillway upgrade.

### **OPTIONS:**

1. Approve the Part V application subject to conditions.
2. Refuse the application and provide reasons for refusal.

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

Nil.

### **POLICY IMPLICATIONS:**

Nil.

### **CONCLUSION:**

The proposed activity is not considered likely to significantly affect the environment including critical habitat or threatened species, populations or ecological communities, or their habitats.

The Clarrie Hall Dam Spillway Upgrade Project will provide sufficient spillway capacity to ensure that the dam can safely pass extreme flood events. The proposed development is considered not to negate the public's interest.

**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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- 11 [PR-CM] Planning Proposal PP10/0003 for Lot 332 DP 1158142, Part Lot 326 and 315 DP 1158142 Rous River Way, West Murwillumbah (Known as Riva Vue)

**ORIGIN:**

Planning Reforms

**FILE NO:** PP10/0003 Pt3

**SUMMARY OF REPORT:**

This report updates Council on the preparation of the additional assessment and reports required to confirm the suitability of the planning proposal, PP10/0003 for Lot 332 DP 1158142, part Lot 326 and 315 DP 1158142 Rous River Way, West Murwillumbah, known as Riva Vue (as shown in Figure 1 - Locality Plan), and seeks the endorsement of Council to place the planning proposal and support information on public exhibition

The proposal seeks to rezone the site from the current majority 1(b2) Agricultural Protection and part 2(c) Urban Expansion to 2(a) Low Density Residential under the Tweed LEP 2000.

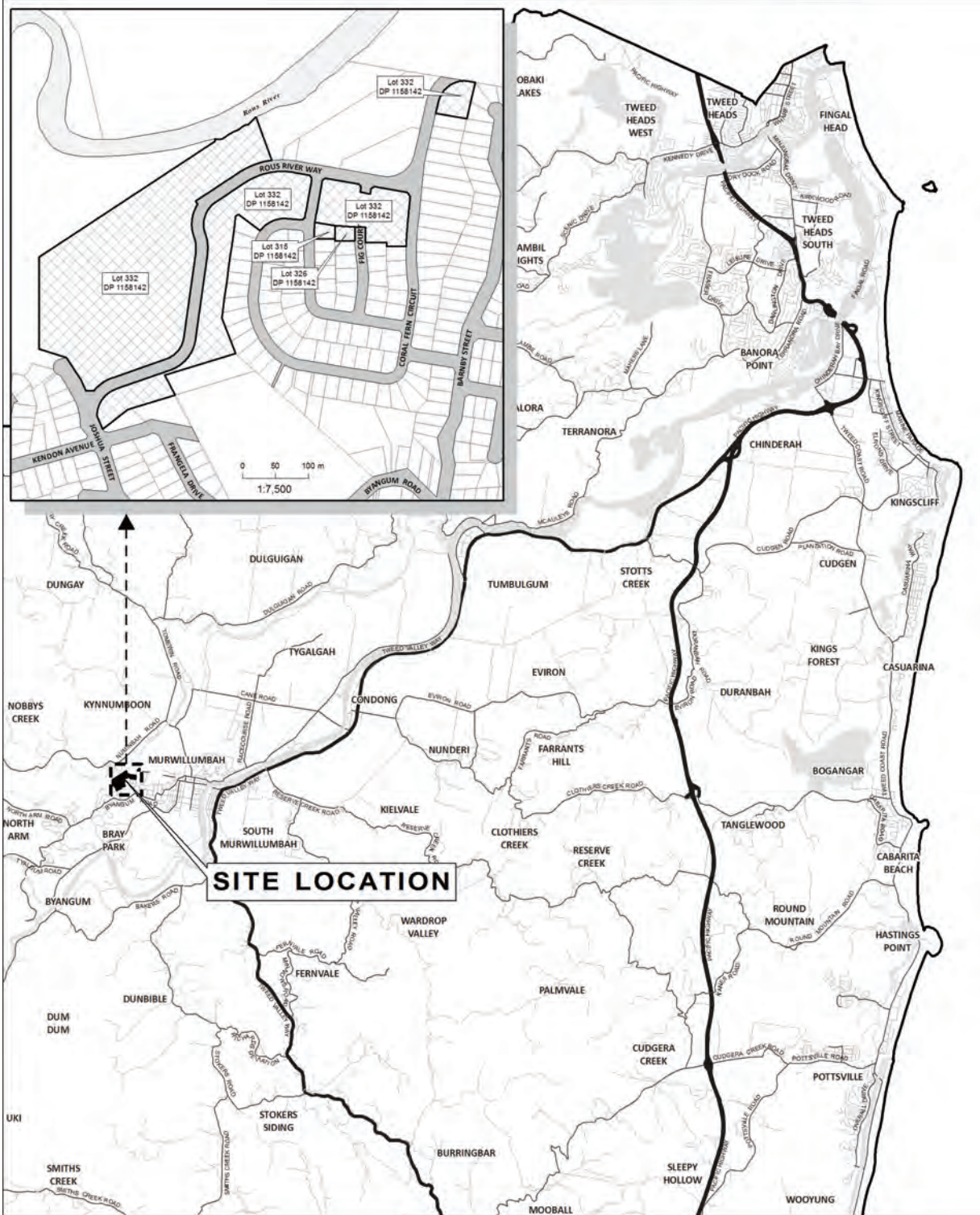
**RECOMMENDATION:**

**That:**

1. The planning proposal be publicly exhibited in accordance with the Ministerial Direction under the Gateway Determination following receipt of all outstanding final studies, and
2. Following completion of the public exhibition, a report on the exhibition process, assessment of submissions, final planning proposal documentation and all supporting reports be reported back to Council for a decision on whether to endorse the planning proposal and to have the LEP amendment made.

REPORT:

FIGURE 1 - LOCALITY PLAN



**Locality Plan**  
 Planning Proposal PP10/0003 -- Lot 315, Lot 326 and Lot 332 DP 1158142  
 Rous River Way, Murwillumbah

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Cadastral: 19 October, 2011  
 © Land and Property Management Authority (LPMA) & Tweed Shire Council.  
 Boundaries shown should be considered approximate only.

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 DO NOT SCALE  
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Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geodetic Datum of Australia 1994  
 GDA: Map 604 of Australia, Zone 56

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**TWEED**  
 SHIRE COUNCIL



At the Council meeting of 20 July 2010, Council considered a report and resolved that:

*"The planning proposal PP10/0003 for a change of land use zone classification to enable Lot 237 DP 1139108 to be developed for the purposes of a low density residential estate of similar character to the adjoining Riva Vue subdivision be supported in principle and that the proposal be referred to the Department of Planning for a Gateway Determination under section 56 of the Environmental Planning and Assessment Act (EP&A Act), 1979, and*

*The applicant of the planning proposal PP10/0003 is to be advised that the actual rezoning classification of the land, if supported by Council, will be determined following assessment of any detailed site studies required as part of the stage 2 gateway determination process."*

Following this resolution, the Planning Proposal (PP) was forwarded to the Department of Planning on 4 August 2010. The [former] Department of Planning (DoP) Gateway Determination was received, dated 25 August 2010.

The Gateway Determination authorised the planning proposal to proceed for low density residential purposes, subject to:

- Preparation of additional reports to be made available during public exhibition of:
  - An updated flood impact assessment
  - An assessment of the potential for airborne (odour) pollutions from the adjacent sewerage treatment works
- Public exhibition of all documents for a period of 28 days
- Compliance with section 4.5 of *A Guide to Preparing LEPs* (Department of Planning, 2009)
- Consultation under section 56(2)(d) of the EP&A Act with:
  - Department of Environment, Climate Change and Water (DECCW), and
  - New South Wales Rural Fire Service, allowing 21 days to comment
- No public hearing is required
- The timeframe for completion of the Local Environmental Plan (LEP) is 12 months (by 29 August 2011).

Given the timeframe required to prepare the additional assessments and reports, including those listed below, a formal extension of the timeframe for completion of the LEP was granted by the Department of Planning and Infrastructure (DoPI) through to 1 June 2012.

### **Additional assessment and reports**

In addition to the flood and odour assessment required by the DoPI, Council also required:

- A rural agricultural land assessment, including assessment of the cumulative impact of loss of rural land;
- Flora and fauna assessment;
- Aboriginal cultural heritage due diligence assessment;
- Geotechnical, engineering and infrastructure assessment, including bulk earthworks, stormwater management and public land/reserves; and
- Contaminated land assessment

In order to manage the additional studies required and ensure the outcome of the reports delivered the information required by Council and the DoPI, a Memorandum of Understanding (MOU) was entered into in March 2011. This MOU clearly articulated the terms of reference, scope and report outcomes for each study.

In the months that followed the proponent has undertaken all required studies. Final drafts have been reviewed by relevant staff and, based on staff feedback; final reports are currently being completed to meet the terms of the MOU.

### **Outcome of the reports**

Whilst the assessments and reports would indicate further detail of the proposal is required at the development application stage, they confirm that the proposed rezoning and resulting low density residential development can be managed appropriately and any potential impacts mitigated.

It is noted that a planning proposal is not intended to provide a level of detail as would be required at subdivision or development stage. The intent of a planning proposal is to provide sufficient information to provide Council with an informed level of confidence that the proposal is achievable, that social, economical and environmental factors have been considered, that the proposal meets strategic land use objectives and that any potential impacts can be mitigated or addressed.

The proponent's planning proposal (Version 1 - application) is currently being updated as Version 2 – exhibition copy, to include the information and recommendations from the additional assessments and reports.

The planning proposal seeks to rezone the site from the current majority 1(b2) Agricultural Protection and part 2(c) Urban Expansion to R1 General Residential under the standard LEP template zones. The suitability of a low density residential zone, 2(a) Low Density Residential under the Tweed LEP 2000 is considered appropriate and is supported through the additional assessment and reports.

It is also noted that Council has formally exhibited the draft LEP 2010, consistent with the requirements and format of the Standard LEP Template. Under this draft LEP, this proposal would translate to the draft R2 Low Density Residential zone.

### **Public exhibition**

Subject to the resolution of Council and the completion of the final studies to the satisfaction of Council staff and the requirements of the MOU, the planning proposal and final copies of all supporting reports will be placed on public exhibition for the required 28 day period.

The planning proposal and all final studies will also be referred to the NSW Rural Fire Service, the Office of Environment and Heritage (former DECCW) and the Department of Primary Industries under s 56(2)(d) of the EP&A Act

## Next steps

Following the public exhibition the planning proposal and full report documentation, along with assessment of submissions received, will be reported to Council for the decision of Council as to whether to proceed with the implementation of the planning proposal and a referral of the planning proposal to the Minister for the Plan to be made.

## LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Under the terms of the Gateway Determination the planning proposal is required to be completed by 1 June 2012. The planning proposal is on track to meet this requirement.

There are no impacts on Council's forward budget estimates, and no perceived legal issues arising.

## POLICY IMPLICATIONS:

There are currently no adverse policy implications and the rezoning is consistent with the principles of sustainable urban development.

## CONCLUSION:

The proponents of the planning proposal have undertaken all required assessment and reports to assist Council in reaching an informed level of confidence that the proposal is achievable, that social, economical and environmental factors have been considered, that the proposal meets strategic land use objectives and that any potential impacts can be mitigated or addressed.

The assessment and reports support the suitability of rezoning the site to the 2(a) Low Density Residential zone under the Tweed LEP 2000, translating to the R2 Low Density Residential zone under the standard LEP template.

It is recommended that the Planning Proposal and all final studies and support information be publicly exhibited as required by the Ministerial Direction of the Gateway Determination.

## UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Council report of 20 July 2011 - Planning Proposal PP10/0003 - Stage 1 Part Lot 237 DP 1139108 Rous River Way, Murwillumbah (Riva Vue Estate) (ECM 42704476)
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**12 [PR-CM] Community Based Heritage Study and Management Plan**

**ORIGIN:**

**Planning Reforms**

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

**SUMMARY OF REPORT:**

This report provides an update on, and seeks Council's endorsement for the public exhibition of the Community Based Heritage Study and Management Plan.

The report details the history of the Study, its previous exhibition and prior resolutions of the Council since 2004.

Acknowledging that there was a period of inaction on the Study, the report goes on to discuss how the Community Based Heritage Study and Management Plan 2011 (CBHS 2011) has been recommenced and reviewed to include updated legislative requirements, more detailed listing of the assessed heritage items and more detailed management recommendations.

Importantly the report acknowledges the original contributors and authors, and that the CBHS 2011 does neither alter, nor add to, the list of items and areas previously resolved by Council.

The CBHS 2011 includes information guidelines for both owners and for staff to educate and assist owners and Council staff to better understand the requirements, responsibilities and opportunities for heritage items and conservation areas.

**RECOMMENDATION:**

**That:**

- 1. The report on the Community Based Heritage Study and Management Plan be received and noted.**
- 2. The Community Based Heritage Study 2011 be publicly exhibited for a minimum period of 28 days.**
- 3. The preparation of a future draft heritage Development Control Plan be scheduled within the Planning Reform Unit's work program in its next review, for consideration.**

## **REPORT:**

### **BACKGROUND:**

The Community Based Heritage Study (CBHS) commenced in 2004 under the guidance of David Scobie Architects, together with a steering committee and group of dedicated volunteers. The CBHS considered, researched and assessed a total of 405 potential heritage items.

A report on the CBHS was considered by Council on 7 September 2005 at which time Council resolved to prepare an amendment to the Local Environmental Plan (LEP) to incorporate a list of 130 items and 2 conservation areas.

A draft LEP amendment was prepared and publicly exhibited from January – March 2007 along with the CBHS 2004. Council considered a report on the public exhibition on 21 August 2007. Council resolved, following assessment of submissions to amend the list of items and re-exhibit the draft LEP amendment.

At this time the progress of the CBHS 2004 stalled due to the preparation of the draft LEP under the directions of the Standard Instrument (Local Environmental Plans) Order 2006, competing priorities and limited resources.

In March 2011 Ainsworth Heritage were engaged to review, update and complete the CBHS and assist with its implementation.

Council was presented with a workshop on the status of the CBHS 2011 on 8 November 2011.

### **Review of the CBHS**

Preparing a CBHS is a 20 step process, as identified in the Community Based Heritage Study and Management Plan provided in Attachment 1 (note appendices E – Site Card and F – Burra Charter are provided on CD due to their size), which has been substantially completed. The remaining steps include consideration of the report by Council, referral to the Heritage Branch, public exhibition and, subject to Council resolution, adoption and implementation.

The current review of the CBHS largely acknowledges the significant body of work previously undertaken by David Scobie Architects and the community members, updates the information in the context of newer legislative requirements and provides further detail to the management recommendations.

The CBHS 2011 has evaluated the full list of items and site cards previously assessed and resolved by Council for inclusion as heritage items in an LEP amendment as a comprehensive list by suburb. In doing this the review has also assessed duplicated heritage inventory items and numbers, reviewed previous reports and clearly articulates in a range of tables why the remaining items were removed from the list.

The CBHS 2011 provides greater detail to the management of heritage items, education of the wider community and includes guidelines to assist both owners and Council staff to better understand the requirements, responsibilities and opportunities for heritage items and conservation areas.

## Guidelines

Two guidelines have been prepared and are provided as Appendices B and C to the Community Based Heritage Study and Management Plan 2011.

The *Guide for Heritage Owners* provides a concise overview of:

- the legislative requirements for heritage;
- an understanding of how significance is assessed, including the types of significance, the levels of significance and the types of sites;
- an overview of the state and local heritage listing and where those lists may be found;
- a step by step process and flow chart of what an owner needs to do if they are considering undertaking works to their property, be they minor works as exempt development, or more significant works requiring a development application; and
- a resources list of where additional information may be found.

The *Guide for Heritage Owners* provides both the resource information owners require for navigating the legislative and development consent requirements as well as providing an educative narrative of the requirements and opportunities.

The *Heritage Guide for Tweed Council Staff* provides a similar step by step overview and flow chart with additional information on what Council is required to consider through the development assessment process.

The *Heritage Guide for Tweed Council Staff* will, in the absence of a formal heritage advisor (as is the current situation), provide the planning framework required for assessment and be used as the basis for internal heritage training.

