



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr K Skinner (Mayor)

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

# Agenda

## Planning and Regulation Reports

### **Ordinary Council Meeting**

### **Tuesday 15 February 2011**

held at Murwillumbah Cultural & Civic Centre  
commencing at 3.30pm

### **COUNCIL'S CHARTER**

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

Tweed Shire Council has the following charter:

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

## Items for Consideration of Council:

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

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

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

#### **MATTERS FOR CONSIDERATION**

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

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

**ORIGIN:**

**Director Planning and Regulation**

**SUMMARY OF REPORT:**

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported.

**RECOMMENDATION:**

**That Council notes the January 2011 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

**REPORT:**

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, no Development Applications have been supported where a variation in standards under SEPP1 has occurred.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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

**ORIGIN:**

**Development Assessment**

**FILE NO: PP10/0002 Pt1**

**SUMMARY OF REPORT:**

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

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

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

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

**RECOMMENDATION:**

**That:**

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

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

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

## REPORT:

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

Council resolved (in part) that:

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

On 20 October 2010 Council received the additional traffic report.

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

### **Summary of the Planning proposal:**

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

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

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

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

### **Assessment of the Planning Proposal:**

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

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

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

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

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

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

### **Planning proposal process update:**

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

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

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

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

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

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

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

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

#### **Additional Traffic assessment:**

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

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

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

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

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

The proposed development assessed is for:

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

The “current” scenarios assessed are for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CONCLUSION:**

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

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

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

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

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

There are no legal implications.

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

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

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

**POLICY IMPLICATIONS:**

Nil



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

**ORIGIN:**

**Building and Environmental Health**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That:**

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

## REPORT:

### Background

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

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

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

### Tweed Heads SES Unit

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



### Murwillumbah SES Unit

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



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

### Pottsville SES Unit

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



### Emergency Service Levees

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

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

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

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

### Emergency Service Levy – NSW Fire and Rescue

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

### Emergency Service Levy – NSW Rural Fire Service

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

### Emergency Service Levy – State Emergency Service

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

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

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

	2006/07	2007/08	2008/09 <sup>1</sup>	2009/10	2010/11
<b>Building Maintenance</b>	\$2 780	\$8 000	\$10 550	\$9 400	\$37 020
<b>Building Construction</b>	\$75 980 <sup>5</sup>	\$114 550 <sup>5</sup>	\$144 220 <sup>5</sup>	\$18 300 <sup>3</sup>	\$135 500 <sup>4</sup>
<b>Plant Maintenance<sup>6</sup></b>	\$7 250	\$16 830	\$14 780	\$17 330	\$17 960
<b>Plant Purchase &amp; Replace't<sup>6</sup></b>			\$78 520	\$7 500	\$61 500
<b>Operational Costs<sup>6</sup></b>	\$12 600	\$8 490	\$7 520	\$7 880	\$4 000
	<b>\$98 610</b>	<b>\$147 870</b>	<b>\$270 370</b>	<b>\$60 410</b>	<b>\$255 980</b>
<b>Loan Repayments<sup>2</sup></b>	<b>\$53 370</b>	<b>\$54 950</b>	<b>\$33 100</b>	<b>\$42 570</b>	<b>\$55 780</b>
	<b>\$151 980</b>	<b>\$202 820</b>	<b>\$303 470</b>	<b>\$102 980</b>	<b>\$311 760</b>



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

Note<sup>2</sup>: Loan repayments are costs incurred from the acquisition of land for the purpose of provision of accommodation for the SES as required under the legislation.

Note<sup>3</sup>: Stage 1 construction of Pottsville Unit (Does not include SES/RFS contributions)

Note<sup>4</sup>: Stage 2 construction Pottsville Unit and Stage 1 additions to Tweed Heads Unit (Does not include SES/RFS contributions)

Note<sup>5</sup> Construction of RFS/SES Murwillumbah Units (Including RFS contribution \$110 000 & SES subsidy \$50 000)

Note<sup>6</sup> Voluntary contributions

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

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

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

### Phase Out of Voluntary Contributions

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

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

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

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

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

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

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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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**11 [PR-CM] Visitor Carparking at Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF4980/130 Pt2**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That:**

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

**REPORT:**

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

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

The options provided in the advice are summarised as follows:

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

Option 3 is recommended.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. 17 August 2010 Council report and resolution (ECM 23643382)
  2. 16 November 2010 Council report and resolution (ECM 27500026)
  3. **Confidential Attachment** Marsdens Legal Advice 22 December 2010 (ECM 27500028)
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**12 [PR-CM] Legal Assistance Ballina Shire Council**

**ORIGIN:**

**Development Assessment**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

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

**REPORT:**

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

Ballina Shire Council received a development application to stockpile 100,000m<sup>3</sup> of soil and rock on land that is adjacent to the Ballina by-pass road works that was surplus to those works.

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

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

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

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

**OPTIONS:**

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

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

**ORIGIN:**

**Planning Reforms**

**SUMMARY OF REPORT:**

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

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

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

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

**RECOMMENDATION:**

**That Council endorses:**

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

**REPORT:**

At its meeting of 14 December 2010 Council resolved:

“A. *That:*

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

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

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

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

This report is divided into two sections:

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



## **1. About the Sustainable Population Strategy for Australia**

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

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

### **Defining sustainability**

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

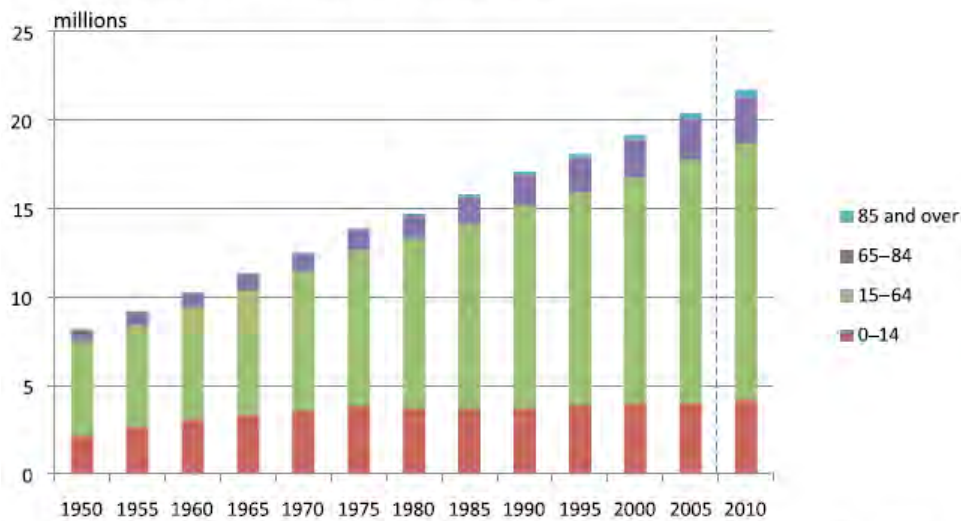
1. The precautionary principle;
2. Inter-generational equity;
3. Conservation of biodiversity and ecological integrity, and
4. Improved valuation, pricing and incentive mechanisms.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

### **What is the sustainable population issues paper?**

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

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

Copies of the Issues Paper and advisory panel reports are available at [www.environment.gov.au/sustainablepopulation](http://www.environment.gov.au/sustainablepopulation).

## **What will the Strategy cover?**

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

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

## **Key threats**

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

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

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

## **Important population issues**

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

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

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

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

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

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

### **Population advisory panels**

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

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

Membership of the panels can be seen in Attachment 1.

Further information on the Sustainable Population Strategy for Australia can be found at [www.environment.gov.au/sustainablepopulation](http://www.environment.gov.au/sustainablepopulation).

Email responses can be made to: [sustainablepopulation@environment.gov.au](mailto:sustainablepopulation@environment.gov.au)

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

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

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

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

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

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

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

### **About the Tweed population**

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

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

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

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

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

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

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

## **Tweed Shire Council Community Strategic Plan 2011/2021**

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

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

As key priorities, the community expects Council to:

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

strengthen the economy through:

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

care for the Environment through:

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

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

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

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

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

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

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

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

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

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



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

## **CONCLUSION:**

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

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

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

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

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

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

**ORIGIN:**

**Planning Reforms**

**SUMMARY OF REPORT:**

At its meeting of 14 December 2010, Council resolved:

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

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

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

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

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

**RECOMMENDATION:**

**That:**

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

## REPORT:

At its meeting of 14 December 2010, Council resolved:

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

This report seeks to:

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

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

### **1. Australia's National Landscapes**

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

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

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

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

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

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

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

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

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

The recently appointed local working group comprises:

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

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

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

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

## 2. Tweed Shire Scenic Landscape Evaluation 1995

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

The study's objectives were:

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

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

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

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

The Evaluation also provided a scenic landscapes resource portfolio of:

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

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

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

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

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

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

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

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

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

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

#### **"Landscape visual character**

- All master plans must be accompanied by a "Scenic Impact Assessment"
- The neighbourhood and subdivision design should protect the landscape character of the locality by contributing to the scenic amenity of the landscape and the distinct identity of the area.
- Neighbourhood and subdivision design must protect the visual landscape character of the locality.
- Proposed subdivisions of more than 50 lots or subdivisions that include more than 15,000 m<sup>2</sup> of earthworks must include a "Scenic Impact Assessment Report" in the development application which shall:
  - Demonstrate that the proposal does not detract from and will contribute to the significant landscape characteristics of the site (see Tweed Shire Scenic Landscape Evaluation -1995, Catherine Brouwer)
  - Illustrate the nature and visibility of the proposal from both within the site and from significant viewpoints outside the site
  - Detail the local urban or cultural context in regard to township and scenic-cultural identity."