Given the significant time delay between the 2007 resolution of Council and this review, at the request of Council and to ensure the community are fully aware of the CBHS 2011 project and implications, the *Guide for Heritage Owners* has been directly distributed to all owners of the proposed heritage listed items and within the proposed conservation areas prior to this report to Council. The Guide was accompanied by a covering letter and information sheet on *Understanding Heritage* and addressing frequently asked question. This information sheet is provided in attachment 2.

## Management Recommendations

The CBHS makes a range of recommendations for the successful implementation of the management plan and to promote heritage awareness and education within the community. These recommendations are:

- adoption of the principles and values of the Burra Charter;
- to ensure best practice management is applied for heritage items and areas;
- to facilitate training of staff;
- to facilitate the implementation of a Heritage Advisor and Local Heritage Assistance Fund (LHAF) supported by the Heritage Branch grant funding;
- standardising, where appropriate, conditions of consent for development applications;

- the preparation of a heritage DCP chapter;
- investigating the opportunities for heritage in Tweed tourism;
- to improve the access to heritage information on Council's website;
- management protocols and procedures for:
  - referring Statement of Heritage Impact (SOHI) reports to local archives to build community information;
  - identifying and assessing of new heritage items or conservation areas;
  - keeping heritage lists updated and current;
  - management objectives for the conservation areas;
  - management of archaeological sites and resources; and
  - management of unexpected discovery of archaeological sites;
- Undertaking an Aboriginal Cultural Heritage Management Plan.

### **Consultation**

The next step in the process is public exhibition of the CBHS and Management Plan 2011 for a minimum of 28 days.

It is proposed to hold community workshops during the exhibition period in Murwillumbah, Tweeds Heads and Uki.

The plan will also be referred to the Heritage Branch consistent with their requirements.

### **Draft LEP amendment and Heritage Development Control Plan (DCP)**

To enable the implementation of the CBHS 2011, an amendment to the LEP is required to list the items and conservation areas within the Heritage Schedule.

Following the public exhibition, consideration of submissions and the resolution of Council, the next step in the process will be to commence a Planning Proposal to amend the LEP by way of listing of the items and areas within the heritage schedule.

Similarly, the management and assessment of works to heritage items requires a planning framework. The Tweed DCP currently does not contain specific objectives, principles and controls for development to or in proximity of a heritage item or within a conservation area.

It is recommended a Heritage chapter for the Tweed DCP be prepared in conjunction with the LEP Planning Proposal to detail appropriate development guidelines for works to heritage items or areas.

Both the planning proposal and the Heritage chapter for the DCP are a logical next step, however, they are part of separate process, subject to resources and a resolution of Council.

### **Aboriginal Cultural Heritage Management Plan (ACHMP)**

It is noted that Council has been successful in obtaining Heritage Branch grant funding, which together with matching Council funding, enables the commencement of the ACHMP.

A public tender process has recently been completed and the successful tenderer is yet to be confirmed. It is anticipated the ACHMP will be undertaken over the coming 12-18 months



and once completed will dovetail with the CBHS to provide a comprehensive framework for the management and assessment of heritage within the Tweed.

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

Council has a requirement under the LEP 2000 Part 8 objectives to:

- Conserve the environmental heritage of the Tweed
- Ensure that any development does not adversely affect the heritage significance of items and areas
- To provide for public involvement in heritage conservation, and
- To integrate heritage conservation into the planning and development control process.

The CBHS 2011 both identifies heritage items and areas which have been assessed as significant and includes recommendations for the management of heritage and the integration of the objectives into the planning framework.

The finalisation of the CBHS and Management Plan and the ACHMP are funded through grants from the Heritage Branch and in part through a Council contribution.

There are no known or anticipated legal implications.

### **POLICY IMPLICATIONS:**

The draft Study provides a much needed policy direction for the identification and management of the Shire's heritage.

### **CONCLUSION:**

The Community Based Heritage Study and Management Plan build on the heritage provisions of the Tweed LEP, and provide a platform for building a meaningful and valuable database of the Shire's heritage. Once established it will provide the necessary information and tools to Council and community alike for assessing future impacts on heritage and the storage of future information on new items of heritage significance as they come to light.

In addition, the Study and Management Plan lay the policy foundation and provide clear direction for future heritage and conservation policy and incentive mechanism, such as, a heritage DCP.

It is recommended that the draft Study and Management Plan be publicly exhibited as public consultation and comment is a fundamental component of strategic heritage planning.

**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. Tweed Community Based Heritage Study and Management Plan 2011 (DW 42702382)
  2. Understanding Heritage information sheet (ECM 42704515)
-

- 13 [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 Road

**ORIGIN:**

**Planning Reforms**

**FILE NO: PP11/0004 and PP11/0005**

**SUMMARY OF REPORT:**

This report seeks Council's endorsement to prepare two strategically important Draft Local Environmental Plan Amendments, which are to be prepared by the Planning Reform Unit utilising external professional (town planning) service providers.

Council had endorsed a prior fees and charges structure in 2010 that enables the Planning Reforms Unit to utilise external consultancies in the preparation and assessment of planning proposals, at the proponent's cost. Costs and Expenses Agreements have been sent out to three proponents, the first of which is for the Mooball planning proposal and which the proponent has executed.

In addition, two further planning proposal requests have been received seeking rezoning to enable redevelopment, comprising; Tweed City Shopping Centre (TCSC) and Club Banora ("the Club"). Both proponents have indicated their willingness to fund the planning proposals through a Cost and Expenses Agreement with Dexus Property Group (TCSC) having affirmed their commitment by execution of an agreement, and the Club's Solicitor reviewing theirs and pending execution.

The Tweed City Centre proposal was reported to the Council meeting of 19 July 2011, with the report highlighting the strategic importance of the redevelopment however, its progress was limited by existing resource commitments. The Club Banora proposal on the other hand has been the subject of several meetings between the proponent and Council staff since late 2009, and because of the like resourcing limitation the proponent was advised in early 2010 to make a Part 3A Major Project Application as this was seen to be the more expedient option, which is paramount for the Club given their prevailing difficult financial position.

Following repeal of the Part 3A process by the Minister for Planning and Infrastructure midway through 2011 the Club's application was not accepted because it had not reached the threshold test of public exhibition. The Club had nonetheless invested substantially in the preparation of application documentation and studies.

The circumstances giving rise to these two requests may be quite different but the strategic objectives are fundamentally the same; to improve public access to and choice of services available in the Tweed and at the same time rationalising the land-use zoning.

Both requests are suitable candidates for utilising the external resourcing and funding procedures that were developed to ensure that strategically justified planning proposal's progress in a timely manner and to ensure the economic vitality of urban land is not lost or delayed.

This report recommends that a planning proposal be prepared for each proposal following the prior execution of Costs and Expenses Agreements.

**RECOMMENDATION:**

**That:**

- 1. A planning proposal be prepared for PP11/0004 - Stage 1, 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 Road; Lot 6 DP 1119624; No. 38 Minjungbal Drive; Lot 13 DP 23659; No. 42 Kirkwood Road; Lot 12 DP 23659; No. 44 Kirkwood Road; Lot 11 DP 23659; No. 46 Kirkwood Road; Lot 2 DP 804871; No. 48-50 Kirkwood Road; Lot 8 DP 23659; No. 52 Kirkwood Road; Lot 1 DP 781517; No. 58 Minjungbal Drive; Lot 2 DP 781518; No. 60 Minjungbal; Lot 1 DP 524806; No. 62 Minjungbal Drive; Lot 2 DP 524806; No. 64 Minjungbal Drive - TWEED HEADS SOUTH, subject to the prior execution of a Costs and Expenses Agreement being executed, and**
- 2. A planning proposal be prepared for PP11/0005 – Stage 1 Club Banora Redevelopment, Lot 2 DP 1040576, Leisure Drive, Banora Point, subject to the prior execution of a Costs and Expenses Agreement being executed.**

## **REPORT:**

### ***Tweed City Shopping Centre***

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.

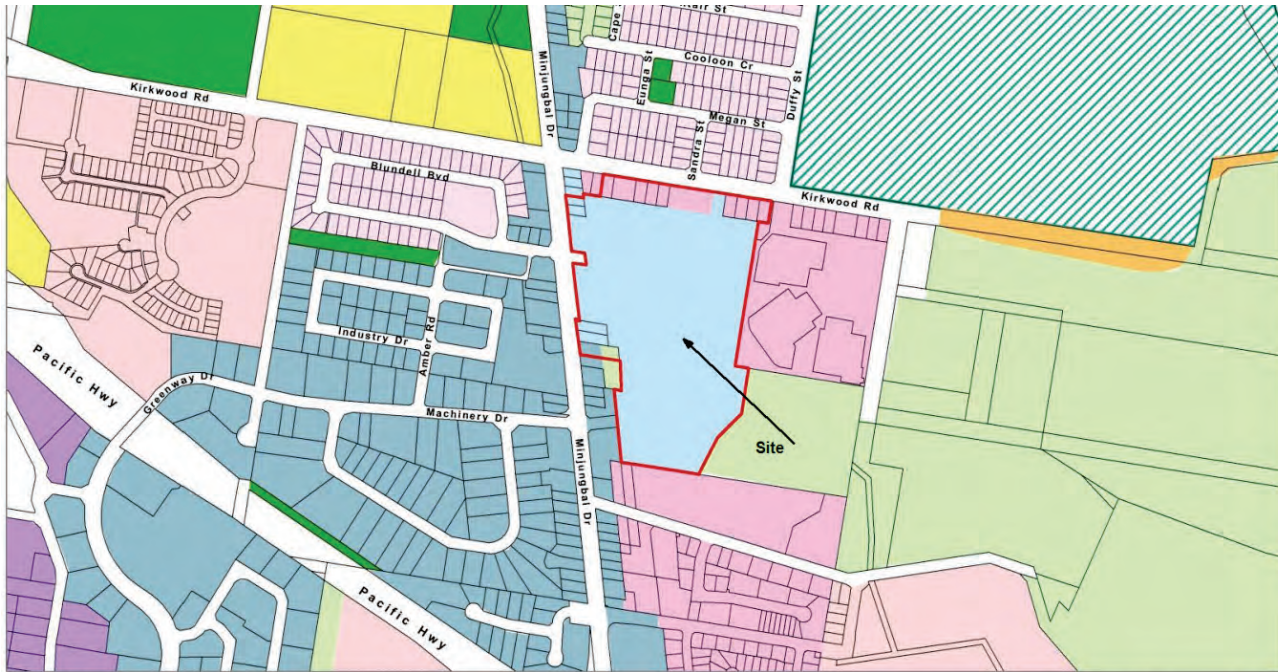
Whether the technical (largely traffic) and policy aspects of the proposal likewise support the proposal is unclear at this stage and will be investigated in detail prior to any public exhibition. The proposal is identified in the Planning Reform Unit’s work program as adopted in April 2011 as pending resource availability; this report seeks to change that status to fully resourced, utilising a professional service provider.

Given that the proposal provides a direct benefit through the provision of a diverse range of services and employment, 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 proceed into a planning proposal.

### **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.

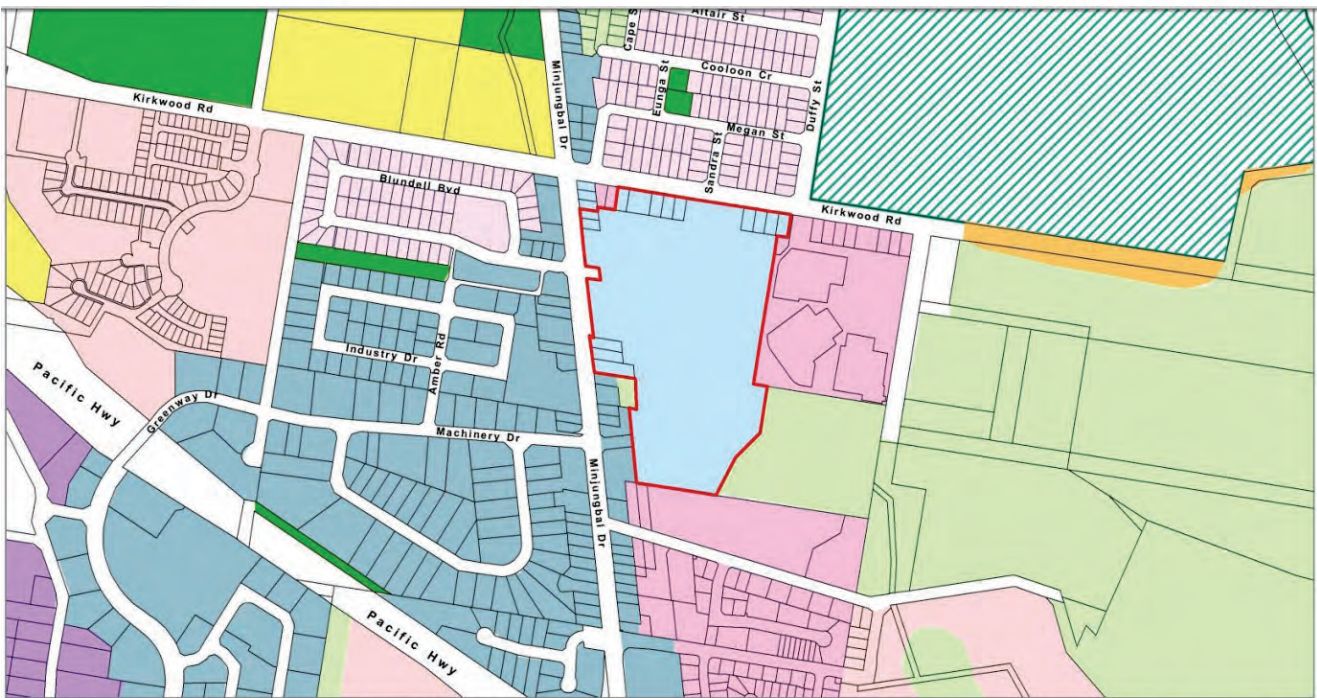
The request seeks a reclassification to enable the rezoning of all non 3(b) General Business zones to that zone.



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- |                       |                                   |                           |   |
|-----------------------|-----------------------------------|---------------------------|---|
| Subject Site Boundary | <b>Existing Zoning</b>            | 3(c) - Commercial & Trade | 7(a) - Environmental Protection (Wetlands & Littoral Rainforests) |
| Cadastre              | 2(a) - Low Density Residential    | 4(a) - Industrial         | 7(l) - Environmental Protection (Habitat)                         |
|                       | 2(b) - Medium Density Residential | 5(a) - Special Uses       | 8(a) - National Parks & Nature Reserves                           |
|                       | 2(c) - Urban Expansion            | 6(a) - Open Space         |   |
|                       | 3(b) - General Business           | 6(b) - Recreation         |   |

EXISTING ZONING  
TWEED HEADS



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- |                       |                                   |                           |   |
|-----------------------|-----------------------------------|---------------------------|---|
| Subject Site Boundary | <b>Proposed Zoning</b>            | 3(c) - Commercial & Trade | 7(a) - Environmental Protection (Wetlands & Littoral Rainforests) |
| Cadastre              | 2(a) - Low Density Residential    | 4(a) - Industrial         | 7(l) - Environmental Protection (Habitat)                         |
|                       | 2(b) - Medium Density Residential | 5(a) - Special Uses       | 8(a) - National Parks & Nature Reserves                           |
|                       | 2(c) - Urban Expansion            | 6(a) - Open Space         |   |
|                       | 3(b) - General Business           | 6(b) - Recreation         |   |

PROPOSED ZONING  
TWEED HEADS

## **Club Banora**

Club Banora was constructed in the early 1980s and comprises an 18 hole golf course, licensed club with a GFA of approximately 7000m<sup>2</sup>, bowling greens, tennis courts, heated Olympic pool and wading pool and approximately 700 onsite car parks. The Club occupies a site of approximately 60.1 hectares which is located in Leisure Drive at Banora Point.

Because of significant changes in the 'club' industry relating to poker machines, indoor smoking and increased taxation, the continued operation of Club Banora as a viable standalone entity in the Twin Towns Group (Twin Towns Services Club also owns Twin Towns Juniors at Tweed Heads South and Twin Towns Services Club at Tweed Heads) has come under considerable pressure and is no longer able to continue operating in the current format.

Twin Towns at Tweed Heads no longer has the ability to continue to subsidise the Club Banora operation and address the planned structural changes to the Wharf Street premises that are needed to maintain its relevance.

The proponent's request details that following a review of the Club's operations by KPMG that there has been confirmation of the Club's financial predicament, and to ensure there is longer-term future for the club, and the public benefit it provides, it has decided to proceed with a redevelopment of the Club Banora site.

A key element of the redevelopment is the inclusion of a retail and aged persons component to generate the necessary cash flows to fund the redevelopment. As an interim step in response to the findings the Club, over the 2009/2010 Christmas period, closed the top floor of the club to reduce losses and temporarily stabilise the business, consolidating all operations into the ground floor with an area of approximately 3500m<sup>2</sup>, being half the previous facility size.

According to the proponent, market research has indicated that major retailers have identified Banora Point as an area for expansion and it is their belief this would be best managed and investigated with an expansion of an existing centre.

Given current economic circumstances and a current interest by retail and retirement operators to increase services in this locality, there is a strategic need to investigate the possibility of a redevelopment, through a planning proposal, to avoid the need to close the club down indefinitely, with the resulting loss of a broad range of public service amenities and employment.

The key elements of the redevelopment master plan can be summarised as follows:

1. A smaller Club building partly suspended over the existing lake;
2. Relocation of the tennis courts;
3. Relocation of the bowling greens;
4. A retail development adjacent to Leisure Drive (supermarket and specialty shops with a GFA of approximately 5000m<sup>2</sup>);
5. A retirement facility (GFA approximately 11000m<sup>2</sup>);
6. Reconfiguration of the existing car parking and access arrangements.

The total project has a capital investment value of approximately \$107,235,000. The retail component of the master plan is seen as critical by the proponent to the overall project and the continued operation of Club Banora as it will provide the initial funding for the redevelopment of the remainder of the site. This will need to be further evaluated as part of the planning proposal however; initial assessment indicates this would be consistent with the Council's adopted retail strategy and the State government's open competition policy.

The land is currently zoned 6(b) Recreation and redevelopment of the Club facilities is permitted with development consent however, the retirement and retail component require a rezoning.

In accordance with Council's Fees and Charges, Twin Towns Services Club Limited has expressed their willingness to meet the agreed costs of Council engaging external consultants to expedite processing of a planning proposal, and their Solicitor is currently reviewing the Costs and Expenses Agreement.

Overall, Club Banora currently employs 41 employees and the Club in total injects approximately \$9.35 million into the local community per annum by way of employment and supply of goods and services.

In addition, it is stated that redevelopment will achieve improved access arrangements to the Club and adjacent land by providing a four way, signalised intersection at Winders Place and Leisure Drive together with rationalisation and reduction of the existing access points onto Leisure Drive, including a reduction from the current three access points to two.

The revised access arrangements will also facilitate improved access to the existing shopping centre adjoining the site to the east and potentially allow for rationalisation of existing accesses to that site from Leisure Drive. Provision is also made in the master plan for widening of Leisure Drive for the frontage of the site as well as significant improvements to the built form and streetscape of the site.

### **Planning Controls (Zoning)**

The site is currently zoned 6(b) Recreation and is proposed to be rezoned in part to include a residential and a commercial zoning. The precise zoning to be used will be determined as part of the planning proposal process.





**CONCLUSION:**

Council officers have been in the process of evaluating procurement processes and expressions of interest for the contracting out of town planning services. Expectations were that a small number of planning proposals could be contracted out on a supervised and managed basis, with the planning consultant filling a role as an 'extension officer' to the Planning Reform Unit.

In addition to meeting the costs and expenses of the planning component a proponent, through a legally enforceable Costs and Expenses Agreement, will be liable for the costs associated and incurred by any Division of Council in the preparation and assessment of the planning proposal. This has been designed and is being implemented on a forward funding arrangement, that is, the proponent makes a specified cash deposit and is required to maintain a minimum account balance, to ensure that the Council is neither paying the cost nor is left to pursue any outstanding debt.

This process may prove to be extremely beneficial but it is not without limitation. There is an associated resource implication which means that only a small number of the projects can be managed at any one time and consequently it should be reserved to the more strategically important projects.

In this instance, the two projects discussed above, for slightly different reasons, fall within the category of 'strategically important', on the one hand as there is a need to preserve the economic vitality of existing urban lands and, on the other the need to ensure that jobs and services keep pace with the Tweed's expanding community and its expectations.

For the reasons discussed above it is concluded that these two projects should be pursued as a matter of priority.

Should Council resolve to proceed with these projects, as it is recommended to do so, it should be noted that there will be a total of three projects utilising external resources and that this is likely to represent the current resourcing limit of the Planning Reform Unit for at least 6 months. This will however be re-evaluated as part of the review of the Unit's work program in 2012.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Undertaking the two planning proposals detailed in the report will be managed through a series of funding agreements and memorandum of understandings, which will ensure that there will be negligible financial impact on Council.

From a resourcing perspective it is likely that these additional projects will keep the Planning Reform Unit's resources at fully committed for a period of at least 6 months. There are no perceived legal implications arising.

**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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**14 [PR-CM] Gold Coast Airport Preliminary Draft Master Plan 2011 – Response to Public Exhibition**

**ORIGIN:**

**Planning Reforms**

**SUMMARY OF REPORT:**

This report provides an overview of the Gold Coast Airport Limited's (GCAL) Preliminary Draft Master Plan, which is was publicly exhibited between 8 September and 5 December 2011.

The Draft Master Plan presents detailed concepts for airport operations over a period covering the next 20 years, and specifically focuses on development requirements for the next 5 years.

While Council and the community are at liberty to make a submission on the Draft Master Plan, the operation of the airport is governed by Federal legislation and is not regulated in any way at a local level either within the parameters of the Federal land or airspace. As such, Council is in the same position as the broader community with respect to making any representation regarding these areas.

A submission canvassing the key strategic planning issues has been sent to the GCAL, which is discussed further in the report. A request to extend the public exhibition period was also made but declined on the basis of the procedural (Federal legislative) deadlines imposed on GCAL, to ensure receipt prior to the close of the public exhibition period.

**RECOMMENDATION:**

**That the report on Gold Coast Airport Preliminary Draft Master Plan 2011 - Response to Public Exhibition be received and noted.**

## **REPORT:**

The Gold Coast Airport Limited has released its Preliminary Draft Master Plan 2011 for public exhibition. The exhibition period runs from 8 September 2011 until 8 December 2011.

Due to the deadline for submissions a response has been prepared as detailed below and forwarded to the GCAL.

The Airport represents a major infrastructure investment which crosses the NSW and Queensland Borders and is responsible for a substantial injection of tourist dollars in to the Tweed each year, as well as increasing the commercial attractiveness of the region.

## **Background**

Since its opening in 1936 Gold Coast Airport (GCA) has become the fifth busiest international airport in Australia, and Australia's fastest growing airport.

By 2031, Gold Coast Airport is forecast to have 16.3 million passenger movements per year, comprising 14 million domestic passengers and 2.3 million international passengers.

Under the *Airports Act 1996*, Gold Coast Airport Limited (GCAL) is required to prepare and publish an Airport Master Plan every 5 years.

This Draft Master Plan presents detailed concepts for the period covering the next 20 years, and specifically focuses on development requirements for the next 5 years, addressing:

- Development of airport facilities,
- Assessment of the environmental effects of this development,
- landuse controls for areas surrounding the airport, and
- airport access requirements.

The airport is fast becoming a major transport hub for South Eastern Queensland and Northern New South Wales, of particular relevance to the Tweed.

Current use of the Airport is depicted in Figure 1 below, with the proposed 20 year Airport Development Plan and 5 year Development Plans presented in Figures 2 and 3 respectively.

The Draft Master Plan does not provide details of investigations undertaken to arrive at the proposed concept development plan, it is therefore difficult to comment on aspects of the Draft Master Plan which require consideration of alternatives to the single option presented. As such validation of the planning process and decision making rationale would have been of benefit in preparing a response to the Draft Master Plan.

Figure 1: 2011 Land Use Plan

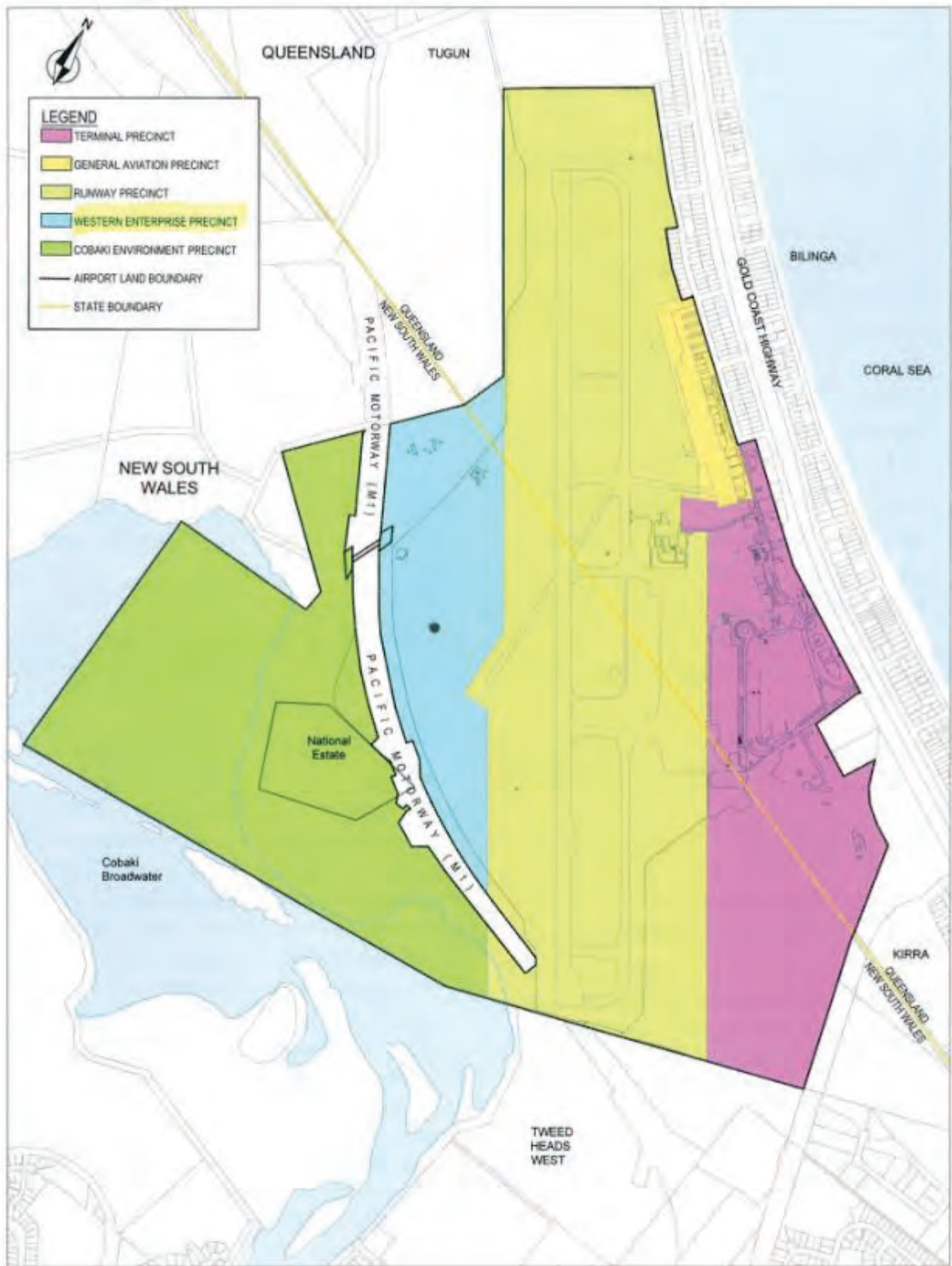


Figure 2: Twenty-year Airport Development Plan



Figure 7.1 enlarged in Appendix C

Figure 3: Five-year Airport Development Plan



## **Specific matters arising from review of the Draft Master Plan**

The following matters have been submitted to GCAL in response to the public exhibition of the Preliminary Draft Master Plan 2011:

### **1. Expansion of the terminal to the south:**

With absolute constraints limiting the 'at ground' expansion of infrastructure associated with the operations of the airport, especially east of the main Runway 32/14, and with a desire to provide an international airport quality experience to passengers, the opportunity for a second storey to the terminal is suggested; apart from reducing demand for more land, especially land covered with ecologically endangered community, containing koala habitat, on the southern boundary, it will ensure that passenger arrivals and departures are not forced onto the tarmac when embarking or disembarking, and, should the elevated heavy rail be retained, (discussed below) it would help in mitigating the otherwise significant visual impact of an elevated heavy rail link and make connection to the terminal more aesthetically acceptable.

Concern is raised about the incremental loss of native vegetation across the Shire, an asset which has made the Tweed a preferred tourist destination for both international tourists and residents of South East Queensland alike. Any opportunity to avoid destruction of remnant vegetation on the site should be fully pursued.

It is noted that GCAL proposes an industrial / commercial precinct to the west of the airstrip, a location which may service the future needs of General Aviation. As such, it is suggested that more investigation of options to relocate General Aviation to this precinct and expand the terminal to the north in preference to the proposed southern extension be undertaken.

#### ***Proposed action:***

That GCAL pursue options for the elevation of the terminal with provision of terminal facilities on a second floor and relocation of General Aviation into the proposed Western Enterprise Precinct, in preference to the extensive southern expansion of the terminal.

### **2. Loss of Business Park:**

It is acknowledged that due to an increase in the demand for aviation related uses, the "Business Park" will now be replaced in preference for aeronautical facilities. While such uses may be required to meet the expansion in demand for land, it is noted that the land to the west of the runway bound by the Tugun Bypass, known as the Western Enterprise Precinct, has been identified as potentially suitable for a range of commercial and industrial uses which may offset this demand, albeit not in the timeframe stipulated by this Draft Master Plan.

Notwithstanding this, the demand for land again raises the issue presented in point '1' above regarding why it is necessary to clear an ecologically endangered community with known koala habitat when potential alternative locations exist.

In recognition of the need for 'Business Park' style development, Council is currently pursuing a Business Park zone within its draft Local Environmental Plan (LEP) 2012. The objectives of the zone will include the provision of office and light industrial uses,



encourage employment opportunities, and to encourage value adding industries. Several sites in close proximity to the airport have been identified as meeting the purpose of this zone and are expected to complement the operations of the airport over the longer term.

***Proposed action:***

That GCAL provide advice on why loss of the Business Park will lead to an expansion of the terminal to the south into ecologically endangered community, and how other aspects of development of the site have eliminated all alternatives.

**3. Ultimate runway length**

On page 85 it is noted that protection is to be maintained for an ultimate runway length of 2,858 metres; however, the current southern extension of about 310 metres suggests that there is a further 206 metres of potential future extension to the runway, the location of which is not identified in the Master Plan. Should it be that a further southern extension of the runway is proposed, any development within the current ANEF zones and OLS could be further affected by this extension and should be made known at the earliest possible time.

***Proposed action:***

That GCAL advises how the ultimate runway length of 2,858 metres will be achieved and in what time frame this is expected to occur.

**4. Possible future use of the Western Precinct**

The potential for the Western Enterprise Precinct to be developed for non-aviation or aviation-related purposes should be better defined at this time, along with infrastructure requirements which are currently not addressed in the Draft Master Plan.

Should development be proposed within the next 20 years, then it is reasonable to commence planning for such development at the earliest possible time. The potential for the site to be utilised for General Aviation should be further investigated, along with consideration of the potential for industrial development to conflict with adjoining and nearby landuses.

***Proposed action:***

That GCAL provide more details as to the potential and likely uses for the Western Precinct, including consideration of matters relating to points above.

**5. Southern Cross University Campus**

Construction of buildings with a maximum height of 10 storeys, for the purpose of a university campus causing a significantly high concentration of persons, within close proximity to the current airport, not to mention the proposed southern extension of the terminal, could have a significant impact on human safety.

While it is acknowledged that construction of the Gold Coast Campus of the Southern Cross University was commenced prior to the release of the recent amendments to the *Airports*

*Act*, no advice is provided as to the extent of any intrusion into the OLS for the airport, and, should the proposed buildings exceed the height limitations imposed by the OLS; how significant a risk this intrusion presents.

***Proposed action:***

That GCAL provide advice on the assessment of the campus development and the extent of variations, if any, to the standards applying to the site and the potential risk of such exceedances.