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

### **Where to from here?**

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

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

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

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

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

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

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

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

## **CONCLUSION:**

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

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

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

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

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

## **POLICY IMPLICATIONS:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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. Catherine Brouwer 'Scenic Landscape Evaluation 1995' – Volume 1 (ECM 28034588)
  2. Catherine Brouwer 'Scenic Landscape Evaluation 1995' – Volume 2 (ECM 28035595)
  3. Catherine Brouwer 'Scenic Landscape Evaluation 1995' – Volume 3 (ECM 28037683)
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**15 [PR-CM] Development Application DA10/0430 for the Erection of a Second Dwelling to Create a Dual Occupancy at Lot 494 DP 755740 No. 15 Adelaide Street, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0430 Pt1**

**SUMMARY OF REPORT:**

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

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

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

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

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

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

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

The addition of the proposed second dwelling represents an increase in floor space ratio for the site that exceeds the maximum allowed for detached dual occupancy development by 11.34% (77.52m<sup>2</sup>).

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

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

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

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

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

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

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

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

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

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

**RECOMMENDATION:**

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

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

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

**The Tweed LEP 2000:**

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

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

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

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



**REPORT:**

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

**BACKGROUND:**

The Subject Site

The subject land is described as Lot 494 DP 755740 Adelaide Street, Tweed Heads and has a total area of 683m<sup>2</sup>. The site has a 15m frontage to Adelaide Street and is approximately 36m in length. The rear boundary has a length of 27.177m. The allotment is irregularly shaped in that it is not a regular, rectangular shape and it exhibits steep topography with an overall 22.5% gradient.

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

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

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

Remaining open space behind the existing two-storey dwelling where the proposed second dwelling is to be located amounts to an average area of 294m<sup>2</sup> constituting 12m (depth) x 24.5m (width), as indicated below.



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



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

### Sellicks Lane

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



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





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



Mid-way drop-off point

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



Garage associated with 13 Adelaide Street

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



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

### The Proposed Development

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

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

The proposal includes:

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

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

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

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

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

### Site History

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



Previous dwelling at 15 Adelaide Street

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

Plans for the upper floor consisted of three bedrooms, living rooms, media room, kitchen and ancillary wet areas. A 50.95m<sup>2</sup> deck was included to the front elevation. Plans for the ground floor consisted of a single garage and an internal storage area with internal stairs. Additional undercover car parking would be provided under the deck area.

Calculation of gross floor area (GFA) was limited to the upper level at 150.4m<sup>2</sup> with a floor space ratio of 0.22:1. A privacy screen was required for the southern end of the front deck.

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

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

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

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

The amendment was approved 13 July 2009.

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

An additional GFA of 88.47m<sup>2</sup> was added to the originally approved dwelling resulting in a total GFA of 238.87m<sup>2</sup> with a floor space ratio of 0.35:1. Total site coverage (including the 225.53m<sup>2</sup> area of the house and the deck) came to 33%. The impermeable site area (inclusive of roof, driveway, concrete paths and porous paving) totalled 319.4m<sup>2</sup> or 46.76% of the site, which was less than the maximum allowed of 65%.

The second amendment was approved 14 January 2010.

#### Public Submissions

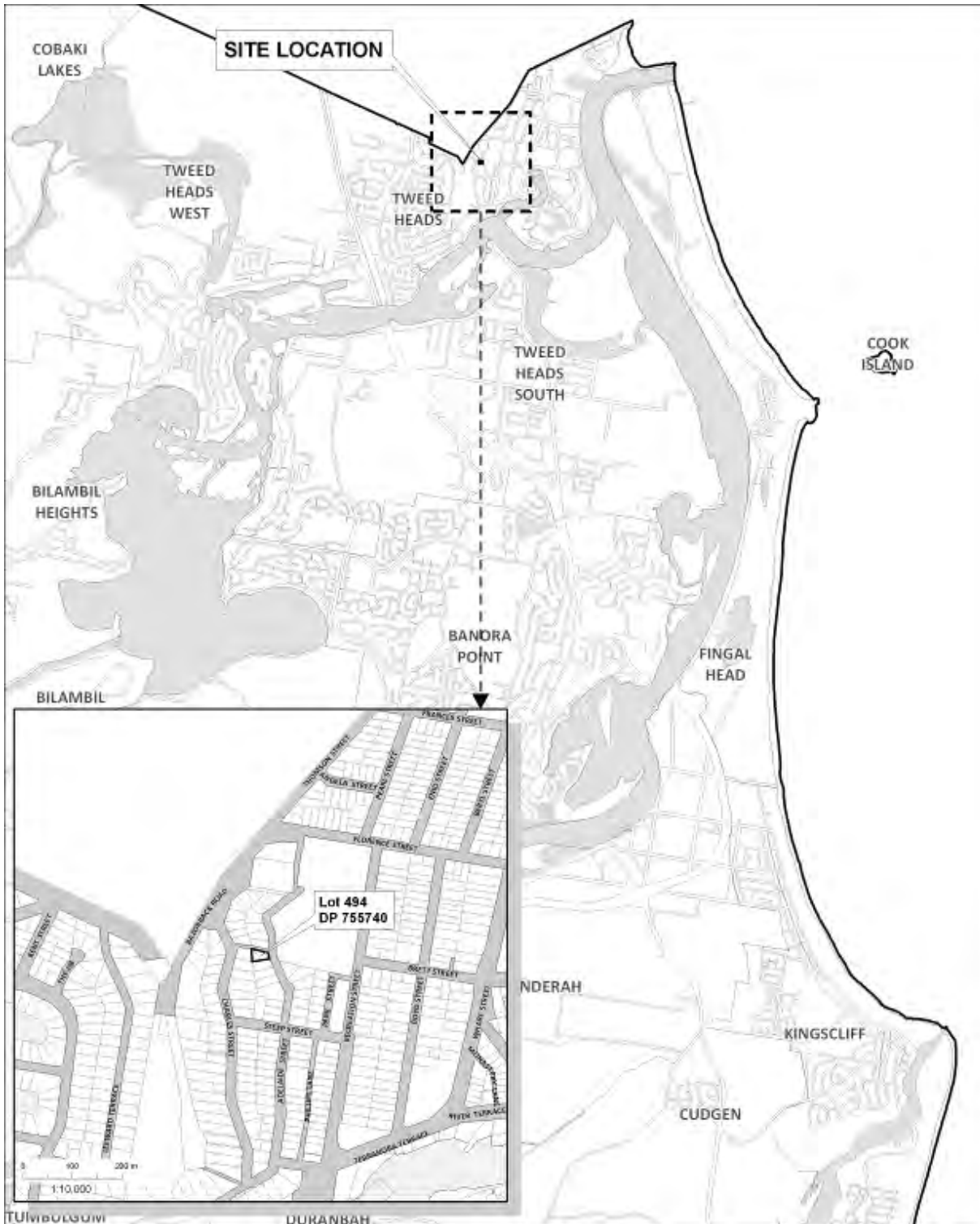
The proposed development attracted two individual objections following exhibition of the application. The objections were focused on the suitability of the site given the impacts of the development upon adjacent properties, inconsistency with residential development controls and the unsuitability of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