**6. Elevated heavy rail station:**

As mentioned above, it is suggested that a multi-level terminal be considered which would reduce demand for additional land, provide a better level of service to passengers boarding and departing, reduce the needs to clear native vegetation, and facilitated better integration with the proposed elevated rail system.

While an elevated rail system will have obvious disadvantages, in preference for an at ground or sub-terrainian system, the visual impact and ability of such a system to integrate with the local environment and the terminal would be facilitated by construction of a second storey to the terminal, similar to Brisbane International Airport.

***Proposed action:***

That GCAL review options to avoid the need for an elevated heavy rail station and should the elevated station be pursued, how visual impacts will be ameliorated and integrated within the terminal, including options for a second storey to the terminal.

**7. Aircraft Noise**

Aircraft noise has been and will remain a major concern of residents of the Tweed. With the proposed relocation of the threshold of runway 32 approximately 310 metres to the south, resulting in a reduction of approach and departure heights near the runway of about 15 metres, the potential for increase in nuisance from aircraft noise is obvious, as shown in the proposed revised ANEF contours.

Figure 4 below shows a comparison of the 2020 ANEF contours and the proposed 2031 ANEF contours

It is acknowledged that the draft revised ANEF contours have been endorsed by Airservices Australia under Federal legislation using a highly objective and technical procedure, and that the ANEF is a projection only at the end date of the forecast; however, while Council has a statutory obligation to advise of potential impact of aircraft noise, as defined by the ANEF contours, and to impose restrictions and controls on development within these zones, Council has no ability to retrospectively apply this advice should the contours change.

The matter of whether and/or how existing landowners will be compensated for increase in aircraft noise has not been addressed in the Draft Master Plan.

While the planning process is driven by Federal legislation, it seems unusual to be recommending a relocation of the runway 32 threshold before all investigations have been

completed. On page 85 of the Draft Master Plan it is noted that prior to finalising a proposed threshold location, a technical investigation will be required to ensure Airservices Australia flight procedures and existing navigational aids are able to accommodate a change in flight path as well as a detailed obstacle survey.

It would appear that critical information is currently not available to justify the relocation at this time, and as such, the intention to relocate the threshold has not been fully justified. As such it is considered reasonable to seek advice on how and when this information will be available and whether the community will be advised of the outcome of these investigations?

***Proposed action:***

That GCAL provide advice on the potential for compensation and assistance in ameliorating the adverse impacts of increased aircraft noise as defined by the variations presented in the revised ANEF contours in the Draft Master Plan.

***Proposed action:***

That GCAL provide advice on the legislative and procedural requirements which make provision for a recommendation for relocation of the runway 32 threshold to be made in the Preliminary Draft Master Plan when all the necessary investigations have not been concluded.

## **8. Surrounding landuses**

While Tweed Council is not presently considering a strategic review of zonings surrounding the Airport at this time, GCAL is advised that a number of requests have been received for consideration of rezoning of land to the south and south east of runway 32. These developments are known to GCAL, and will be considered on their merit and referred to GCAL and appropriate Federal agencies as appropriate.

While there are no proposed landuses in the preliminary Draft Master Plan for the next 5 years that may compete with or supplant the roles of designated commercial or retail facilities in surrounding areas, strategic landuse planning requires consideration of time frames often well in excess of 5 years, and as such, it is considered reasonable to request GCAL to provide advice on the potential future landuses for the Airport as part of the 20 year concept for the site to allow maximum opportunity to facilitate integration with adjoining landuses and infrastructure.

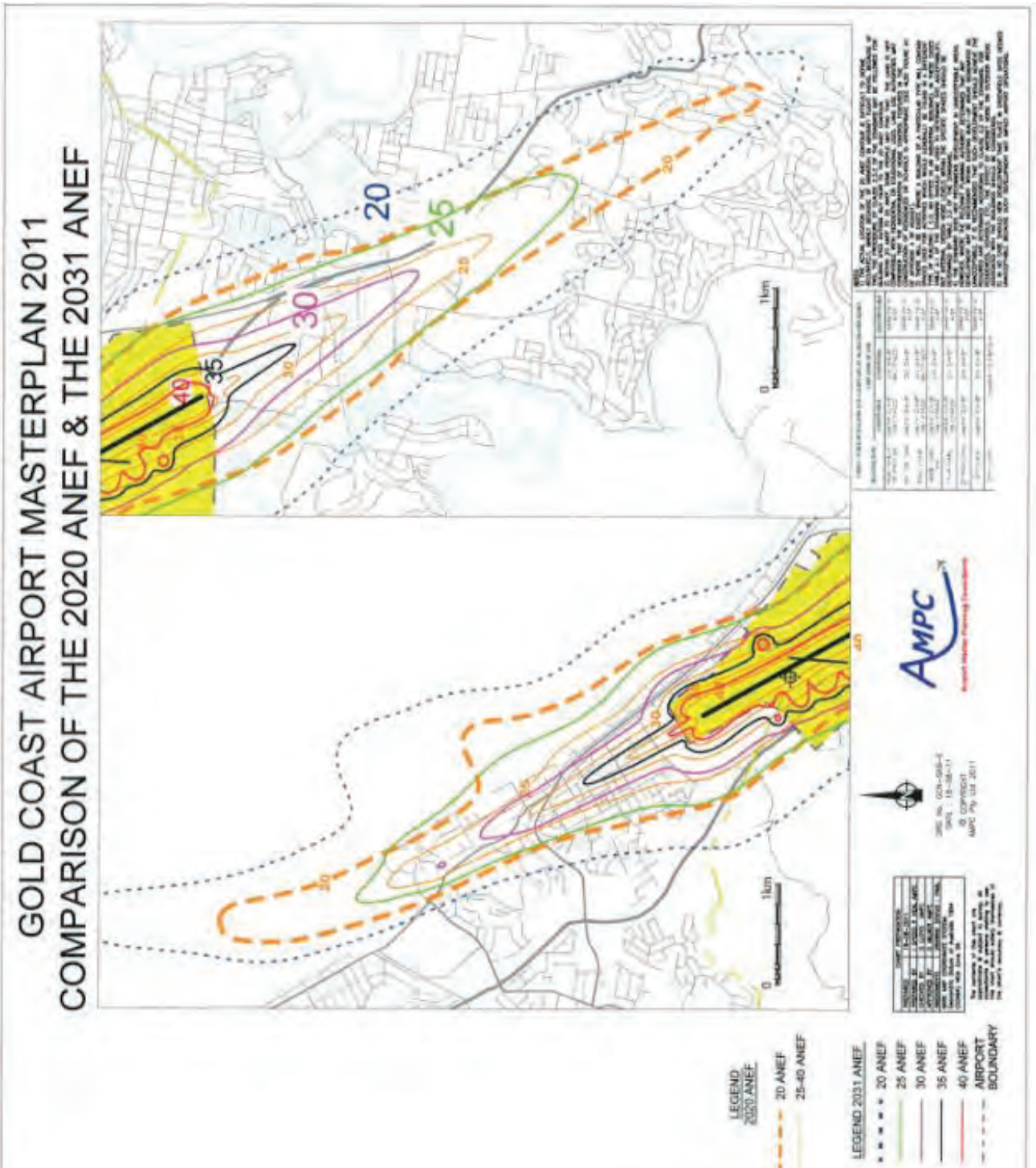
Proposed new development areas such as the Cobaki Lakes Estate to be built under existing flight paths for General Aviation activities do not appear to fall within the boundaries of the proposed revised ANEF contours, but as advised on page 72 on the Preliminary Draft Master Plan, sections of the Estate are subject to noise from aircraft movements on light aircraft training circuits and by helicopters.

***Proposed action:***

That GCAL work with Tweed developers, real estate agents and the like to increase awareness of the potential for properties to be exposed to aircraft noise, and to ensure that the likelihood of nuisance from aircraft noise is made known to potential purchasers of

property affected by aircraft noise. At all stages it must be made clear that Tweed Shire Council is not the responsible Authority.

Figure 4: Comparison of 2020 ANEF and 2031 ANEF



## 9. **N70 Contours**

GCAL is applauded for inclusion of the N70 contours as a means of providing additional information to assist the community understand the potential for nuisance from aircraft.

The N70 contours indicate the projected average number of aircraft per day which may fly over generating noise louder than 70dB(A), as seen in Figure 5 below.

It is understood that GCAL has no statutory obligation to provide this information; however, with the number of complaints currently generated from residents of the Tweed who lie outside the designated ANEF contour boundaries, this additional information will provide useful, meaningful advice on the potential for a particular property to be affected by aircraft noise. Unfortunately, at this time, Council is not in a position to provide notifications relating to non-statutory advice provided by GCAL; however, we welcome the opportunity to work with GCAL to develop a mechanism whereby such information can be provided to potential property purchasers enquiring of Council as to matters potentially impacting their property of interest.

### ***Proposed action:***

That GCAL make the N70 contours available as a separate, standalone, ready reference item on the GCAL website, and that GCAL work with Council to investigate options to provide formal notification of N70 contours.

## 10. **North Coast Regional Environmental Plan**

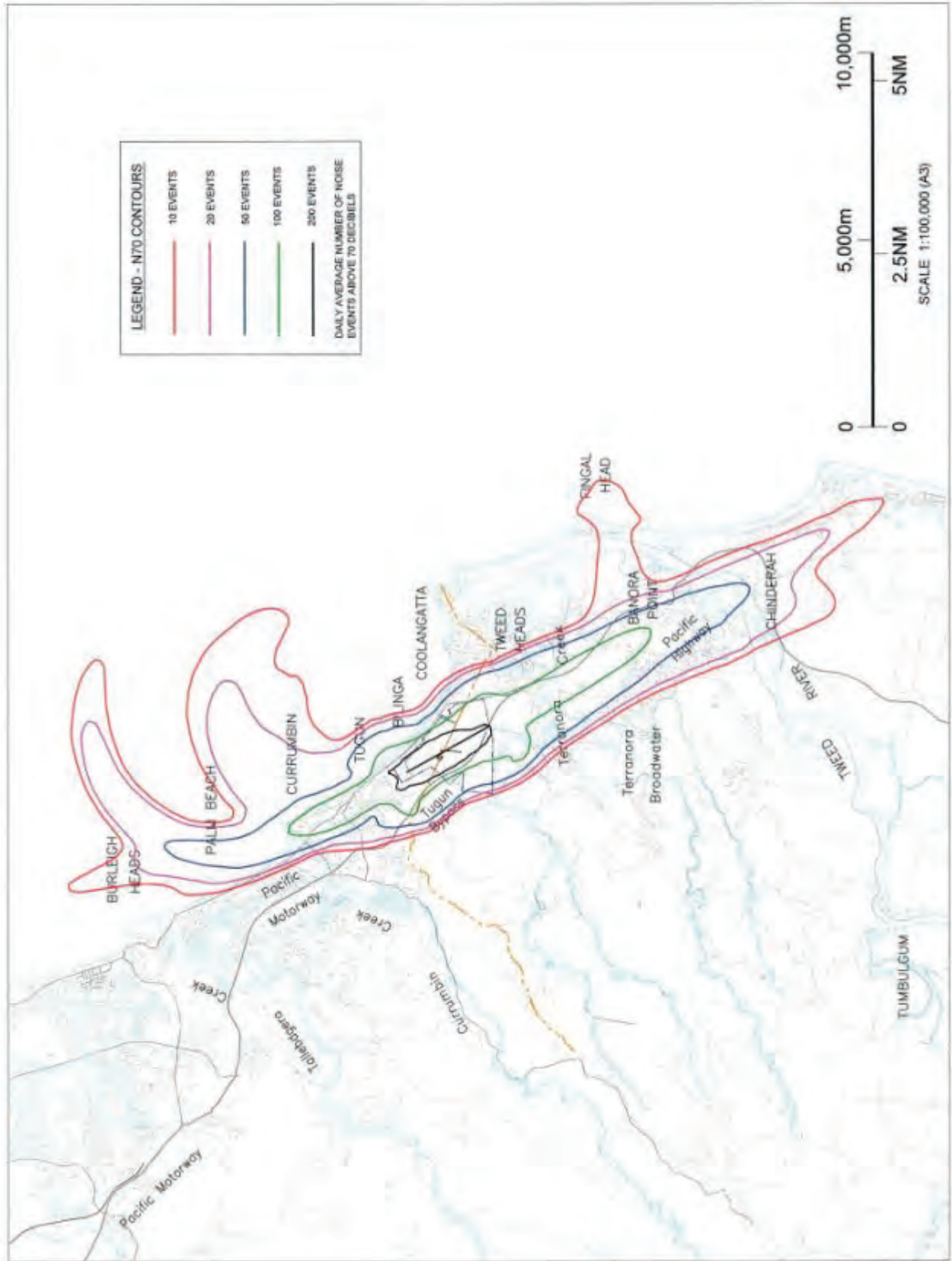
As of 1 July 2009, regional environmental plans (REPs) are no longer part of the hierarchy of environmental planning instruments in NSW. The removal of the REP layer was intended to simplify the State's planning system.

All existing REPs are now deemed State environmental planning policies (SEPPs). The Department is reviewing all remaining REPs as part of the NSW planning system reforms; however the majority of provisions contained in the SEPP will be addressed through Council's draft LEP 2012.

## 11. **Draft Tweed City Centre LEP**

The draft Tweed City Centre LEP has been re-exhibited and will be reported to the December 2011 Council meeting prior to being forwarded to the Department of Planning and Infrastructure to be made early in 2012.

Figure 5: 2031 N70 Contours



## 12. Multi-modal transport centre

The construction of a multi-modal transport centre at the Airport is seen as a positive development in the coordination of transport movements both within the airport and regionally. The rationalisation of cross-border traffic movements requires significant strategic consideration and will have impacts well south of the border. Council is currently working with the NSW Roads and Maritime Services and Tweed Developers to define the impact of a number of near-border development proposals on transport movements, including pedestrian and cycling.

## 13. Public transport

While the concept of a multi-modal transport hub is applauded, the integration of the hub into the local and subregional transport network has not been well documented in the Draft Master Plan. How will the hub service demand from northern New South Wales? Have the potential implications been investigated beyond the general advice provided in the Draft master Plan?

While outside the mandate of Council, the design of the hub as central to the terminal and as a passenger friendly development facilitating pedestrian movement seems a little at odds with the location of the hub on the eastern boundary of the site beyond the carpark. Given the space now provided through the loss of the loop road adjoining the terminal, it would seem possible to relocate the hub into this space, making it directly linked and much closer to the terminal. Were the terminal to be developed with a second storey, this could be well integrated into the overall concept for the terminal and genuinely limit the distance pedestrians needed to travel to reach the hub.

While cul-de-sacs will facilitate the separation of pedestrian and vehicle traffic, the option, as implemented at Sydney International Airport of traffic lights and separation of taxi and general traffic seems to work well and may provide an alternative to two cul-de-sacs.



Figure 6: Environmental features



Figure 13.2 enlarged in Appendix C

#### 14. **Biodiversity**

The matter of protecting remnant vegetation, a recognised ecologically endangered community containing known koala habitat has been presented for consideration earlier.

While the Draft Master Plan states that development of the airport facilities will inevitably impact upon biodiversity values including the Environmentally Sensitive Area (ESA) as seen in Figure 6 above, and that options to avoid impacts was a key consideration, those options are not presented, and the impact of development as proposed, will be that the vast majority of the ESA on the southern boundary in Tweed Shire will be removed.

While the Draft master Plan states that detailed assessment(s) of impacts will be carried out during the planning and approvals phase, it is considered reasonable to only include development in the Draft Master Plan which will not be constrained by ecological considerations, and as such the potential impact of clearing of remnant vegetation, an ecologically endangered community, should be considered at this stage, rather than securing a tacit approval to impact through the making of the Master Plan.

Any further investigations or measures which will minimise the potential impact of proposed future development of the airport on this habitat should be pursued and will be welcomed by Council.

As identified on page 173 of the Draft Master Plan vegetation clearing is listed as a potential source of environmental impact; this is particularly the case with remnant vegetation and ecologically endangered communities which are proposed to be almost entirely cleared under the development concepts presented in this Draft master Plan.

#### ***Proposed action:***

That GCAL undertake the necessary investigations to ensure that remnant native vegetation, a known ecologically endangered community containing koala habitat identified as ESA in the Draft Master Plan be undertaken prior to making any recommendations for southern expansion of the terminal as proposed in this Draft Master Plan, and that GCAL pursue all options to minimise the loss of ecologically endangered communities and koala habitat on the site.

#### 15. **Cultural heritage sites**

As part of its due diligence, Tweed Shire Council undertakes a Due Diligence Assessment in accordance with the Due Diligence Guide prepared by the Office of Environment and Heritage. An early part of this investigation includes notification of the local aboriginal land council and other groups. It is noted that the local land council has not been listed as a source for the review of known cultural heritage sites.

#### **In conclusion**

While the majority of issues affecting the site are regulated by Federal legislation, there are several aspects of the Draft Master Plan which require further detail and/or clarification in particular, the concept configuration of the site and how it relates to minimisation of demand for additional land, the efficient operation of internal operations and potential impacts on

adjoining land and infrastructure, the potential impacts of changes in the ANEF contours to the south of the Airport, and matters generally relating to vegetation and cultural heritage.

Key aspects of the Draft Master Plan relevant to the Tweed include:

- Relocation of the threshold (touchdown/liftoff point) 310 metres south of its current location;
- Construction of a third, southern entry into the Airport;
- Development of a multi-modal transport hub;
- Development of the Southern Cross University Campus, and
- Expansion of terminal into remnant vegetation, ecologically endangered community.

The potential impact of these proposed changes will include:

- An increase the number of properties likely to be impacted by aircraft noise as defined by the Aircraft Noise Exposure Forecast (ANEF) contours;
- Provision of a range of public transport options capable of servicing the needs of Tweed residents and tourists;
- Loss of ecologically endangered community, and
- Increased pedestrian and vehicular traffic within the Tweed.

As discussed within the report there are areas of concern that have been raised by way of submission to GCAL.

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

Resourcing and corresponding financial implications may arise should the need to review policy implications, discussed below, arise in consequence of the airport's draft master plan being adopted.

#### **POLICY IMPLICATIONS:**

Adoption of the Draft Master Plan, changes in airport operations and new development will likely result in the need for more detailed assessment of the Shire's current land-use zoning in the vicinity of or affected by the airport.

#### **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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**15 [PR-CM] Area E Urban Release Development Code**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/DCP/B24**

**SUMMARY OF REPORT:**

In accordance with the Local Environmental Plan gazetted for this site in 2007, Council's Planning Reform Unit have prepared a draft Area E Urban Release Development Code (draft Code), to form Section B24 of the Tweed Development Control Plan 2008.

Area E has been recognised in recent decades by both Tweed Shire Council and the NSW Department of Planning and Infrastructure (DoPI) as an important strategic site for urban land release and housing supply, catering for a potential, additional residential population of about 4,000 people. In parallel to Council's process, DoPI is currently considering, as the consent authority, a 321-lot community title (Torrens) subdivision within the eastern portion of Area E, under the savings provisions of Part 3A of the Environmental Planning and Assessment Act 1979.

The Code preparation process involved three landowner workshops during 2011, a number of Council reports, workshops and a formal public exhibition processes. Public exhibition was conducted in July/August 2011 for a period of 30 days. A detailed summary of submissions is addressed in this report, identifying key issues raised in the 67 public submissions received and a response upon which the final draft Code has proceeded.

This report concludes that the Code will advance the Council's broader strategic planning framework and will provide the necessary planning guidelines to regulate and guide the development of the Area E Urban Release Area.

The draft Code, having been widely consulted on, and prepared having regard to the principles of ecologically, socially and economically sustainable development, is now considered suitable, and recommended, for adoption.

**RECOMMENDATION:**

**That Council:**

- 1. Receives and notes the amendments to the publicly exhibited Draft Development Control Plan Section B24 – Area E Urban Release Development Code, arising from the review of public consultation submissions;**
- 2. Endorses the Development Control Plan Section B24 – Area E Urban Release Development Code, as amended, and provided as an attachment to this report,**

- 3. Endorses that when an appropriate framework of Developer Contributions is achieved and in place, give public notice of the Code's adoption in accordance with Clause 21(2) of the Environmental Planning and Assessment Regulation 2000, satisfying the provision of Clauses 53D(2)(a) and 53D(3)(a) of the Tweed Local Environmental Plan 2000 – Specific Provisions for Terranora Urban Release Area E; and**
  
- 4. Requests the General Manager forwards a copy of Development Control Plan Section B24 – Area E Urban Release Development Code to the Director-General of the NSW Department of Planning and Infrastructure in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000.**

## 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. Area E was identified in for urban release in the Tweed Urban Land Release Strategy 1991.

Within Tweed Local Environmental Plan 2000 – Amendment No. 10 (LEP Amendment), the site was rezoned in October 2007 to:

- 5(a) Special Uses (School);
- 2(c) Urban Expansion;
- 7(a) Environmental Protection (Wetlands and Littoral Rainforests); and
- 7(d) Environmental Project/Scenic Escarpment.

As part of the LEP Amendment a new Clause 53D was inserted that requires the following:

- (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....*
- (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.*

In accordance with the above, Council's planning have undertaken the preparation of a Draft Development Control Plan 2008, Section B24 – Area E Urban Release Development Code (the Code) to facilitate the orderly and economic development of Area E.

At its meeting of 19 July 2011, Council resolved to publically exhibit the draft Code for a minimum period of 30 days. Public exhibition took place between 27 July 2011 and 26 August 2011, including one-on-one meetings for interested parties. A total of 67 submissions were received during exhibition, the details of which are addressed within Attachment 1 to this report.

### **Key Features of the Proposed Code**

The draft Code is an urban release area based planning document aimed at guiding the development of Area E. It is the culmination of an extensive strategic planning body of work developed through the Area E Local Environmental Study 2004, Tweed Local Environmental Plan Amendment No. 10 and the Tweed 4/24 Strategic Plan (2004).

The draft Plan's area of application is identified in Figure 1.

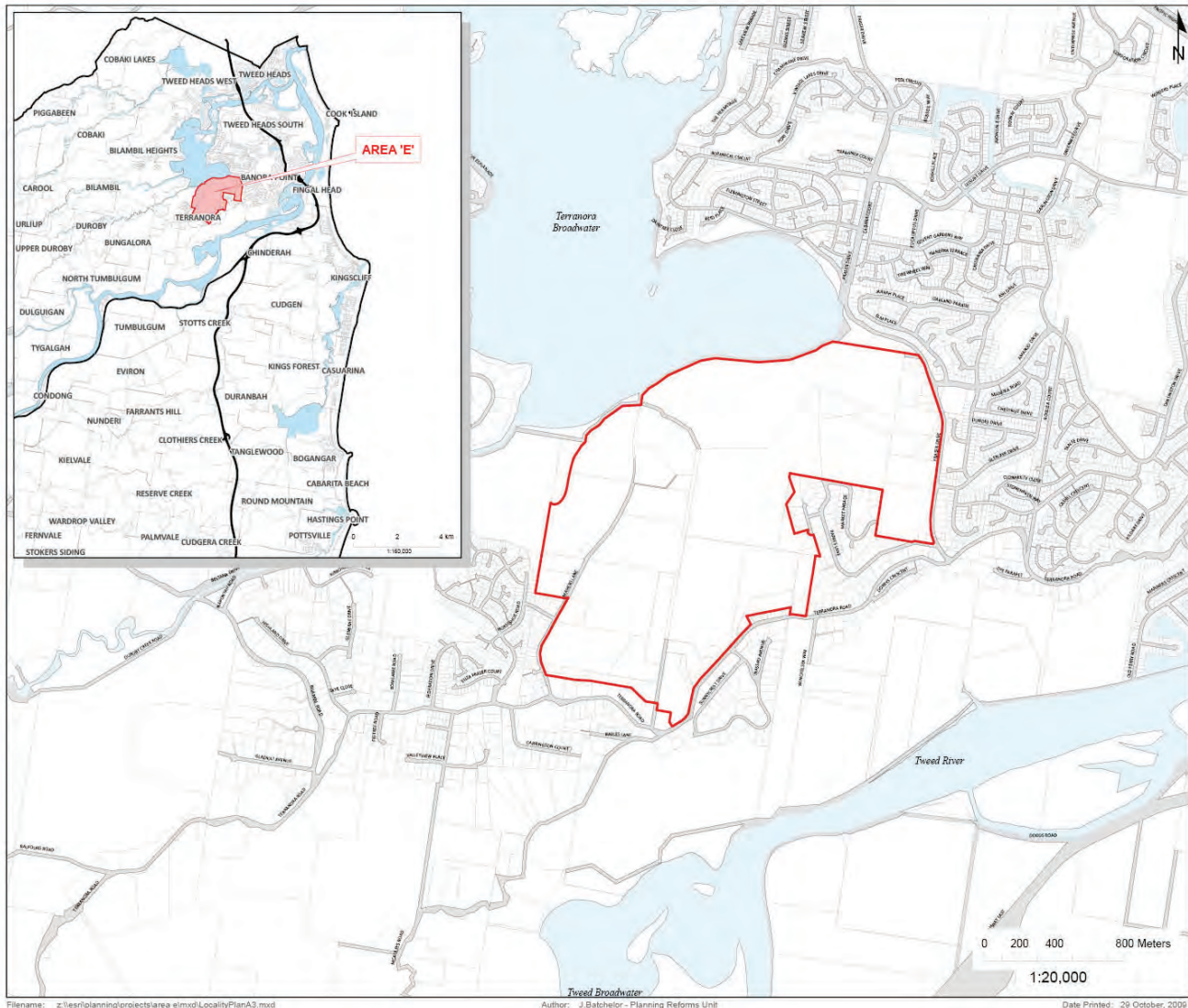


Figure 1 – Application of the Area E Urban Release Development Code

The Code is structured to address the anticipated staged development growth of Area E, being subdivision, the creation of a village centre and individual residential development.

The Code seeks to embody regulatory and urban design controls within the broader strategic visioning component, assisting the interrelationships between the site and phases of its development. This format is advantageous to most DCP formats where the controls and developments of individual sites are often looked at in isolation or a vacuum of other competing factors. It recognises the importance of the interrelationship between subdivision design (including roads, bulk earthworks, infrastructure provision), to individual lots and dwellings, as well as the immediate area and locality.

The most notable urban design principles include:

- Establishing a vision of best practice design and sustainability, health and wellbeing and creating a sense of place;
- Establishing an urban footprint to confine urban development to appropriate locations;
- Preservation and rehabilitation of environmental zones, establishment of further wildlife corridors within the future urban form;



- Establishing parameters for future landscape and visual character;
- Promote subdivision, building design and structural systems that respect and responds to the natural topographic features of Area E;
- Facilitate the village centre as the primary activity hub with a mix of retail, commercial, community facilities and residential accommodation;
- Provision of structured and casual open space;
- Requiring management of Class 6 soils to enable potential future use;
- Strong mix of dwelling types, sizes and densities, from transitional lots (minimum lot size of 1,200m<sup>2</sup>) to small lot/multi dwelling housing;
- Public domain and streetscape consideration; and
- Identifying infrastructure requirements.

The overarching principle of the draft Code is to foster development which reaffirms the qualities and characteristics of Area E through a framework that encourages active consideration of environmental, landscape and visual value. The village centre is to be consolidated as the primary activity hub for the Area E community by encouraging a mix of business and community uses, high quality public domain and containing a larger building form.

### **Public Exhibition and Submission Review**

A summary of issues raised by way of public submissions are addressed within Attachment 1 – Public Consultation Submission Review. However, the most critical amendments as a result of public exhibition are discussed below:

#### *Density of Development*

A number of objections were received regarding the proposed density of residential development within Area E. The objections stemmed from concern regarding the flow-on effect of the density onto the road network, interface and integration issues with adjoining residential development, the ability to achieve the density within a topographically constrained site and the visual impact within a hinterland setting. As a result, the provisions guiding the residential composition were reviewed.

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, Tweed Futures (now enshrined in the Tweed Community Strategic Plan 2011/2021) and Council's Urban Release Strategy 2009.

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 publically exhibited Code contained provision for 1799 dwellings, however with a stronger emphasis on small lot and medium density housing to enable greater areas of land to be retained for environmental, open space and visual quality purposes.

Post exhibition, in accordance with the submissions received, a band of 'Transitional Lots' has been included, along the Parkes Lane, Market Parade interface.

Transitional Lots are to have a minimum lot size of 1,200m<sup>2</sup>, assisting in the transition from the existing 2,000m<sup>2</sup> lots, to the <800m<sup>2</sup> suburban lots within Area E. In addition, the extent of small lot and medium density housing within Area E has been reduced following concerns that the extent of medium density could potentially adversely impact upon the visual and desired character, and also because there is a risk that the site constraints and associated building costs would cause the orderly and economic use of the land to become uneconomical.

This analysis resulted in amended targets 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>
Transitional and Large Lot Residential (Lots >800m <sup>2</sup> )	8	60	47	115
Suburban Lot Residential (Lots between 450 – 800m <sup>2</sup> and provided at a rate of 1 dwelling per 650m <sup>2</sup> of site area)	428	265	229	922
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)	174	58	55	287
Neighbourhood Plan Housing	0	114	32	146
Shop-Top & Village Centre Residential	0	120	0	120
<b>Total</b>	<b>610</b>	<b>617</b>	<b>363</b>	<b>1590</b>

Table 1 – Dwelling Density and Typology Targets

As detailed in the above table, the Code has been amended to reduce the number of dwellings within Area E by approximately 200 lots and provide a higher proportion of dwelling house development compared to multi-dwelling housing.

This outcome is considered to strike an appropriate balance between providing for the highest and best use of residential land to achieve long established density targets and maintaining the high quality visual and landscape characteristics of the region.

#### *Sustainability and Environmental Concerns*

During the submission period, sustainability and environmental concerns were raised. Whilst many of the concerns raised have not generated specific amendment, (i.e. concerns regarding water quality are already addressed within Shirewide policies) the Code has been amended to include an 'Urban Footprint' map, clearly identifying land that is consider suitable for urban development, land that is not suitable, and land that will require additional topographically sensitive development in order to satisfy Council about its development suitability.

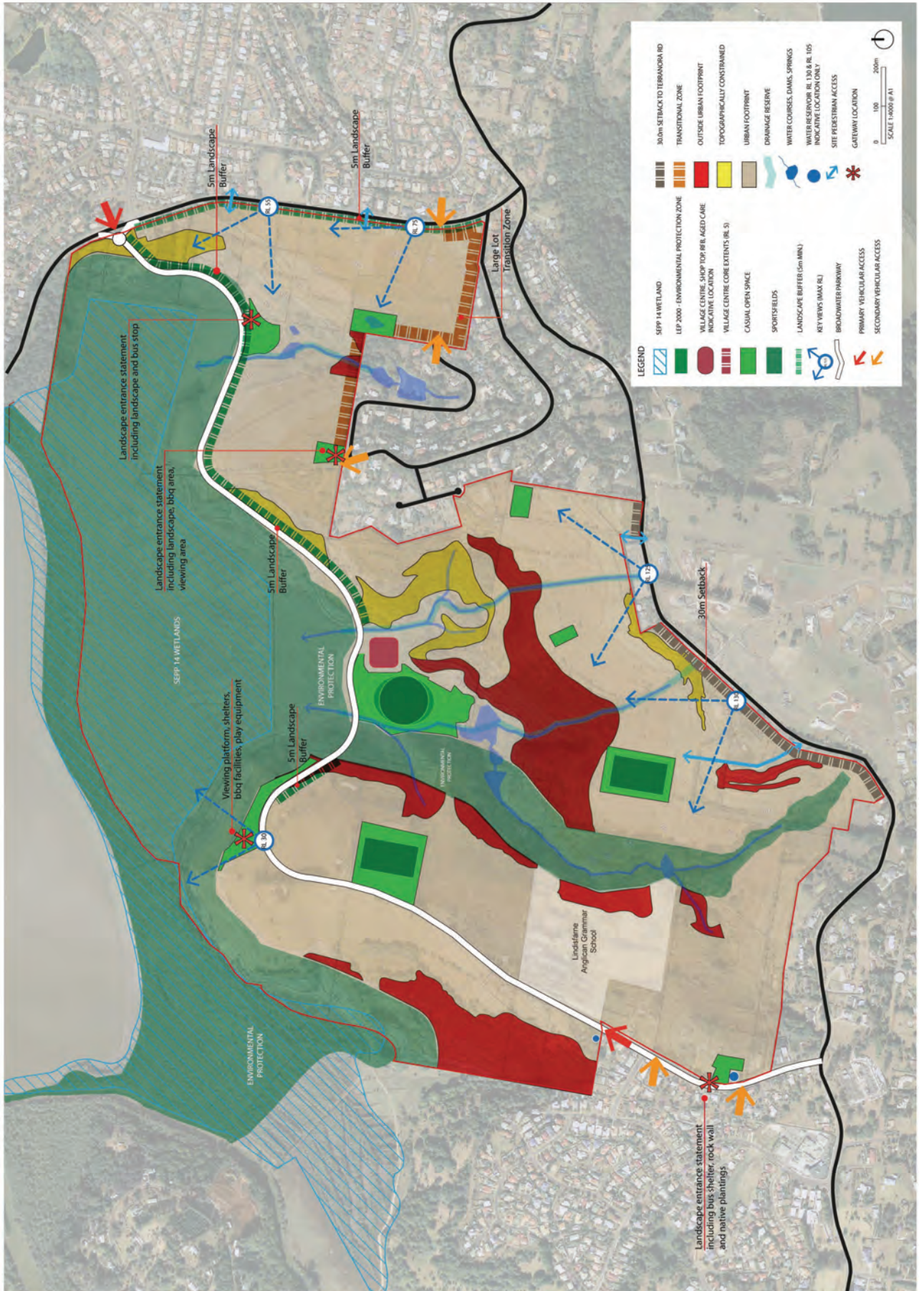


Figure 2 – Urban Footprint

The Urban Footprint for Area E is derived from a methodology of retaining land identified for environmental protection for that purpose, identifying land possessing a combination of greater than 18 degrees slope and mapped as 'Bushland' and acknowledging that these tracts of land comprise a significant portion of the site's landscape and visual character, and identifying bushland and natural systems that have the capacity to integrate with wider wildlife corridors.