#### Conclusion

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



**SITE DIAGRAM:**

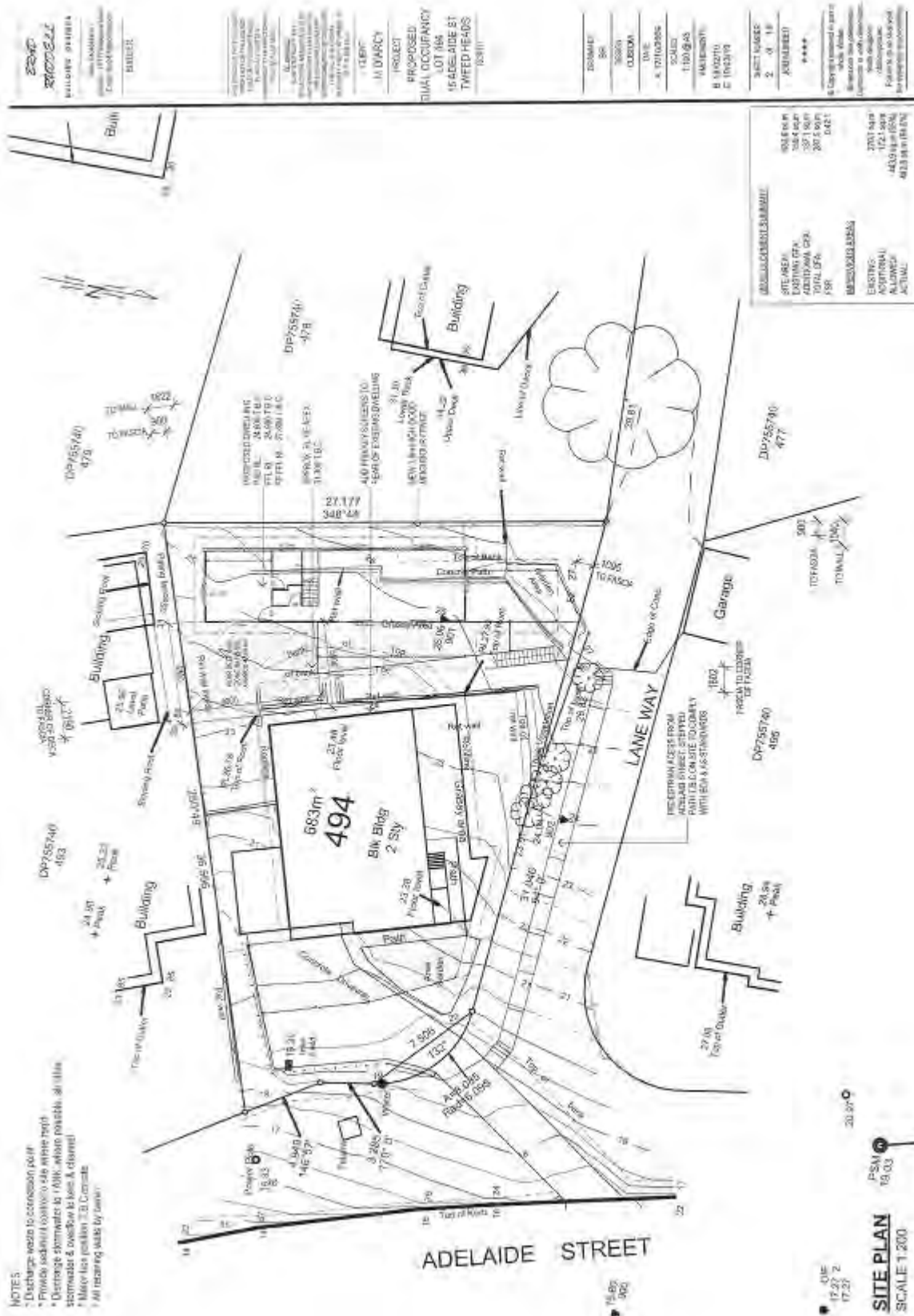


**Locality Plan**  
 Lot 494 DP 755740  
 15 Adelaide Street, Tweed Heads

<p>Disclaimer: A Member's vote is taken to ensure the accuracy of this data. Council does not warrant the accuracy or completeness of the information provided in this report, and is not responsible for any loss or damage arising from its use. Council is not responsible for any loss or damage arising from its use. Council is not responsible for any loss or damage arising from its use. Council is not responsible for any loss or damage arising from its use.</p>	<p>Calendar: 30 November 2010                  10 Land and Property Management Authority (LPMMA)                  &amp; Tweed Shire Council                  Some items shown should be considered approximate only.</p>	<p>0 0.5 1.0 km                  1:50,000 A4 Portrait                  (print only - not for display)</p> <p>Map: 1:50,000 - Regional Services (R/S) and                  Council's Land Use and Planning (LUP) 2008                  (with Map of Australia, part 2)</p>	<p>Civic and Cultural Centre                  7 Tullaghan Road                  Murrumbidgee NSW 2484                  PO Box 835                  Murrumbidgee NSW 2464                  T (02) 6670 2838 / 1300 292 672                  F (02) 6670 2429                  W www.tweed.nsw.gov.au                  E planning@tweed.nsw.gov.au</p>	<p><b>TWEED</b> SHIRE COUNCIL</p>
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DEVELOPMENT PLANS:





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**CLIENT**  
MIDARCY

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

**DATE**  
13/03/10



**DESIGNER**  
BRND

**DESIGN**  
DATE  
13/03/10

**REVISIONS**  
1/04/10  
2/03/10  
3/03/10

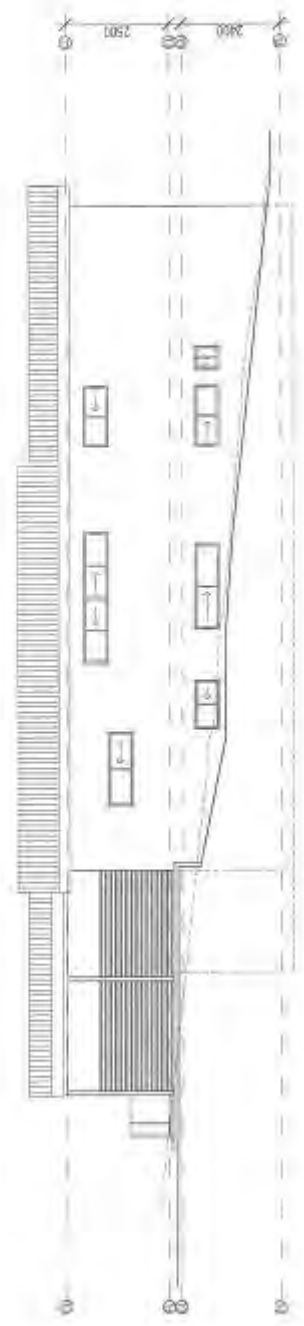
**SHEET NUMBER**  
7 of 18

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**NOTES**

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- NOTES:**
- 1. In all stages to MC 60/1
  - 2. Provide GPO & cold water provision to all spaces
  - 3. ALL external and internal doors to be automatic fire
  - 4. All windows to be double glazed
  - 5. Insulation to ceiling (R1.5) only
  - 6. All windows to be double glazed (R1.5) only
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ELEVATION 3 1:100



ELEVATION 4 1:100

**REVISED**  
**7730028**  
**CHS**

ARCHITECT: **ARCHITECTURE**  
 11/11/11  
 11/11/11  
 11/11/11

**CLIENT:**  
**M D WARC**  
**PROPOSED:**  
**DUAL OCCUPANCY**  
**LOT 494**  
**1 ADELAIDE ST**  
**TWEED HEADS**  
**NSW 2471**

**QUANTITY:**  
**ONE**  
**DATE:**  
**11/11/11**  
**SCALE:**  
**1:1000**  
**PROJECT:**  
**11/11/11**  
**NO:**  
**11/11/11**  
**DATE:**  
**11/11/11**

**SHED NUMBER:**  
**11/11/11**  
**JOB NUMBER:**  
**11/11/11**  
**11/11/11**  
**11/11/11**  
**11/11/11**

All dimensions are to be taken from the centre of the building unless otherwise indicated.  
 Dimensions may vary slightly due to the way the building is constructed.  
 All dimensions are to be taken from the centre of the building unless otherwise indicated.  
 All dimensions are to be taken from the centre of the building unless otherwise indicated.



**MANDATORY CONTROL PLAN**  
 SCALE 1:200

**BRAD RUSSELL**  
BUSINESS DESIGN

100 BRADSHAW  
SUITE 1110, MOUNTAIN VIEW  
DALLAS, TEXAS 75241  
PH: 972.342.8888  
WWW.BRADRUSSELL.COM

BRAD RUSSELL, INC.  
100 BRADSHAW SUITE 1110  
MOUNTAIN VIEW, TEXAS 75241  
PH: 972.342.8888  
WWW.BRADRUSSELL.COM

PROPOSED  
DUAL OCCUPANCY  
LOT 45A  
18 ADELAIDE ST  
TWEED HEADS  
NSW

CLIENT  
MORACY

PROJECT  
PROPOSED  
DUAL OCCUPANCY  
LOT 45A  
18 ADELAIDE ST  
TWEED HEADS  
NSW

DATE  
A 17/10/2010  
B 18/12/10  
C 18/02/11

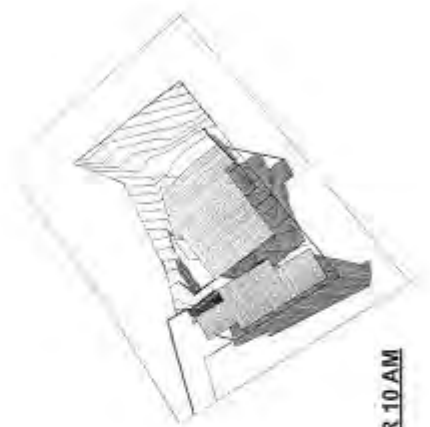
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1 OF 19

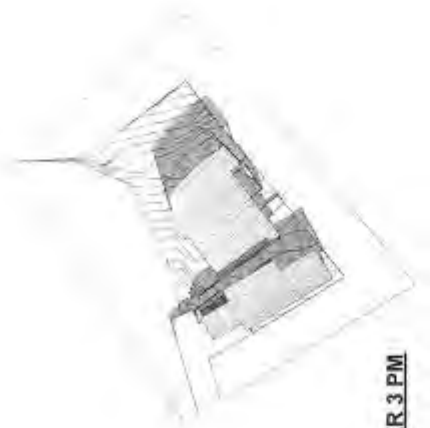
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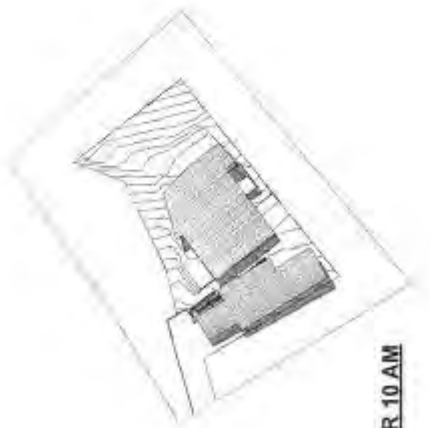
**WINTER 3 PM**



**WINTER 10 AM**



**SUMMER 3 PM**



**SUMMER 10 AM**

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan.