The inclusion of an Urban Footprint plan provides additional guidance and clarity to the community as well as Area E landowners on what land is considered broadly suitable and unsuitable for development, therefore protecting land of environmental quality and assisting in meeting sustainable development objectives.

### *Designing Regulatory Controls and Guiding Principles*

Post public exhibition it was identified that whilst a number of the objectives and controls were supported by the general public, there was concern that the intent could be lost in application of the Code. As such, the Code has been modified to clearly establish additional plans, studies, analysis that will be required for the development of Area E. Similarly, where controls could be further qualified or quantified, the opportunity has been taken to embody this information within the Code. In this respect, the intent of the Code is not considered to have changed; rather the controls have evolved through an iterative process that has included the additional information provided through public and industry consultation and feedback.

### *Legibility of the Code*

A number of concerns were raised through the public submission period regarding the legibility or 'clarity' of the Code in distinguishing its relationship to existing Council policies (particularly Sections A1 and A5 of the Tweed DCP) and between Development Controls and indicative, or diagrammatic illustrations (examples). The further review has led to further refinement to ensure that the controls and their relationship with others plans is clear, concise and minimised ambiguity or misunderstanding.

The Code was amended in several ways in order to achieve this aim:

- *Removal of background information* - As this information does not provide a development control measure, rather, describes the background and context of the site, it was determined that this information was not required to be in the Code. This information is to be retained within a background site analysis document, which is called-up by the Code.
- *Amend the document structure* – Previously the Code contained 4 parts comprising; an "Introduction", "Area E in Context", "Whole of Release Area Strategies" and "Precinct Specific Strategies." The amendments have shifted from the 'precinct' based to 'development' based parts, thus following a more intuitive and representative sequence of the land development process.

The Code now comprises four parts: "Introduction," "Subdivision," "Village Centre" and "Residential Controls." This structure clearly delineates what form of

development the controls apply too and therefore when the controls need to be considered and addressed.

- The role the diagrams take within the Code has been clarified to ensure that those provided for illustrative purposes only are not inadvertently used as a development control or incorrectly applied to justify an otherwise inappropriate departure from a stated development control.

## **BROADWATER PARKWAY**

As reported to Council's April, June and July 2011 meetings, the location, design, connection and construction of the trunk road, known as Broadwater Parkway, linking Mahers Lane to Fraser Drive, is critical and essential infrastructure to the development of Area E.

As part of the DCP preparation, a number of potential alignments to Broadwater Parkway have been identified and considered at a desktop level. Generally, the constraints that impact upon the ultimate alignment of Broadwater Parkway include:

- Topography;
- Existing dwelling houses
- Areas of environmental protection; and
- Integration into the wider road network.

The alignment, funding and construction of Broadwater Parkway is possibly the greatest challenge to the development of Area E.

Whilst a number of submissions were received in relation to Broadwater Parkway, for the most part, the alignment within the Code has not been changed. An amended alignment has been pursued through the western portion to reduce landforming required, and the alignment rationalised in front of the Village Centre in keeping the stormwater solutions proposed, the eastern end has not been amended. The preferred alignment of Broadwater Parkway is displayed below.



Figure 3 – Broadwater Parkway within the Area E Council Report

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.

This preferred alignment will require the compulsory acquisition of at least one property and result in amenity impacts to nearby existing residences. While these impacts are considered undesirable they are seen to be unavoidable given that Broadwater Parkway is a critical infrastructure component to Area E, would provide additional connectivity and efficiency to the local traffic network, and cannot be avoided without endorsement for a completely different road alignment, for example through the adjacent highly vegetated and sensitive lands.

To date, no feasible alternative has been identified that are considered to meet triple bottom line sustainable development principles and as such, framework should be put in place to secure this alignment, through adoption of the Code and corresponding developer contribution plans or similar funding arrangement.

### **Developer Contributions**

At its October meeting, Council resolved to publically exhibit draft Section 94 Contribution Plan No. 31 – Terranora Area E (draft CP). Within the public exhibition period Council initiated discussions with NSW DoPI to assist in obtaining the Minister for Planning's approval for the plan, which is required given the levy exceeds the State Government enforced \$30,000 per lot cap.

To date discussions with DoPI have indicated a need for the applicable plans to be referred to the Independent Pricing and Regulatory Tribunal (IPART) for assessment. IPART's role is to review applicable contribution plans and will give advice and make recommendations to the minister for Planning and Council regarding the Plan. Initial indications are that this process could take up to 8 months and may draw in the review of other Council's 94 plans.

In light of the above and the timeframes involved, Council staff are currently reviewing an alternative option, which may be available in order to equitably facilitate the infrastructure provision required by the development of Area E. Preliminary investigations indicate that a Voluntary Planning Agreement (VPA) may be the best framework available, however until such time that the Code is adopted, which details the infrastructure required, investigations remain in the early stages.

Adoption of the Code Council will enable staff to work with the Area E landowners to establish the most effective framework for collecting and distributing the cost of developer contributions.

### **PART 3A UPDATE**

Post the update contained with the July council meeting report, relevant Council officers have held additional meetings with the applicant and DoPI staff, to discuss components of the Part 3A Major Project Application. Despite repealing the previous provisions of Part 3A of the Environmental Planning and Assessment Act 1979, the savings provisions included result in DoPI being retained as the consent authority for the application.

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 July update, though it is understood that the applicant is currently preparing the next level of documentation required, being the Preferred Project Report.

**CONCLUSION:**

The Code provides another key component of planning framework for the Area E Urban Release Area, stemming from a contemporary LEP amendment which identified Area E for urban expansion.

The draft Code has been drafted taking account of the many valuable and relevant elements of the earlier Local Environmental Study, LEP amendment, extensive landowner consultation, as well as seeking to take the best of current best practice urban planning and community input.

Area E is a unique and constrained release area and has many challenges to face as new development occurs. Among those challenges is the delivery of infrastructure, maintaining an appropriate landscape and visual character, providing housing types that respond to the strong topography of the site, retention and improvement of the environmental assets of the site and integrating appropriately within the wider residential fabric.

The draft Code since exhibited has been amended to take in to account the matters raised in this report relating to the receipt of public submissions and feedback.

The draft Code is premised on best practice, it is highly relevant and geared to managing development and growth into the future.

It is recommended that the Code be adopted and that further investigation of options for funding the necessary infrastructure be pursued and negotiated with the landowners.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The adoption of the draft Code will necessitate amendments to several Council documents, including the Tweed LEP and amendments to the Developer Contributions framework as it relates to Area E.

**POLICY IMPLICATIONS:**

The adoption of the Area E Urban Release Development Code seeks to provide a clear direction and prioritisation of Council's strategic planning and infrastructure provision as it relates to Area E.



**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. Public Consultation Submission Review (ECM 42803479)
  2. Copy of Tweed DCP Section B24 – Area Urban Release Development Code for endorsement. (ECM 42748359, ECM 42748361, ECM 42748364, ECM 42799369)
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**16 [PR-CM] Tweed City Centre Vision, Local Environmental Plan and Development Control Plan (Section B2)**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/LEP/2006**

**SUMMARY OF REPORT:**

On 6 October 2004, Council resolved to prepare draft Tweed Local Environmental Plan 2000, Amendment No 64, relating to Tweed Heads. The draft LEP amendment investigates the land zonings, building height and development standards of land located within the Tweed City Centre (as displayed on Land Application Map in Appendix A). Within the preparation of the initial LEP amendment it was identified that a more holistic planning approach was necessary and the project brief ultimately included the preparation of a Vision document and amendments to the existing Section B2 – Tweed Heads, of the Tweed Development control Plan 2008 (the draft Plans). 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.

The suite of Plans was placed on public exhibition initially from 27 January to 30 April 2010, and then again from 14 September to 14 October 2011. A total of 15 submissions were received in respect of the 2011 exhibited plans.

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

**RECOMMENDATION:**

**That Council:**

- 1. Receives and notes the summary content of submissions received as part of the exhibition of Tweed City Centre Vision, Local Environmental Plan and Development Control Plan – Section B2;**
- 2. Endorses the desired amendments identified within this report;**

**Tweed City Centre Vision**

- 3. Adopts the Tweed City Centre Vision document and encourages the 'Future Actions' identified to be included within Council's work programs as necessary;**

**Tweed City Centre Local Environmental Plan 2012**

- 4. Endorses the adoption of the Draft Tweed City Centre Local Environmental Plan 2012;**

5. Endorses the preparation and subsequent furnishing of a report to the Director General, pursuant to the provision of s68(4) of the Environmental Planning and Assessment Act 1979 to assist in the making of the Tweed City Centre LEP 2012;

**Tweed Development Control Plan – Section B2 – Tweed City Centre**

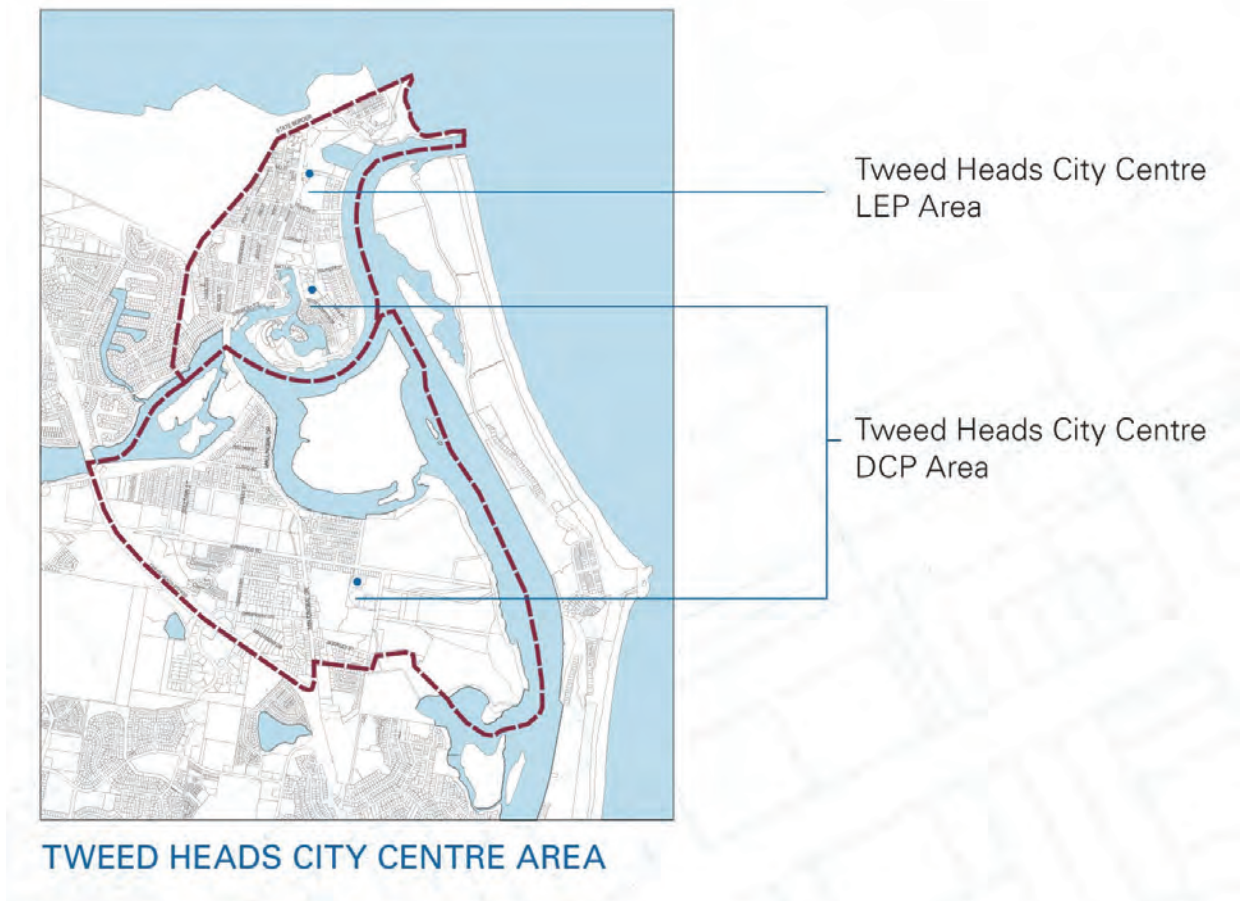
- 6A. Endorses the retention of the 'Alternative routes of rapid transit service' (and associated wording), provided by way of Figure 8.4 of the Tweed Development Control Plan – Section B2 – Tweed City Centre, as it relates to Council owned land at Bay Street, Tweed Heads (The Fire Station site).

**OR**

- 6B. Endorses the removal of the 'Alternative routes of rapid transit service' (and associated wording), provided by way of Figure 8.4 of the Tweed Development Control Plan – Section B2 – Tweed City Centre, as it relates to Council owned land at Bay Street, Tweed Heads (The Fire Station site).
7. Endorses the adoption of the Draft Tweed Development Control Plan 2008 – Section B2 – Tweed City Centre to take effect simultaneously with the commencement of the Tweed City Centre Local Environmental Plan;
8. Advertises a public notice of Council's adoption of the Draft Tweed Development Control Plan 2008 – Section B2 – Tweed City Centre, be published in the Council's newspaper, the Tweed Link, in accordance with Clause 21 and 22 of the Environmental Planning and Assessment Regulation 2000; and
9. Endorses the preparation of supporting documents to ensure appropriate implementation of the Tweed City Centre Plans; including but not limited to, development contributions plan/s and a policy framework for implementing Architectural Design Competitions.

## REPORT:

On 6 October 2004, Council resolved to prepare draft Tweed Local Environmental Plan 2000, Amendment No 64, relating to Tweed Heads. The draft LEP, along with a Vision Document and new Development Control Plan - Section B2 amendment investigates the land zonings, building height and development standards of land located within the Tweed City Centre. The Study Area is displayed below.



**Figure 1 – The Study Area**

The Draft Plans were prepared by the Department of Planning and Infrastructure's (DoPI) (former) Cities Taskforce in conjunction with Council staff and their consultant, JBA Urban Planning.

At its 19 July 2011 meeting, Council resolved to publicly exhibit the Draft Plans for the second time. In accordance with cl.12 of the Environmental Planning and Assessment Regulation 2000, and section 66 of the Environmental Planning and Assessment Act 1979, the Draft Amendment and relevant supporting information was placed on exhibition between 14 September 2011 and 14 October 2011. A total of 15 submissions were received.

### Public Exhibition

The draft plans and associated documents were placed on public exhibition from the 14 September 2011 to the 14 October 2011. The exhibition was advertised in the Tweed Link, Council's publication and on Councils' website.

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

- Murwillumbah Civic Centre from 8.00am to 4.30pm weekdays;

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

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

- Draft Tweed City Centre Vision Document
- Draft Tweed City Centre Local Environmental Plan Instrument and Mapping
- Draft Tweed City Centre Development control Plan (Section B2 of the Tweed Development Control Plan 2008)
- Copy of the Standard Instrument (Local Environmental Plans) Order 2006
- Copies of relevant S117 Directions, SEPPs, REPs and Strategies (i.e. NSW Coastal Policy, Far North Coast Regional Strategy etc)
- Details of s62 Consultation
- Details of s64 Compliance
- S65 Certificate

A total of 15 submissions were received pursuant to s.67 of the EP&A Act 1979. A summary of the submissions and responses are detailed below.

- ***Vision***

*Issue: Council planners should be looking to create a vibrant urban village, along the lines of new development just west of Robina Town Centre. This new centre has a mix of commercial, café and living in heights that range from six to ten stories. It is very attractive and is encouraging to new residents.*

Response: Similar to the referred area (Robina/Varsity), the draft Plans provide for a variety of land uses (such as commercial, retail, cafes etc.) and building height. It is acknowledged that the draft Plans do provide for taller buildings north of Frances Street than presently surround Robina Town Centre, however this is considered to be appropriately coupled with design controls, such as setbacks and floorplate sizes to ensure that built form will be of appropriate height, bulk and scale. No further amendment to the Plans is recommended.

*Issue: In previous submissions, the Tweed Community have previously submitted that a tiered form of high-rise development with city urban open space could be a priority, rather than the desolate "canon" style high-rise now evident in Stuart Street, Tweed Heads.*

Response: The draft Plans provide for a variety in building height, ranging from 5m – 49.5m AHD in and around the Tweed City Centre. Similarly, the area is well serviced by open space areas including Jack Evans Boat Harbour, Durambah Beach, Jack Chard Par, John Follent Park and Ebenezer Park. The draft Plans are considered to possess appropriate controls to result in high quality built form outcomes that are visually attractive, interesting and accommodate a range of suitable land uses. No further amendment to the Plans is recommended.

*Issue: This plan also contains no provision for a public car park, rail or bus terminal, nor public transport corridor, which should be considered in the future planning of a town. Unless car park planning is corrected and more alternative car parking facilities provided, loss of car parking will seriously affect tourist amenity and local business*

Response: At its meeting of 19 July 2011, Council resolved to:

- "2. *Develop a Rapid Bus Transit Corridor Plan from Gold Coast Airport Transport Hub to Pottsville through the coastal villages with links to Murwillumbah.*
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."*

At this point the referred Rapid Bus Transit Corridor Plan has not been commenced, accordingly, the Vision, LEP and DCP do not prescribe a corridor or route. From a strategic planning perspective, significant attempts to shift Tweed Shire's high vehicle dependency should be pursued. In this regard, the Plans include:

- increased mixed use development, assisting in reducing the number and length of trips
- increased requirements for bicycle parking and associated facilities
- improved built form controls to improve amenity and safety from the public realm, assisting in encouraging pedestrian movement.

It is acknowledged that efforts must be made beyond these Plans to significant shift methods of travel. Such projects could include:

- Public Domain and Infrastructure Plans – further increasing pedestrian and cyclist comfort and interest, strategically locating pocket car parks along transport routes.
- Public Transport Station/Stop Design – integrating land use, cultural development/awareness, 'Wi-Fi' nodes and facilities with 'stops', beyond simply providing shelter to waiting patrons
- Creating Transport Alliances - Ensuring long-term stability in transit routes to assist in financial stability to business owners, granting public transport street primacy, investigating car share programs and shuttle systems.
- Transit Corridor Plan – Identifying routes and marrying public transport opportunities with integrated land use and activity density.

The abovementioned potential plans are not within the scope of these Plans, however could be pursued by Council at a point in the future. It is acknowledged that the Plans propose an increase in population and as such additional focus should be made towards ensuring greater efficiency in human movement. Importantly, the Plans themselves provide an appropriate framework for future detailed investigations to occur and do not prohibit complimenting public transport and movement strategies. To this extent, Future Action 3 within the Vision document identifies the needs to review and develop transport management strategies and the LEP permits '*Passenger Transport Facilities*' within the business zones adopted. Both of these actions enable Council, State Government or other public transport providers to provide facilities if and when required to further encourage a variety of travel means. No further amendment to the Plans is recommended.

*Issue: I do not support the cultural information contained in the Vision Statement, as my community did not play a role in developing that statement and I seek to have it replaced with the endorsed Aboriginal community statement, provided by members of the Tweed Shire Council Aboriginal Advisory Committee.*

Response: In response to the abovementioned concerns, Council engaged Ian Fox to review the Historic Context chapter of the Vision document. Ian Fox has prepared a revised Cultural Statement, developed consultation with the community and endorsed by the

Aboriginal Advisory Committee at its meeting of 14 November 2011. The Historic Context chapter of the Vision document has been revised accordingly.

*Issue: Reinstate the Tweed Heads Town Centre Masterplan - The community of Tweed Heads prefers to grow sustainably as a Town Centre and not try to duplicate the evils of the high rises and oppressive overdevelopment of the Gold Coast which is implied in this massive overdevelopment in the LEP/DCP of 2011. The regional city concept for Tweed Heads is rejected due to:*

- *The lack of movement by developers since 2000 to implement LEP 2000 in Tweed Heads Town Centre over the last 12 years.*
- *All the development in the Tweed since 2000 and all the developments now planned for the future are south and west of Tweed Heads Town Centre or along the coast of Coolangatta where the views are that make both tourist units and residential units attractive.*
- *The highly restrictive areas of the Tweed Heads Town Centre and Tweed City south with its flood zone restrictions place limits on future development and growth in both areas.*
- *The proposed high rises west of Wharf and south of Frances Streets will have no views or reasons to attract buyers unless they are either on the hills or are specialist concepts catering for the up market retirement dollar or are proposed by the Clubs who have a \$100 million annual gambling income and expanding businesses from that income, as most current developments under construction or planned in Tweed Heads Town Centre are today.*

Response: Within the Vision document, a regional city is defined as:

*“A city that is a focal point for jobs that also has a full range of business, government, retail, cultural, entertainment and recreational activities.”*

The abovementioned definition is in keeping with the NSW Far North Coast Regional Strategy 2006, which identified Tweed Heads (along with Lismore) as a Regional Centre and ‘containing 35% of the Region’s additional housing’. The draft Plans are considered to embody this overarching guidance from DoPI as well as employ a triple-bottom line approach to development.

The Vision document identifies that growth within the Tweed statistical local area has been stronger than the Shire as a whole within the past decade. The Tweed City Centre is considered to continue to attract new investment, population and job growth with the attributes possessed by its location (close to employment, beaches, open space, the Gold Coast International Airport etc), and an improved planning framework which carefully considers the flooding constraints of the area. No further amendment to the Plans is recommended.

*Issue: The current art gallery/museum proposal on priceless scenic land planned at Flagstaff Hill would be better suited at the current, but soon to be relocated, Southern Cross University campus at Brett Street, Tweed Heads.*

Response: This submission and concept has been forward to Council’s Museum working group for their consideration. Information and Education Facilities (includes museums) is identified as permissible with consent within the draft TCC LEP for this site, accordingly no further amendment to the Plans is recommended.



*Issue: A submission was received suggesting that Bay Street should be the Government and Recreational centre of Tweed City. The proposal would include pedestrian amenity, shops, studios, cafes, restaurants, recreation and promenade opportunities. Further, at the Western (top) end of Bay St (Old fire station) close off Bay St on the ridge ie Thomson Street and build our new City of Tweed Government offices making Bay St an exceptional core centre for recreational and administration of the City of Tweed Heads.*

Response: Whilst relocating Council operations is not presently included in any adopted strategies, should Council wish to pursue such a proposal the B3 – Commercial Core zone applied to the ‘Old Fire Station’ site includes *Public Administration Building* as a permissible with consent land use. No further amendment to the Plans is recommended.

- **Local Environmental Plan**

*Issue: I object to the B4 zoning on Coral Street, Tweed Heads. Under this zoning high rise development is permitted. Coral Street land is Crown Land and as such, should be retained as parkland or perhaps a more suitable site for the proposed museum.*

Response: The referred site (Lot 703 DP 877250) is currently zoned 3(e) Special Tourist (Jack Evans Boat Harbour), with a permitted building height of 3 storeys. The draft LEP includes a B4 – Mixed Use zoning, with a maximum building height of 15m.

When comparing objectives and land use tables of the current and proposed zoning (both seek to provide for a mixture of compatible land uses, including tourist orientated commercial, retail, service, residential and waterfront facilities), a number of similarities can be identified and the zones considered ‘like’. The B4 Mixed Use zone includes a number of public and community uses as permissible with consent, including Information & Education Facilities (which includes Museums etc) and as such, does not preclude community facilities being pursued on the site.

The site is currently affected by a 3 storey height restriction, which, under the Tweed LEP 2000 definitions could result in a 15m height building (3 storeys of commercial development). Whilst this height is permissible, a more ‘regular’ building height of 13.6m (as per the prescriptive controls of Section A1 of the Tweed DCP), representing a 1.4m uplift in building height. The building height controls for this site have been carefully considered by Council and Department of Planning officers to ensure appropriate view sharing for adjoining properties, whilst providing opportunities for high quality built form opportunities, framing Jack Evans Boat Harbour – a regionally significant open space area.

The referred lot presents a significant opportunity to frame and activate the northern edge of Jack Evan Boat Harbour. The controls included within the draft Plans are seen to provide appropriate planning controls and guidance to ensure an appropriately high quality outcome for this site and as such no further amendment to the Plans is recommended.

*Issue: I object to the zoning of the Commercial Core to B3. Under this zoning high rises of excessive height are permitted. This type of high rise development is not suited to Tweed. It will create a smothered environment of bleak, wind tunnel unattractiveness in what could be a beautiful urban environment.*

Response: Whilst it is acknowledged that building heights throughout the B3 Commercial Core zone are reflective of ‘high rise’ development within a Tweed Shire context, the requirements of the LEP by way of Floor Space Ratio restrictions and Design Competitions, coupled with the built form controls within the draft DCP ensure that built form will be of appropriate height, bulk and scale. No further amendment to the Plans is recommended.

*Issue: Gold Coast Airport Limited (GCAPL) concurs in the intent and effect of the draft Clause 6.10, however, consider that it would be preferable for phraseology changes to be*

*made to provide greater clarity. Further, it was suggested that it may be appropriate for an Aircraft Noise clause to be included, for consistency with the draft Shire-wide LEP, although there are no current proposals which would specially bring about a need for protection against aircraft noise in the central Tweed Heads locally.*

Response: The suggested amendments to the Aircraft Obstacles clause have been forwarded to DoPI staff for their review and feedback, concluding that some minor amendments are warranted, specifically relating to the role of the relevant Commonwealth body, however the full suite of amendments sought is not supported. As the Tweed City Centre area is not affected by the ANEF contours, pursuing an Aircraft Noise clause is not considered warranted at this time. No further amendment to the Plans is recommended in this regard.

*Issue: Measurement of building height - It would appear that a 49.5m high building could be anything from 11 to 15 storey and 34m high could mean anything from 8 to 10 storey. This confusion must be cleared up to give guidance to both residents and developers.*

Response: DoPI's Practice Note PN 08-001 provides detail on Building Height provisions within the Standard Instrument, confirming that heights are to be shown as metres. No further amendment to the Plan is recommended in this regard.

*Issue: Submissions were received requesting that the area proposed by Centro to takeover or purchase in Bay Street north of the Centro Complex which is still shown on planning maps be removed.*

Response: DoPI's Practice Note PN 10-001 provides guidance to councils on zoning public infrastructure land in standard instrument local environmental plans. Principle 1.3 of the Practice Note states 'Roads must be zoned' before providing a framework for how to appropriately zone roads. Bay Street, east of Wharf Street, is currently bound by commercial and recreational zones. DoPI advises that in cases where a road forms a boundary between zones the whole of the road should be zoned the same zone (i.e. the zone boundary should not run down the middle of the road); and that wherever possible, the zone applied should be the same as that applied to adjoining land, and which provides for a range of land uses to assist with flexibility in land use planning.

In keeping with the abovementioned principle, Bay Street has been zoned B3 – Commercial Core. It is largely viewed that the application of the B3 Commercial Core zone provides a continuation of the current Tweed LEP 2000 provisions. In this regard, Clause 12 of the Tweed LEP 2000 enables development on unzoned land that is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.

In summary, the draft LEP is considered to reflect the application of the current Tweed LEP 2000 in relation to the referred site and is in keeping with the DoPI's practice note regarding the zoning of infrastructure. Any application for the site would need to be considered on its merits, having regard to the provisions of the LEP and DCP, particularly the Controls for Special Areas. No further amendment to the Plan is recommended in this regard.

*Issue: The continuing zoning of Public Recreation Space surrounding Jack Evans Boat Harbour southern foreshores is nothing short of a disgrace and facilitates the sale of lands for residential use by the State Government.*

Response: It is not clear from the submission received which specific property/s is referred to, however the zoning of Bay Street to B3 Commercial Core is considered likely. In this regard, the draft LEP is considered to reflect the application of the current Tweed LEP 2000 in relation to the referred site and is in keeping with the DoPI's practice note regarding the zoning of infrastructure. No further amendment to the Plan is recommended in this regard.

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*Issue: The proposed high rises west of Wharf St and south of Frances Street appear to be "slum planning" with urban squalor of repetitive ten stories imposed.... No view planes, no sunlight allowed.*

Response: The draft Plans provide for a variety of land uses (such as commercial, retail, cafes etc.) and building height. It is acknowledged that the draft Plans do provide for taller buildings north of Frances Street, however this is considered to be appropriately coupled with design controls, such as setbacks and floorplate sizes to ensure that built form will be of appropriate height, bulk and scale. No further amendment to the Plans is recommended.

*Issue: Environmental Protection Zoning on Charles Street is objected to on the following grounds:*

- *The principal purpose of the first phase of preparation of new LEPs for the Shire has always been put forward by the Council as being to effectively translate the status quo under the Tweed LEP 2000 into the new NSW standard format LEP. The current proposed zoning amendment is inconsistent with that declared purpose of the review, particularly where this otherwise unannounced zoning amendment had apparently not been contemplated when the draft LEP was first exhibited in early 2010.*
- *The re-exhibition of the draft LEP took place for other reasons, unrelated to zoning of residential areas within the LEP area, and the Council's decision at its meeting on 19 July 2011 to not undertake community consultation or ANY public presentation for the re-exhibition would have tended to reinforce that what was being proposed by way of amendment of the original draft LEP was of a routine nature.*
- *There is no evidence for the justification or need for the proposed amendment put forward in the supporting documents for the draft LEP. The only (less than transparent) reference to an amendment in the re-exhibited draft LEP documents occurs in the report to the Council Meeting of 19 July 2011.*
- *The affected land itself, despite obviously being heavily vegetated in part, could not mainly be categorized as being of high ecological, scientific or cultural values. Rare or threatened species do not appear to be involved. For much of the area, pest and non endemic species predominate.*

Response: The draft Plans as they relate to the Tweed City Centre has not been intended to translate the current LEP 2000 provisions into the Standard Instrument, rather to form a strategic review of the planning controls that apply to the Tweed Heads locality. Contrary to the submission, the draft Plans were re-exhibited in 2011 as a direct outcome of submissions received to the 2010 exhibition, as well as changes to the Standard Instrument Template. Council's Natural Resource Management Unit has reviewed the submissions received and commented as follows:

1. *The area in question is part of a larger bushland patch consisting of a rare form of Littoral Rainforest. Littoral Rainforest is listed as **Endangered** under the NSW Threatened Species Conservation Act 1995 (Gazetted 04/06/04; see <http://www.threatenedspecies.environment.nsw.gov.au/tsprofile/profile.aspx?id=10867> ) and **Critically Endangered** under the Commonwealth Environment Protection and Biodiversity conservation Act 1999 (Gazetted 10/10/08; see <http://www.environment.gov.au/epbc/publications/littoral-rainforest.html> ).*
2. *The approved Conservation Advice provided to the Commonwealth for this ecological community recommends protection via zoning for environmental purposes of private and leased lands (see*

*<http://www.environment.gov.au/biodiversity/threatened/communities/pubs/76-conservation-advice.pdf> ). The NSW Office of Environment and Heritage (OEH) acknowledge the potential for clearing and development of stands (such as this one) that are not already identified under SEPP 26 and recommend the implementation of appropriate protection measures.*

3. *The proposed E2 Environmental Conservation zone was also prompted by comments from DECCW (now OEH) on the Draft Tweed City Centre LEP 2009 where they specifically recommend the application of the E2 Environmental Conservation zone to "vegetated lands on the escarpment."*
4. *The submissions suggest that parts of the area proposed for Environmental zoning have been previously cleared and are affected by non-local species and environmental weeds. This in itself does not exclude the area from being regarded as an Endangered Ecological Community as noted in point 1 above. Indeed, both the State and Commonwealth Scientific Committee determinations for this community specifically acknowledge that many patches are highly degraded and subject to ongoing threats from a range of sources including invasive weeds.*

*For the reasons outlined above I am of the view that it is in the public interest to retain the proposed zoning.*

In light of the abovementioned comments, no further amendment to the Plans is recommended.