The vision of the plan is “the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”.

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

Clause 5 - Ecologically Sustainable Development

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

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

Clause 8 – Consent Considerations

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

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

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

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

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

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

#### Clause 11 - Zone objectives

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

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

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

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

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

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

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

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

### Clause 15 - Essential Services

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

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

### Clause 16 - Height of Building

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

### Clause 17 - Social Impact Assessment

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

### Clause 35 - Acid Sulfate Soils

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

## **State Environmental Planning Policies**

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

#### Clause 32B: Coastal Lands

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

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

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

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



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

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

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

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



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

Clause 43: Residential development

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

Considerations within this clause relate to satisfactory:

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

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

SEPP No 71 – Coastal Protection

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

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

Of note is matter for consideration (d):

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

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

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

The draft Tweed City Centre Local Environmental Plan 2009 was on exhibition in early 2010. The draft LEP decreases the density of the subject site from medium density to R2 – Low Density Residential with a minimum allotment size of 450m<sup>2</sup> per dwelling. Detached dual occupancy is a permitted form of residential development within this zone on sites with a minimum area of 900m<sup>2</sup>. Floor space ratio requirements remain consistent with current DCP A1 provisions.

Discussion with the Planning Reform Unit has revealed that the purpose of the decrease in density is due to the topographical constraints of the site which are considered to be unsuitable for medium density development. Dual occupancy development would be prohibited on this steep 683m<sup>2</sup> undersized site under the draft LEP provisions. A 25% variation to the development standard would apply.

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

Tweed Development Control Plan

The applicant states in correspondence dated 25 October 2010:

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

A1-Residential and Tourist Development Code

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

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

**Mandatory Controls**

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

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

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

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

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

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

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

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

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

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

### **Suitable locations for dual occupancy housing**

#### Control a.

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

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

#### Control g.

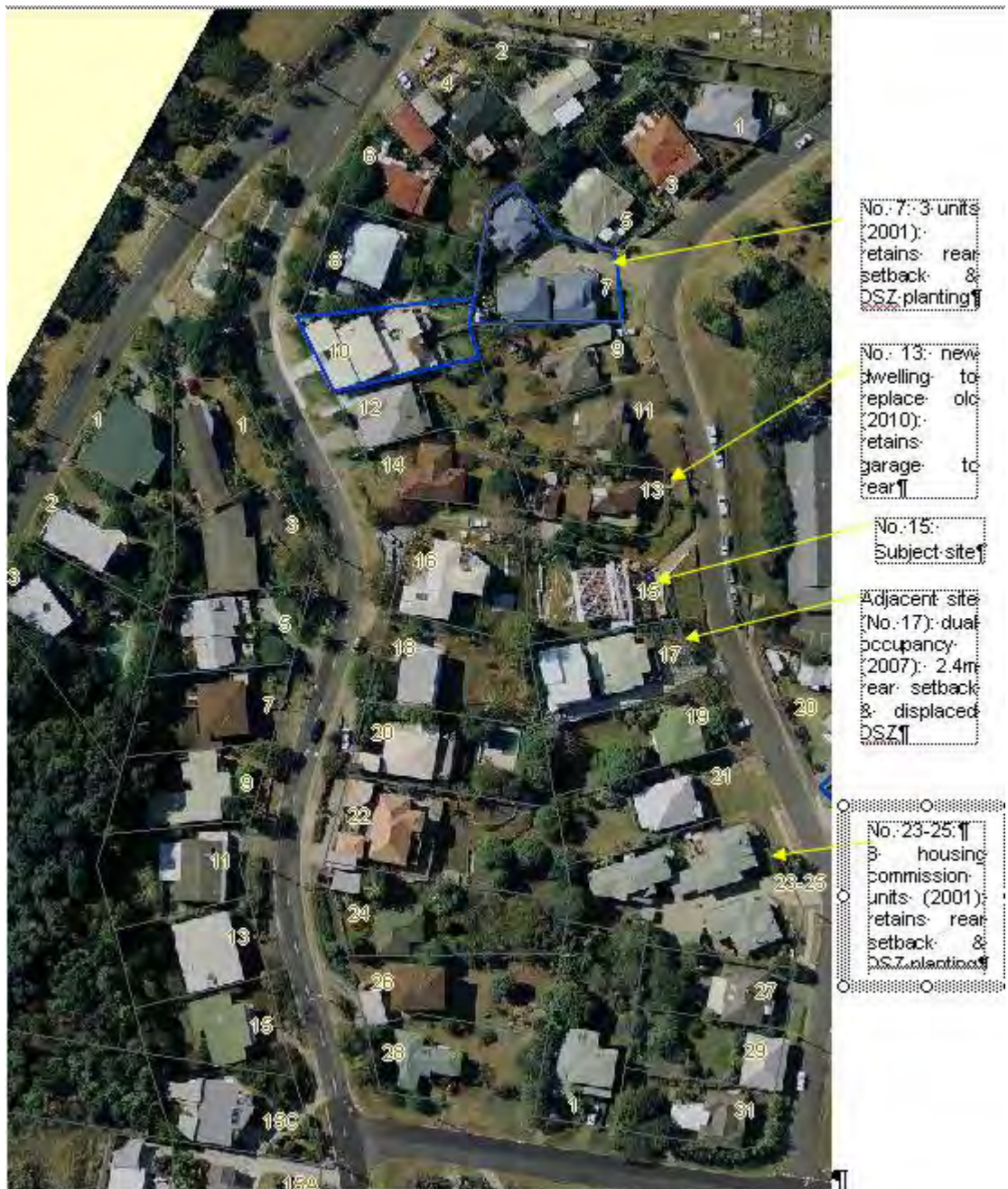
- g. Dual occupancy housing is to be compatible with residential streetscape character.

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

Review of the assessment of the adjacent dual occupancy development against prior controls (A1 – Multi Dwelling Housing) indicates that only three minor variations to standards needed to be considered (600mm encroachment into required 3m rear setback; 1m<sup>2</sup> exceeding the building envelope; 50m<sup>2</sup> shortfall of private open space) and that the proposal was considered consistent with the performance criteria. In addition, the overall Floor Space Ratio of the development was low at 39%. There was no requirement for a rear deep soil

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

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





## Deep soil zones

### Controls b, c and g.

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

### Calculation rules:

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

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

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

In accordance with calculation rules (above), the required 48.64m<sup>2</sup> rear deep soil zone for this site is as follows:

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

Application details indicate the placement of a 'rear' deep soil zone with a total area of 45.2m<sup>2</sup> (8m width x variable length from 5m to 6.3m = average of 5.65m) in the centre of the site adjacent to the southern boundary.

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

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

The applicant states:

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

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

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

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

### **Impermeable site area**

#### Control g.

g. The maximum areas for impervious surfaces are:

- 70% of the allotment – On lot sizes less than 500m<sup>2</sup>
- 65% of the allotment – On lot sizes between 500m<sup>2</sup> and 750m<sup>2</sup> inclusive
- 60% of the allotment – On lot sizes greater than 750m<sup>2</sup>.

Plans supplied in support of the proposed dwelling indicate a total impermeable site area (for the 294m<sup>2</sup> site at the rear of the lot) of 172.1m<sup>2</sup>. Alterations to the existing dwelling on the subject site resulted in an overall impermeable site area of 319.4m<sup>2</sup>, including the concrete paths at the rear of the lot.

Taking this into account (and granting a concession of 14.4m<sup>2</sup> for some of the concrete paths to the rear), an overall impermeable site area for the whole allotment is assessed at 477.1m<sup>2</sup> or 69.85% which exceeds the 65% maximum allowed on an allotment of 683m<sup>2</sup> by 33.15m<sup>2</sup> or 4.85%.

### **Rear setback**

#### Control c.

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

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

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

## **Floor space ratio**

### Control c.

a. The maximum FSR for Dual Occupancy housing is:

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

Council's records on file indicate that the gross floor area (GFA) of the upper level of the existing dwelling is 150.4m<sup>2</sup> and the GFA of the lower level of the existing dwelling is 88.47m<sup>2</sup>, consistent with the most recent Section 96 amendment. This is a total of 238.87m<sup>2</sup> GFA.

The GFA of the proposed dwelling as indicated on the BASIX certificate as conditioned floor area is 146m<sup>2</sup>.

Therefore, with a site area of 683m<sup>2</sup> and a total GFA of 384.87m<sup>2</sup> for both dwellings, the Floor Space Ratio is 0.5634:1 which exceeds the maximum allowable of 0.45:1 for detached dwellings by 11.34%. This represents an additional GFA of 77.52m<sup>2</sup>.

## **Further possible variations**

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

### Overshadowing

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

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

### View sharing

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

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



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

Topography, cut and fill

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

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

Landscaping

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

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

BASIX

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

Waste management

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

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

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

### A2-Site Access and Parking Code

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

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

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

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

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

### B2-Tweed Heads

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





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

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

These objectives detail the broad planning intent for the precinct.

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

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

#### A1 – Multi dwelling Housing

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

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

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

#### Draft B2-Tweed City Centre

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

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

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

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

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

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

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

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

Clause 92(a) Government Coastal Policy

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

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

Pedestrian Access

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

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

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

Earthworks

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

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

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

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

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

#### Access from Sellicks Lane

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

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

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

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

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

The applicant has not addressed these matters.

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

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

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

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

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

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

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

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

#### Contamination

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

#### Flora and Fauna

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

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

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



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



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

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



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

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

Services

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

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

Reticulated Sewer

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

Stormwater

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

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

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

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

Issues raised in the submissions by the two objectors include:

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

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

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

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

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

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

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

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0842 Pt1**

**SUMMARY OF REPORT:**

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

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

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

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

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

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

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

**RECOMMENDATION:**

**That:**

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

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

**GENERAL**

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

[GEN0015]

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

[GEN0115]

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

[GEN0135]

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

[GENNS01]

**PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0005]

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

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

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

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

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

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

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

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

[PCW0215]

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

[PCW0225]

8. Residential building work:

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

[PCW0235]

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

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

[PCW0255]

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

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

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

[PCW0985]

#### **DURING CONSTRUCTION**

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

[DUR0005]

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

**Monday to Saturday from 7.00am to 6.00pm**

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

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

[DUR0205]

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

[DUR0245]

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



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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

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

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

[DUR1005]

19. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

20. Swimming Pools (Building)

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

[DUR2075]

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

[DUR2085]

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

[DUR2185]

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

[DUR2255]

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

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

[DUR2485]

25. Plumbing

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

[DUR2495]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POC0205]

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

[POC1045]

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

[POC1055]

**USE**

29. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

**30. Swimming Pools (Building)**

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

[USE1295]

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

[USE1305]

**REPORT:**

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

**BACKGROUND:**

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

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

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

The allotment has a maximum depth of 41.554 metres and encompasses an area of 878.9m<sup>2</sup>.

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

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

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

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

The SEPP 1 objection is considered below in this report.

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

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

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

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

**SITE DIAGRAM:**



**Locality Plan**

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

Disclaimer: While every care is taken to ensure the accuracy of this data, Shire of Tweed Council and its representatives do not warrant or represent or hold any liability, directly or indirectly, in respect of any person's personal and financial interests, and all liability (including without limitation, liability in respect of all persons, losses, damages, liabilities, interests or consequences) arising and which may be incurred as a result of data being used in any way and for any purpose. This information is supplied for the general guidance and is to be considered as indicative and approximate only. It should not be used for the purpose of making any property or financial investment. "As Above Shown" means used as depicted on the 1:50,000 scale map as published on the 15th day only from the date of issue.

0 0.4 0.8 1.2 Km  
1:50,000 @ A4 Portrait  
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**CIVIC AND COMMUNITY**  
3 Tweed Heads Road  
Murrumbidgee NSW 2484  
PO Box 615  
Murrumbidgee NSW 2484  
T 02 6670 2400 | F 02 6670 2472  
E 02 6670 2429  
W www.tweedshire.nsw.gov.au  
E participation@tweedshire.nsw.gov.au



DEVELOPMENT PLANS:





**EASTERN ELEVATION**

**WESTERN ELEVATION**

**NORTHERN ELEVATION**

EXISTING DWELLING

COLORBOND SHEET ROOFING

SELECT CLADDING TO MATCH ORIGINAL

EXISTING DWELLING

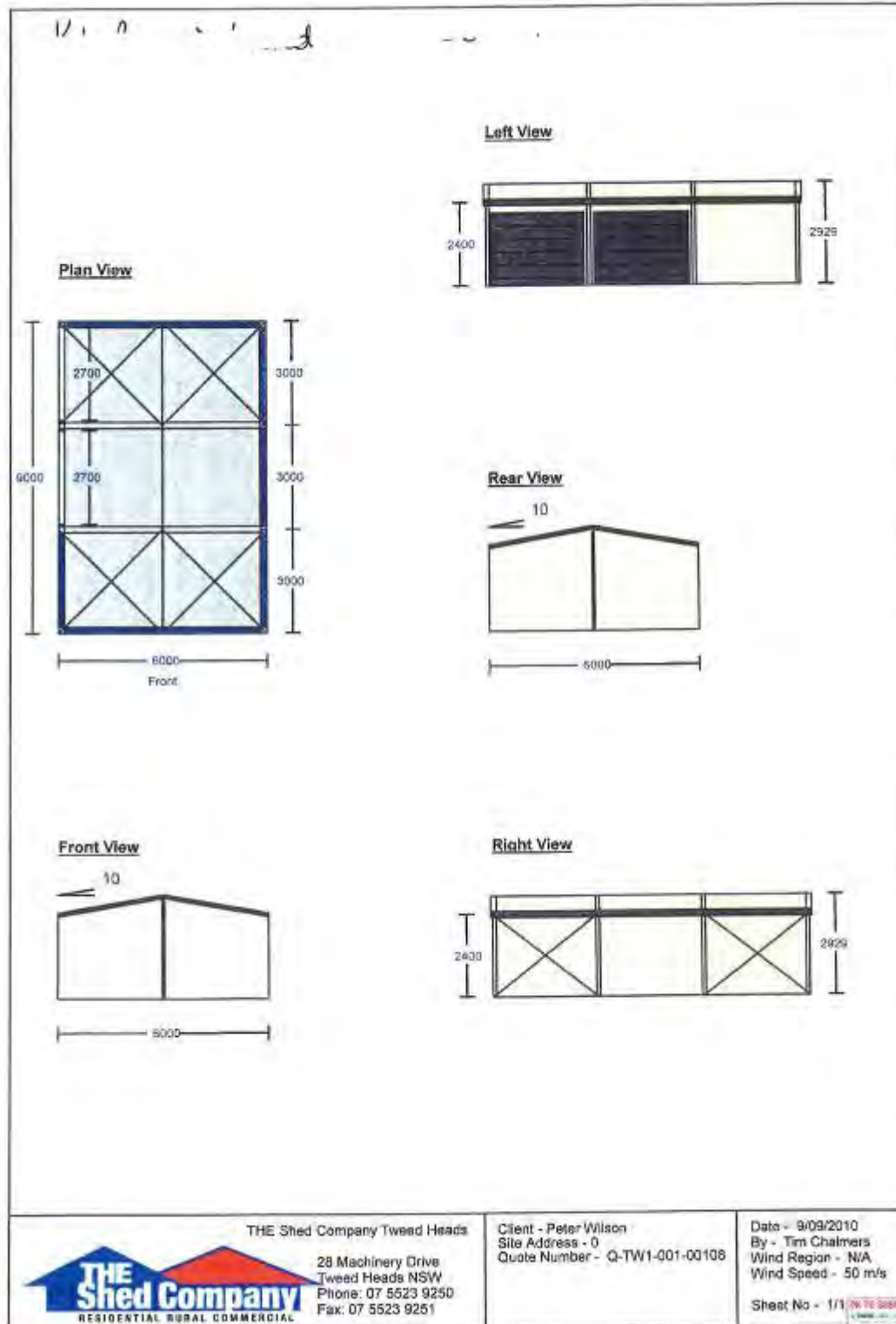
EXISTING DWELLING

SELECT STAINLESS STEEL WIRE BALUSTRADE

SELECT STAINLESS STEEL WIRE BALUSTRADE

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





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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposal satisfies the aims of the plan.

Clause 5 - Ecologically Sustainable Development

Proposal satisfies the objectives of this plan.

Clause 8 - Zone objectives

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

Clause 15 - Essential Services

All required essential services are available and adequate.

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

Allotment is not affected by acid sulfate soils.

Other Specific Clauses

N/A

Specific Clauses

Clause 24 – Designated Roads.

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

The SEPP 1 objection is supported and is discussed below.

**State Environmental Planning Policies**

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

Clause 12: Impact on agricultural activities

N/A

Clause 15: Wetlands or Fishery Habitats

N/A

Clause 18: Extractive industry

N/A

Clause 29A: Natural areas and water catchment

N/A

Clause 32B: Coastal Lands

N/A

Clause 33: Coastal hazard areas

N/A

Clause 36: Heritage items, generally

N/A

Clause 36A: Heritage items of state & regional significance

N/A

Clause 36C: Conservation areas of state & regional significance

N/A

Clause 36D: Advertising heritage applications

N/A

Clause 43: Residential development

N/A

Clause 47 Principles for Commercial and Industrial Development

N/A

Clause 66: Adequacy of community and welfare services

N/A

Clause 75: Tourism development

N/A

Clause 76: Natural tourism areas

N/A

Clause 81: Development adjacent to the ocean or a waterway

N/A

Clause 82: Sporting fields or specialised recreation facilities

N/A

SEPP No. 1 - Development Standards

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

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

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

*The objective of this Development Standard include:*

- *To control development along designated roads.*

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

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

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

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

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

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

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

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

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

#### **Clause 22 – Development near designated roads**

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

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

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

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

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

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

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

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

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

#### **Clause 23 – Control of access**

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

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

#### **Clause 24 – Set backs to designated roads**

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

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

#### SEPP No 71 – Coastal Protection

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

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

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

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

##### Tweed Development Control Plan

##### A1-Residential and Tourist Development Code

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

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

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

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

## **DESIGN CONTROL 10 - Swimming Pools & Spas**

### **Objectives**

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

### **Controls**

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

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

**Justification**

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

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

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

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

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

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

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



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

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

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

The proposal is regarded as being worthy of approval.