*Issue: We submit that it would be more appropriate to define the block for floor space ratio purposes as Wharf Street, Florence Street, Powell Street and adopt a 2:1 FSR given that it is well removed from the river foreshore (thus minimizing the potential for overshadowing) and also the additional FSR will assist in achieving optimal residential development outcomes having regard to the proposed zone objectives and the allowable building height of 22m, which is normally 6 to 7 stories.*

*The additional FSR would also be consistent with the objective of providing for a high population in the town centre to make more efficient use of infrastructure and create a vibrant and active "city centre".*

Response: The current controls have been extensively modelled and tested by DoPI urban designers and are considered appropriate for the site. Furthermore, the referred property is identified as being located within the area of Council's Tweed Valley Floodplain Risk Management Study (land below 3.5m AHD) and as such, is to remain as a translation of the existing planning controls by way of height and zone. It is noted that should an applicant wish to pursue an architectural design competition for the site, proposing a development of exemplary design, a bonus of 10% additional FSR and Building Height can be granted. No further amendment to the Plans is recommended.

- **Development Control Plan**

*Issue: Whilst the draft DCP provides a range controls that are supported, amendments are sought in the following areas:*

- *Minjungbal Drive Corridor Precinct - The proposed character statement still seeks to provide "relocation of car parking and storage and services areas to the rear of the buildings away from street frontages". We consider that the words "where functionally and practically possible" would be an appropriate amendment here.*
- *Table 3.1 also applies a 1,200sqm GFA cap per floor on non-residential uses within the Commercial core of the City Centre. It is not stated clearly in the draft DCP that this excludes South Tweed.*

- *Access, Parking and Servicing - On Site Parking - (Section 5.3) - remains consistent with the content of draft DCP 2009. Therefore, we consider that Section 5.3 needs to be amended to include the following wording: "Controls for Special Areas Section 8 provide site specific controls which prevail in the case of inconsistency with these general on-site parking controls".*
- *The Special Area Controls for TCSC need to be amended to take into account the current car parking rate of 4.4 spaces per 100sqm with a 30% dispensation allowed where appropriate justification can be demonstrated. This is reflective of development consents granted on the site to date.*

Response: Table 3.1 applies to South Tweed Heads and as such the maximum floor plate size of 1,200m<sup>2</sup> needs to be considered above the street frontage height. In this regard, the DCP has been amended to clearly identify such, however also acknowledge on large, consolidated allotments such as Tweed City Shopping Centre, that multiple structures could be constructed above the street frontage height and that ensuring an appropriate building bulk, scale and separation needs to be demonstrated as part of any approval. Whilst it is agreed that the DCP should clearly establish the hierarchy of development controls, the proposal to grant Tweed City Shopping Centre further car parking concessions within the draft Plans is not considered appropriate. Specific car parking rates can be further investigated within any future development application should a concession be deemed acceptable.

*Issue: It is not clear from the current exhibited Draft Development Control Plan whether or not a Club comes within the scope of a commercial building. Accordingly we hereby object to the provisions of Section 3.3 – Building Depth and Bulk on the basis that a Club should be separately defined to a commercial building as the proposed controls would be a significant impediment to future redevelopment proposals for the Club.*

Response: The proposal to exclude Clubs from the Building Depth and Bulk controls is not considered appropriate. Specific proposals can be further investigated within any future development application, however the referred controls detail a desired built form for the Tweed City Centre and should be upheld. No further amendment to the Plans is recommended.

*Issue: Whilst we note the Section 4.2 only requires active frontages to be encouraged, we nevertheless again request that the Clause be amended to make it clear that active frontages are not required on the Club site itself, insofar as the Jack Evans Boat Harbour perimeter is concerned.*

Response: This issue has been reviewed by DoPI urban designers, providing the following comment:

*'Figure 4-5 indicates where active street frontages and outdoor dining should be encouraged in the city centre. The Club's building being the integral part of the Tweed City Centre on the Jack Evans Boat Harbour and on the boundary of the two States should significantly contribute to the attractiveness of the locality and the pedestrian amenity surrounding it. All efforts should be taken by the Club to make the building attractive and activate the ground level of the building facing the surrounding streets and the JEBH.'*

No further amendment to the Plans is recommended.

*Issue: Concerns are raised that the range of permitted signage under this Section may preclude normal signage ancillary to a Registered Club, such as TAB and Keno advertising and soft drink and beverage advertisements.*

Response: The proposal to grant further signage parameters within the draft Plans is not considered appropriate. Specific signage proposals can be further investigated within any future development application. No further amendment to the Plans is recommended.

*Issue: We object to this Draft Plan on the basis that the proposed controls are onerous and prescriptive and likely to result in reduced yields and significant additional development costs.*

*It is difficult to accurately quantify the impact of the controls without incurring the significant costs of preparing concept Architectural Plans of development options under current and proposed controls. However, based on a preliminary analysis it is apparent that yields are likely to be reduced and costs are likely to be significantly increased which would make redevelopment of the site unlikely.*

Response: Void of any clear examples of how the document is 'onerous' or 'likely to reduce yields' it is difficult to provide further meaningful assessment. The draft Plans have been prepared with the intent of population and economic growth within the Tweed City Centre whilst also ensuring a high quality built form and amenity. It is not considered appropriate to repeal controls to guide high quality built form purely to gain further development yield. No further amendment to the Plans is recommended.

### **Public Hearing**

No submissions within the 2011 exhibition requested a public hearing. No issues were raised in submissions of such significance that they should be the subject of a hearing.

### **Amendments Post Public Exhibition**

In addition to the amendments identified above as a result of public submissions received the following additional amendments have been made:

- Amend appropriate references from 2011 to 2012 – As the Draft Plans are highly unlikely to take effect until 2012 it is considered appropriate to amend the references accordingly
- Amendments to Height of Buildings Map – Specific review of the proposed Height of Buildings map and topography of the City Centre identified 2 minor areas where the exhibited heights could result in penetration of the Airport Obstacle Limitation Surface. These protrusions were not intended and the Height of Buildings Map amended accordingly.
- Amendments to 'Controls for Special Areas – Stuart Street/Border Area' - At its meeting of 19 July 2011 Council resolved to publically exhibit the draft Plans and resolved on a Public Transport Strategy. The Public Transport Strategy included as follows:
  2. Develop a Rapid Bus Transit Corridor Plan from Gold Coast Airport Transport Hub to Pottsville through the coastal villages with links to Murwillumbah.
  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.

In light of the above, Council's Executive requested a review of the Special Area Controls relating to the Stuart Street/Border Area as they detailed potential rapid transit links (see Figure 3)



**Figure 2 – Exhibited Diagrammatic Representation of Future Development for the Stuart Street/Border Area**

In short, concern has been raised that as light rail does not form part of any medium/long term Tweed Shire Public Transport Strategy, a corridor beyond the current road network is unnecessary and limits the development potential of the site by needing to retain a corridor (although noting the DCP enables development above).

It is identified that there is a need to reconcile the DCP, the need to properly integrate land use planning and transport and Council's adopted Public Transport Strategy. It is also acknowledged that work to 'Develop a Rapid Bus Transit Corridor Plan from Gold Coast Airport Transport Hub to Pottsville through the coastal villages with links to Murwillumbah' is yet to commence, resulting in significant uncertainty in what is required, where its required and when it's required.

Extensive design work needs to be undertaken for the site (owned by Council) to promote a best practice built form, showcasing the desired architectural excellence and maximise public benefit. It is considered that this design process is the appropriate phase to identify the sites ability and need to include a public transport interchange, the modes involved within, any necessary movement axis and the immediately surrounding design and treatments.

Accordingly, it is proposed not to amend the diagram contained within the DCP, however include the following statement to clarify and reconcile Council's position on public transport for the site:

*'On 19 July 2011, Council resolved not to include the southerly extension of light rail south of the Coolangatta Airport Hub in any medium/long term Tweed Shire Public Transport Strategy. Accordingly, the preservation of the identified rapid transit route through Lot 1 DP 880816 may not be mandated as part of this Plan. Prior to lodgement of any application, applicants are encouraged to investigate design opportunities for public transport movement and interchange/stops for the site and discuss with Council officers to establish Council's position and requirements for public transport at the time.'*

The abovementioned statement provides opportunities for Council to waive the need for the corridor after a preliminary design process, yet retain a corridor should the site be identified within its Rapid Bus Transit Corridor Plan when prepared or new opportunities be identified, such as infrastructure provision for the Gold Coast Commonwealth Games. Alternatively, it is open to Council to resolve to amend the diagram and remove all references within the document to light rail, consistent with its adopted Public transport Strategy.

### **Council Land**

The draft LEP has been prepared in response to the State Government requirement for all NSW Councils to have an LEP consistent with the Standard Instrument (Local Environmental Plans) Order 2006, known as the 'standard template'. In addition, the draft LEP has been prepared to give effect to the provisions of the Tweed City Centre Vision, and to provide Tweed Heads with a strategic planning framework for the next 20 to 25 years. Council is not rezoning the land specifically for the purpose of sale or improvement, with the exception of Lot 7038 DP 1055266, which is discussed as follows.

Lot 7038 DP 1055266 has been identified as desirable site for a new regional museum, a land use currently prohibited within the Tweed LEP 2000. Table 1 below identifies the zone name and objectives for both the current Tweed LEP 2000 and the draft Tweed City Centre LEP.

	<b>Tweed LEP 2000</b>	<b>Draft Tweed City Centre Plan</b>
<b>Zone Name</b>	<b>6 (a) Open Space</b>	<b>RE1 Public Recreation</b>
Zone Objectives	To identify existing public land, and land that is proposed to be acquired for public ownership, to satisfy the open space and recreational needs of local residents and visitors to the area of Tweed and to enable its development to encourage or assist their recreational use and enjoyment of the land.  To allow other development that is compatible with the recreational use of the land.	To enable land to be used for public open space or recreational purposes.  To provide a range of recreational settings and activities and compatible land uses.  To protect and enhance the natural environment for recreational purposes.

**Table 1 – Comparison between current and proposed Public Recreation Zone**

As detailed within Table 1, the current and proposed zones share the same intent; however the draft LEP permits museums on this site.



Lot 7038, and adjoining Lot 7094 DP 1095768 are also impacted by a change in the maximum height of buildings permitted. Presently affected by a 3 storey height restriction, the draft TCC LEP seeks to allow development on the western portion of the Lots of up to 49.5m AHD, as displayed in Figure 2. When considering the topography of the site, buildings of between 17.5m – 22.5m in height could be perused (normally equated to approximately 6 – 7 storeys). Lots 7038 and 7094 are identified as Council administered Crown land, and Council does not have any plans at this time seeking to pursue development of this site other than the Regional Museum.



Figure 3 – Proposed Height Controls for Lots 7038 and 7094

The remainder of Council land is ‘rezoned’ due to the absence of the traditional Zone 5(a) – Special uses or the change in zoning names through the ‘standard template’. Accordingly, the historical details, such as the type of tenure, date of Council acquisition, and reason for acquisition of all land affected have not been included for all sites affected.

Council does not intend to change the classification of any land within the TCC LEP.

### Compliance with State and Regional Policy

Section 68(4)(d) of the Environmental Planning & Assessment Act 1979 requires Council to submitted to the Director-General a statement:

- (ii) *specifying the environmental planning instruments and directions under section 117 that have been taken into consideration.*
- (iii) *giving details of any inconsistency between the draft plan and any instrument or direction referred to in subparagraph (ii) and the reasons justifying the inconsistency, and*
- (iv) *giving details of the reasons justifying the exclusion of provisions of the draft plan under subsection (5) or the exclusion from the application of the draft plan of any land under that subsection.*

A copy of this documentation has been prepared and can be viewed within Appendix 5 of this report. In summary, the TCC LEP is considered to be consistent with the applicable SEPPs, Section 117 Directions and other applicable State and Regional Policy. The TCC LEP is however considered to be contrary to Section 117 Direction 4.3 – Flood Prone Land and will require the granting of 'Exceptional Circumstances' to enable development controls to be imposed above the Flood Planning Level. In this regard the TCC LEP is considered justifiably inconsistent with the Section 117 Direction for the following reasons:

- Significant flood assessment has been carried out including the adjustment of flood heights to take sea level rise into consideration. Parts of the precinct are known to be flood affected and are included in a map identifying the flood planning area. Much of the precinct is also affected by the Maximum Probable Flood. Small areas that are currently zoned to permit residential and commercial development within the flood planning area are proposed to remain in these urban zones. However any redevelopment will be assessed against cl 6.2 which applies stringent controls to new development in flood affected locations. A floodplain risk management assessment will be required for all development that is located within the areas affected by the maximum probable flood (cl 6.3)
- The TCC LEP does not permit substantial structures or other major land uses in flood affected areas without development consent.
- Design flood levels for the city centre are required to be consistent with the requirements of Section A3 – Development of Flood Liable Land in Tweed Shire Council's Development Control Plan.
- Land lower than 3.5m AHD in the South Tweed area has been deferred from this LEP to further consider the issue of flooding and how this should impact on planning controls in the context of predicted sea level rise.
- Land lower than 3.5m AHD in the North Tweed area has been translated as directly as possible from the current Tweed LEP 2000 provisions into the Standard Instrument Template format.

### **Relationship with Tweed Local Environmental Plan 2000 and Draft Tweed Local Environmental Plan 2010**

Clause 1.8 – Repeal of planning instruments applying to land [compulsory] of the Standard Instrument Template (SI) details that all LEPs and deemed Environmental Planning Instruments applying to the Tweed City Centre cease to apply when the SI LEP is published. Accordingly, should the draft TCC LEP be published on the NSW legislation website the TCC LEP will apply to the Tweed City Centre, whilst the Tweed LEP 2000 will continue to apply to the remainder of the Shire. Whilst having active SI and non-SI LEPs operating simultaneously is not considered a desirable scenario for the general public, nor operational staff, the SI LEP for the remainder of the Shire is still some months away from completion. In this regard, Council could resolve to defer sending the TCC LEP to DoPI until such time that Shirewide SI LEP is resolved. This action would defer the TCC LEP for an undetermined amount of time, however likely to be in the vicinity of 12 months.

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

Nil.

## **POLICY IMPLICATIONS:**

The adoption of the suite of Tweed City Centre Plans enables a new policy framework for the Tweed City Centre. Whilst the Vision, LEP and DCP are robust documents, there is a need to pursue an amendment of Section 94 Plan No. 27 – Tweed Heads Masterplan, or another like funding mechanism, to reflect the aspirations and growth of the area. Similarly, the Plans introduce requirements for Architectural Design Competitions, a current unutilised process within the Shire. Accordingly a framework of how such competitions are to be administered will need to be developed.

## **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 dated 19 July 2011 on Tweed City Centre Vision, Local Environmental Plan and Development Control Plan (ECM 42698204)
  2. Tweed City Centre Vision (ECM 42698206)
  3. Tweed City Centre Local Environmental Plan 2012 (ECM 42710928)
  4. Tweed City Centre Development Control Plan (being Section B2 of the Tweed Development Control Plan) (ECM 42698209)
  5. State and Regional Policy compliance documentation (ECM 42698212)
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