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

This clause is not applicable to the proposed development.

Clause 94 Buildings to be upgraded

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

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

N/A

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

Context and Setting

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

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

Access, Transport and Traffic

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

Flora and Fauna

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

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

Surrounding Landuses/Development

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

Flora and Fauna

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

Topography

The allotment slopes moderately downhill from south to north.

Site Orientation

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

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

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

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

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

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

**CONCLUSION:**

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

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

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0790 Pt1**

**SUMMARY OF REPORT:**

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

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

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

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

**RECOMMENDATION:**

**That Development Application DA10/0790 for a three (3) lot subdivision at Lot 1 and 2 DP 746783, No. 58 McCollums Road, Duranbah be approved subject to the following conditions:**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No 1A prepared by Planit Consulting, except where varied by the conditions of this consent.**  
[GEN0005]
- 2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.**  
[GEN0125]
- 3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**  
[GEN0135]
- 4. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device**

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

[GEN0310]

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

[GENNS01]

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

[DUR1005]

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

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

[PSC0005]

#### **8, Section 94 Contributions**

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

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

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

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

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

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<b>(a) Tweed Road Contribution Plan:</b>	
6.5 Trips @ \$861 per Trips	<b>\$5597</b>
(\$782 base rate + \$79 indexation)	
S94 Plan No. 4	
Sector6_4	
<b>(b) Open Space (Casual):</b>	
1 ET @ \$526 per ET	<b>\$526</b>
(\$502 base rate + \$24 indexation)	
S94 Plan No. 5	
<b>(c) Open Space (Structured):</b>	
1 ET @ \$602 per ET	<b>\$602</b>
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	
<b>(d) Shirewide Library Facilities:</b>	
1 ET @ \$792 per ET	<b>\$792</b>
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
<b>(e) Eviron Cemetery:</b>	
1 ET @ \$120 per ET	<b>\$120</b>
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
<b>(f) Community Facilities (Tweed Coast – North)</b>	
1 ET @ \$1305.6 per ET	<b>\$1306</b>
(\$1305.6 base rate + \$0 indexation)	
S94 Plan No. 15	
<b>(g) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	
1 ET @ \$1759.9 per ET	<b>\$1759.90</b>
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
<b>(h) Regional Open Space (Casual)</b>	
1 ET @ \$1031 per ET	<b>\$1031</b>
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	

**(i) Regional Open Space (Structured):**

**1 ET @ \$3619 per ET**

**\$3619**

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

**S94 Plan No. 26**

[PCC0215/PSC0175]

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

[PSC0825]

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

**(a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.**

**(b) Right of carriageway**

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

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

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

[PSC0835]

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

[PSC0845]

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

**The following information must accompany an application:**

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

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



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

[PSC0885]

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

[PSC0945]

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

[PSC1165]

15. **The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to each allotment.**

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

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

[PSC1175]

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

[PSCNS01]

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

[PSCNS02]

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

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

**REPORT:**

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

**BACKGROUND:**

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

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

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

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

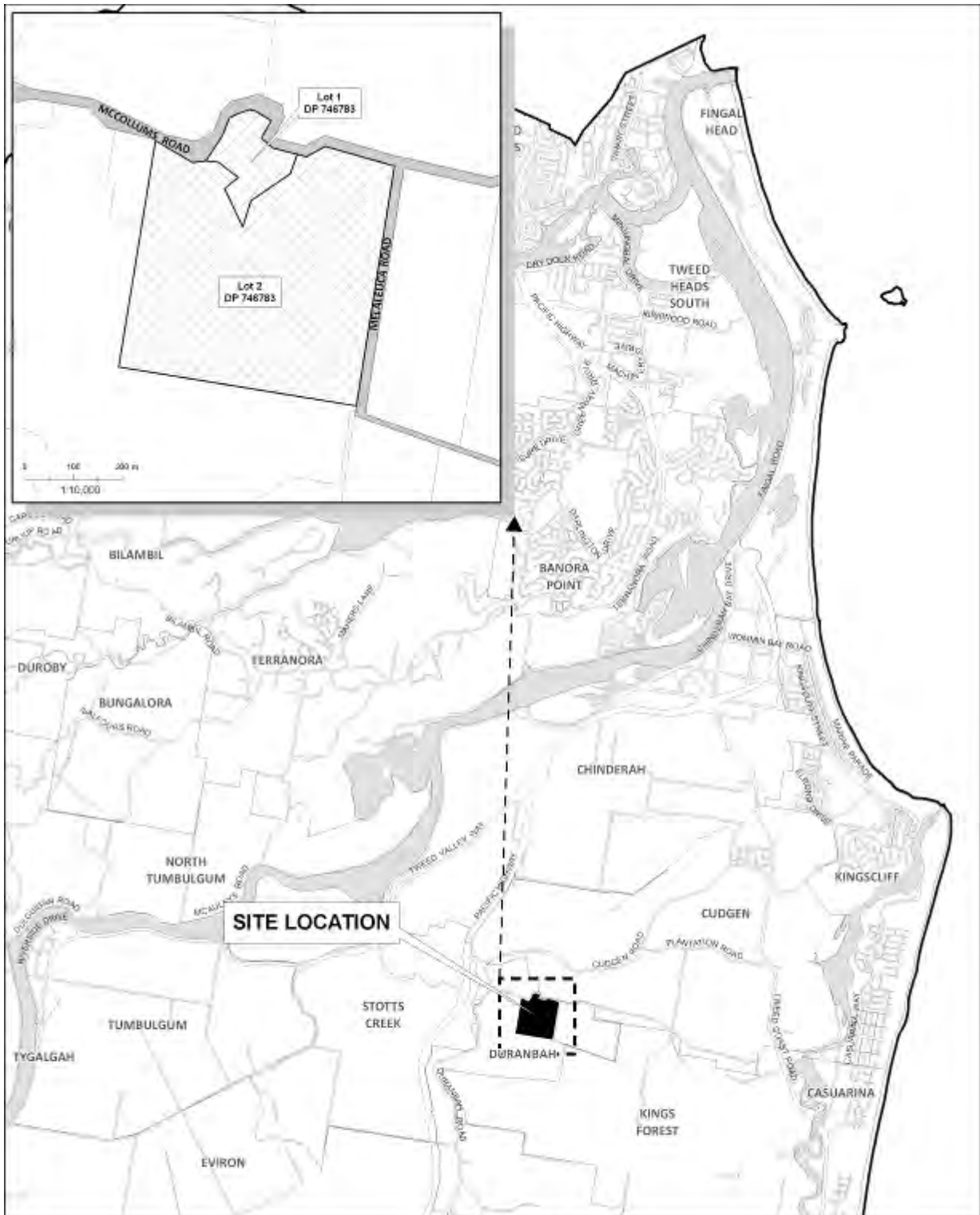
Two dwellings currently exist over the parent parcels. The subdivision proposes to create a future house site on proposed Lot 1 with the existing dwellings to be located on proposed Lots 2 & 3.

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

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

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

**SITE DIAGRAM:**



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

<p><small>This plan is for information only and does not guarantee the accuracy of the data. Council shall not be responsible for any loss or damage arising from reliance on this plan. Council is not responsible for any loss or damage arising from reliance on this plan. Council is not responsible for any loss or damage arising from reliance on this plan.</small></p>	<p>Cadastral: 01 February 2011                  © Land and Property Management Authority (LPM) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p>	<p>Scale: 0 0.5 1 1.5 km                  1:85,000 @ A4 Portrait                  COPY ONLY - NOT OFFICIAL</p> <p><b>Civil and Cultural Centre</b>                  3 Tomahgan Road                  Duranbah NSW 2486                  PO Box 276                  Duranbah NSW 2486                  T: (02) 6670 2488   (02) 292 872                  F: (02) 6673 2479                  W: www.tweed.nsw.gov.au                  E: planning@tweed.nsw.gov.au</p> <p><b>TWEED SHIRE COUNCIL</b></p>
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**SUBDIVISION PLAN:**



**Proposed Three (3) Lot Subdivision**

Lots 1 & 2 in DP 746783  
McCollums Road, Durambah  
SCALE: 1:1000  
Client: G. Marsden



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

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Zone objectives

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

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

Primary Objective

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

Secondary Objective

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

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

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

Clause 15 - Essential Services

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

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

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

Clause 19 – Subdivision Generally

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

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

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

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

Clause 20 aims to:

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

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

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

#### Clause 35 - Acid Sulfate Soils

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

#### Clause 39A – Bushfire Protection

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

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

#### Clause 39 – Remediation of Contaminated Land

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

### **State Environmental Planning Policies**

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

##### Clause 12 – Impact on Agricultural Activities

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

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

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

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

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

#### Clause 43: Residential development

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

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

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

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

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

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



This lot is presently 2ha in size and contains an existing established dwelling (under 1220/91B– Building Application for a dwelling approved in 1991).

The basis of the applicant's SEPP 1 Objection is that the 10ha minimum lot size for the 1(b)1 zone is unreasonable and unnecessary in the circumstances because:

- *“The undersized allotment has a dwelling entitlement;*
- *The undersized allotments contains an existing dwelling house upon it which has been approved by Council;*
- *No additional undersized allotments will be created;*
- *No additional dwelling entitlements will be created on undersized allotments;*
- *The smaller allotment is currently utilised for Rural Residential purposes. The increased size of the allotment will enable issues of effluent disposal and bushfire hazard reduction to be better managed, whilst also providing a better buffer from the larger allotments;*
- *The development will not affect the ability of the two larger parcels to be utilised for agricultural purposes such as small crops and the like.*
- *The development will not impact upon the quality of Tweed Shires Water supply, being outside of the catchment area for Clarrie Hall Dam and the Bray Park Weir.*
- *The proposal will not impact upon the ecological values or scenic quality of the land.*
- *The proposal is not inconsistent with the objectives of the 1(b) Agricultural Protection Zone;*
- *The proposed subdivision will in no way jeopardises Council's planning controls and does not set a dangerous precedent in this regard; and*
- *The proposed variation does not raise any matters of significance relative to state or regional environmental planning”.*

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston articulated the SEPP 1 test as follows:

- 1 The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979; and
3. It is also important to consider:
  - (a) whether non-compliance with the development standard raises any matter of significance for State or regional planning; and

- (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Preston CJ then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

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

Though not stated by the applicant, the subject SEPP 1 Objection seems to rest upon point one above, in that the objectives of the 1(b1) zone are achieved notwithstanding the undersize allotment (which is presently undersize) and granting consent to the smaller allotment does not limit the ability of proposed lots 1 and 3 to be used for agricultural purposes commensurate with the zone objectives.

Based on the above, the objection is considered to be well founded, as existing Lot 1 is already well below the required 10ha minimum lot size and the proposed subdivision will not further reduce its size.

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

The aims of the policy are as follows:

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

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

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

With respect to Sections 5(a) (i) and (ii) the proposed subdivision is not considered to hinder the proper management, development and conservation of any resources, in particular the subject agricultural land and rural/residential development surrounding the subject site. Negligible impact upon resources and the social and economic welfare of the community is anticipated to result from approval of the application.

Further, non compliance with the development standard is not considered to raise any matters of significance for State or regional environmental planning. As no additional dwelling potential will be created by the proposed subdivision, no public benefit would be gained by maintaining the standard in this instance.

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

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

#### SEPP (Rural Lands) 2008

This SEPP aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes and reduce land use conflicts through utilising Rural Planning Principles and Rural Subdivision Principles. It also aims to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land.

Clause 10(3) specifies the following matters to be considered in determining development applications for rural subdivisions or rural dwellings:

- (a) *the existing uses and approved uses of land in the vicinity of the development;*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

In this instance, the proposed subdivision is considered to be consistent with the surrounding agricultural land use, which includes crop growing and pasture land. The proposal is not considered to impact upon any such uses, nor will it prejudice the ability for the subject site to be used for agricultural purposes commensurate with the zone objectives. The proposal is consistent with Clause 10(3)(a).

The preferred land uses in the 1(b1) Agricultural Protection zone are considered to be agriculture and forestry (both allowed without consent in the zone). The subject proposal is not considered to have a significant impact on either such land use given the subdivision does not involve any works. The proposal is consistent with Clause 10(3)(b).

Given the proposal is for subdivision only, it is not considered to be incompatible with the land uses mentioned in (a) or (b) above. The proposal is not considered to reduce the agricultural viability of the subject site or surrounding properties. The proposal is consistent with Clause 10(3)(c).

The subject site is not located adjacent to a rural/residential zone and Clause 10(3)(d) is considered satisfied.

No measures to avoid or minimise land use conflict have been proposed by the applicant as the proposal is not considered to generate any significant issues in this regard. The recommended buffers (detailed by the Department of Primary Industry) are exceeded by the proposed development. Clause 10(3)(e) is considered satisfied.

The proposed subdivision has no further ramifications for SEPP (Rural Lands) 2008 and is considered to be consistent with the Policy in its entirety.

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

The subject sites are zoned RU1 – Primary Production under the draft Tweed Local Environmental Plan 2010, with a corresponding minimum lot size of 10ha. The proposed subdivision, inclusive of the SEPP 1 Objection would remain permissible under the draft LEP 2010.

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

Tweed Development Control Plan

A5-Subdivision Manual

Physical Constraints

The subject property is generally free from physical constraints, despite being bushfire prone. The site is undulating, with contours ranging from 50m at the south east corner of the site down to 6m at the south western corner.

A future dwelling site is proposed on proposed Lot 1. This location is the same as that approved under the previous DA for a two lot subdivision (DA08/0490) and HMC Environmental Consulting prepared an OSSM report for the site associated

with DA08/0490. Council's Environmental Health Officer has reviewed this report and returned no objections to the proposal, subject to conditions of consent in this regard.

#### Rural Watercourses and Drainage

The subject site does not contain any significant watercourses. Council's Development Assessment Engineer has indicated that stormwater drainage is rural in nature, discharging as overland flow which remains appropriate.

#### Rural Subdivision Structure

The objectives of Clause 5.3 aim to facilitate rural subdivision which is consistent with zone objectives, provides for uses that are suitable for agricultural areas and protects rural character and amenity. The proposed subdivision is considered to be consistent with the objectives of the 1(b)1 zone as it generally preserves the existing layout and use of the land, inclusive of the two lot subdivision approved by DA08/0490.

#### Rural Subdivision and Lot Layout

A future house site has been nominated within proposed Lot 1. The location is consistent with the Rural Subdivision and lot layout provisions and has been reviewed by Council's Environmental Health Officer with regard to contaminated land and on site sewage management and found to be acceptable.

#### Rural Movement Network

The existing road network is adequate for servicing the new subdivision according to Council's Development Assessment Engineer. The application proposes to maintain the existing access from Melaleuca Road (Lot 1), McCollums Road (Lot 2) via a right of way through proposed Lot 2. Lot 3 will maintain its existing access via the convergence point of the right of way at McCollums Road.

Conditions have been applied by Council's Development Assessment Engineer with regard to the right of way who has also noted that the surrounding road network will not be affected by the creation of one additional new dwelling in this location. Negligible impacts on the existing rural movement network are envisaged as a result of approval of this application.

It is considered that the proposed subdivision complies with DCP A5.

#### B9 - Tweed Coast Strategy

Much of the Tweed Coast Strategy relates to matters such as urban design in the Kingscliff Town Centre, as well as planning principles for the now established Salt and Casuarina developments. With particular relevance to the subject application for subdivision, the strategy details the following objective under Part TSC.S.7.11:

*Council will retain the protection of the District's agricultural land i.e. land currently zoned 1(b) Agricultural Protection as a finite resource and given its*

*scenic value and ensure that it remains protected from any non-agricultural forms of development that conflict with agriculture.*

With regard to the above, it is noted that the proposed subdivision does not limit the ability of the subject land to be used for agricultural purposes and is not considered to be a development type which conflicts with agriculture. The Tweed Local Environmental Plan permits dwellings to be located on agricultural land where the minimum lot size is met (or the property is a council approved subdivision). With regard to the subject application, the minimum lot size will be met by two of the three allotments, with the third being increased slightly to incorporate existing farm facilities. Development consent has been issued for the dwelling on this lot and as such, no additional dwelling entitlements are created by the subject application.

The proposed development is consistent with the relevant parts of DCP B9 – Tweed Coast Strategy.

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

Clause 92(a) Government Coastal Policy

The site is not covered by the Government Coastal Policy.

Clause 92(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

No consideration of fire safety within the bounds of Clause 93 is required.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded.

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

Context and Setting

The proposal complies with the prescribed minimum lot size for the 1(b1) zone (with the exception of proposed Lot 2 which increases slightly in size) and applicable clauses of the TLEP and the NCREP with respect to the protection of agricultural land. Based on this and the fact that no works (apart from minor driveway works for access) are required to facilitate the subdivision, the proposal is considered to be consistent with the context and setting of the subject locality.

It is also noted that the proposed realigned boundary for proposed Lot 2 results in a more 'regular' area, essentially removing an existing triangle shaped portion of the lot from jutting into proposed Lot 3. Such an outcome is considered to be

beneficial for an agricultural property in terms of creating a larger space of useable area which has improved manageability than an irregular boundary.

### Access

The provision of access to each proposed allotment is summarised as follows:

- Proposed Lot 1 is to gain access from Melaleuca Road. The proposed driveway is sealed from the road to the property boundary, with a culvert and headwalls located in the table drain. The driveway is located adjacent to a large fig tree and is in good condition.

The topography is relatively flat to the proposed house site; therefore 2 wheel drive access to the proposed site can be achieved.

- Proposed Lot 2 will retain the current access from McCollums Road via a right of carriageway through proposed Lot 3 to proposed Lot 2. The driveway servicing the existing dwelling on proposed Lot 2 is sealed and is in good condition. The development application is lacking in detail in regards to the proposed right of carriageway and the existing driveway servicing proposed Lot 2.

It is noted that the sealed driveways servicing the existing dwellings located on proposed Lots 2 & 3 converge at the same point on McCollums Road and it is assumed that the right of way will be located over the existing sealed driveway to proposed Lot 2.

Council's rural road standards require a right of carriageway to be constructed to a pavement width of 3.6m with a two coat bitumen seal. The right of way standards have been included as a condition of consent.

- Proposed Lot 3 will gain access from the McCollum Road at the same access point where the right of way access is proposed. The driveway to the existing dwelling is sealed from the property boundary to the house and is in good condition.

Council's Development Assessment Engineer has reviewed the proposed access arrangement and applied relevant conditions.

### Farmland of Regional or State Significance

The subject site is not identified as regionally or state significant farmland.

### Concurrence

Concurrence was required from the Director General, Department of Planning as one of the lots to be created is less than 90% of the required standard. Concurrence was issued by the Department on 23 December 2010, for the following reasons (excerpt from letter dated 23 December 2010):

- The boundaries of the small proposed lot of 2.012 hectares will be adjusted marginally from and will be similar in size to the existing Lot 1;
- As no additional dwelling potential will be created by the proposed subdivision, no public benefit would be gained by maintaining the standard in this instance.

#### Dwelling Entitlement

As noted above, no additional dwelling potential is created by the subject application. It is noted however that proposed Lot 2 (existing Lot 1) was created as part of a Council approved subdivision in 1987, thus the property enjoyed a dwelling entitlement. While a dwelling has since been approved and constructed on this lot, the proposed subdivision will result in the dwelling entitlement being extinguished and the dwelling house having to rely on existing use rights for any future development.

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

#### Surrounding Land Uses/Development

The proposal is considered to be consistent with the surrounding agricultural land use.

#### Bushfire

The western part of the subject site is bushfire prone. The NSW Rural Fire Service have reviewed the application and issued a Bushfire Safety Authority pursuant to Section 100B of the Rural Fires Act 1997 with the following condition:

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

This condition has been applied.

#### Contaminated Land

An excerpt from Council’s Environmental Health Officer’s assessment for the previous subdivision DA08/0490 is supplied below. No further matters with regard to contaminated land were raised by the subject application and no new conditions were required.

*“The creation of one dwelling site is proposed on Lot 1. A Preliminary Site Contamination report, HMC March 2007 has been submitted for consideration. The site history included small cropping and therefore soil sampling has been completed. Contaminants of concern were not identified above relevant HILs and the report concludes the site is suitable for the proposed use.  
Council’s Enlighten shows that there are no dip sites within 200m of the subject property. No further considerations required”.*



Onsite Sewage Management

Amended conditions have been provided by Council's Environmental Health Officer with regard to OSSM, which have been applied.

Potable Water Supply

The application notes that water harvesting will be utilised for any future dwelling on proposed Lot 1. Appropriate conditions have been applied.

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

The proposal did not require advertising or notification under Council's Development Control Plan Section A11 – Public Exhibition of Development Proposals. No submissions were received from the public though it is noted that concurrence was received from the Department of Planning and a Bushfire Safety Authority was returned by the NSW Rural Fire Service. Conditions have been applied where required.

**(e) Public interest**

The proposed development is minor and maintains the agricultural nature of the Duranbah locality. No adverse impacts are envisaged as a result of approval of the application, nor the construction of an additional dwelling in the proposed location.

The proposed SEPP 1 Objection is considered reasonable in this instance based on the subject lot being already considerably undersize and no additional dwelling potential being created. The proposed development generally complies with all relevant matters for Council's consideration, being considered suitable for the subject site and without significant environmental impacts.

The proposed development is therefore considered to be in the public interest.

**OPTIONS:**

1. Approve the application in accordance with the recommended conditions for approval.
2. Refuse the application for specified reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If dissatisfied with the decision, the applicant has the ability to appeal.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development is minor and detailed assessment has been undertaken of all relevant issues, with the conclusion drawn that negligible environmental impacts are envisaged as a result of approval of this application.

The proposed development is considered to be suitable for the subject site and will not reduce agricultural use of the site or the subject locality.

Approval in accordance with the recommended conditions is therefore recommended.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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. Delegated report for Development Application DA08/0490 (ECM 28031428)
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**18 [PR-CM] Development Application DA10/0099 for a Five (5) Lot Subdivision at Lot 192 DP 217678, Lot 22 DP 1058759 Poplar Avenue and Lot 2 DP 873399 Poinciana Avenue, Bogangar**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0099 Pt2**

**SUMMARY OF REPORT:**

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied within the range of 80% to 99.02%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of zoned land within each allotment created is at least 40 hectares.

Proposed Lot 3 has a total area of 18.37ha and is inclusive of 1.622ha of 1(a) zoned land, 1.7ha of 7(a) zoned land and 3200m<sup>2</sup> of 7(l) zoned land, all of which are less than 40ha as required by the development standard.

Proposed Lot 2 has a total area of 50.29ha and is inclusive of 8.2ha of 7(l) zoned land which is less than 40ha as required by the development standard.

The applicant seeks consent for a five (5) lot rural residential subdivision, including a road extension of Poinciana Avenue and earthworks to be undertaken on proposed Lots 4 and 5.

Assessment of the application has taken into account indicative dwelling sites located on proposed Lots 1, 4 and 5 in order to ascertain the extent of Asset Protection Zones (APZ's) required for future dwellings and the impact that APZ's may have on sensitive vegetation, koala habitat and mapped wetlands located upon or adjacent to the proposed lots.

Concurrence was not granted by the Director General in this instance to permit the creation of proposed Lot 3 of 18.37ha for the following reason:

*The subdivision would create an undersized lot on rural and environmental protection land that would result in a total of four undersized lots in this location in the same ownership. This amounts to rural-residential development outside the strategic planning process and is not in the public interest.*

The proposal was required to be notified to adjoining owners for a period of 14 days. A petition with 70 signatures and 41 individual submissions were received during the notification period.

Having regard to relevant statutory controls and an assessment against SEPP 14 and Clause 20(2)(a) in particular, of the Tweed LEP 2000, the proposed five (5) lot subdivision is not considered suitable and therefore the proposed development is recommended for refusal. This recommendation is in accordance with direction from the Department of Planning.

**RECOMMENDATION:**

**That Development Application DA10/0099 for a five (5) lot subdivision at Lot 192 DP 217678; Lot 22 DP 1058759 Poplar Avenue and Lot 2 DP 873399 Poinciana Avenue, Bogangar be refused for the following reasons:**

- 1. The Department of Planning has not issued concurrence.**
- 2. The proposed subdivision does not comply with the 40 hectare minimum development standard contained within Clause 20(2)(a) of the Tweed LEP 2000.**
- 3. The SEPP 1 objection has not demonstrated that the development standard is unnecessary and unreasonable.**
- 4. The applicant has not addressed matters for consideration under Clause 7 of SEPP 14 in relation to clearance of mapped wetland and concurrence for the proposal is required by the Director of National Parks and Wildlife.**

**REPORT:**

**Applicant:** Kenmar Farms Pty Ltd  
**Owner:** Hansen Developments Pty Ltd  
**Location:** Lot 192 DP 217678, Lot 22 DP 1058759 Poplar Avenue and Lot 2 DP 873399 Poinciana Avenue, Bogangar  
**Zoning:** 1(a) Rural, 2(a) Low Density Residential, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 7(l) Environmental Protection (Habitat) and Unzoned Land  
**Cost:** N/A

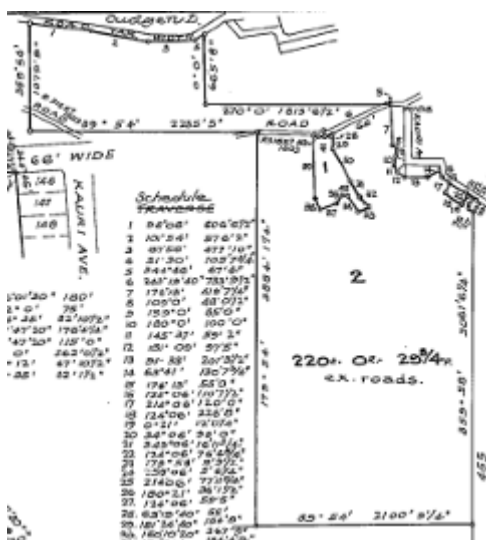
**BACKGROUND:**

History

The applicant has ownership of multiple parcels adjacent to the subject site and within the locality of Bogangar.

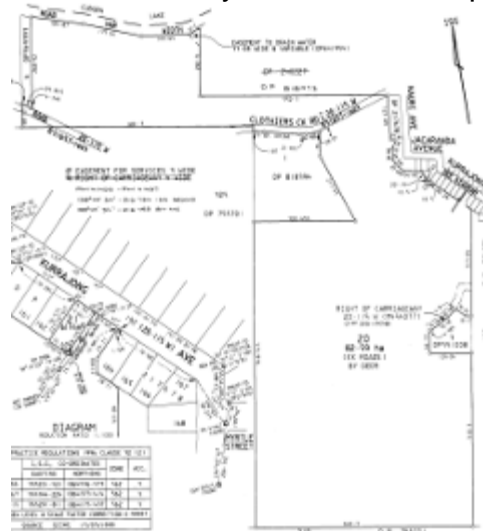


In 1963 (left), the subject site consolidated land not then bisected by Clothiers Creek Road known as Portion 189 in the Cabarita Estate.

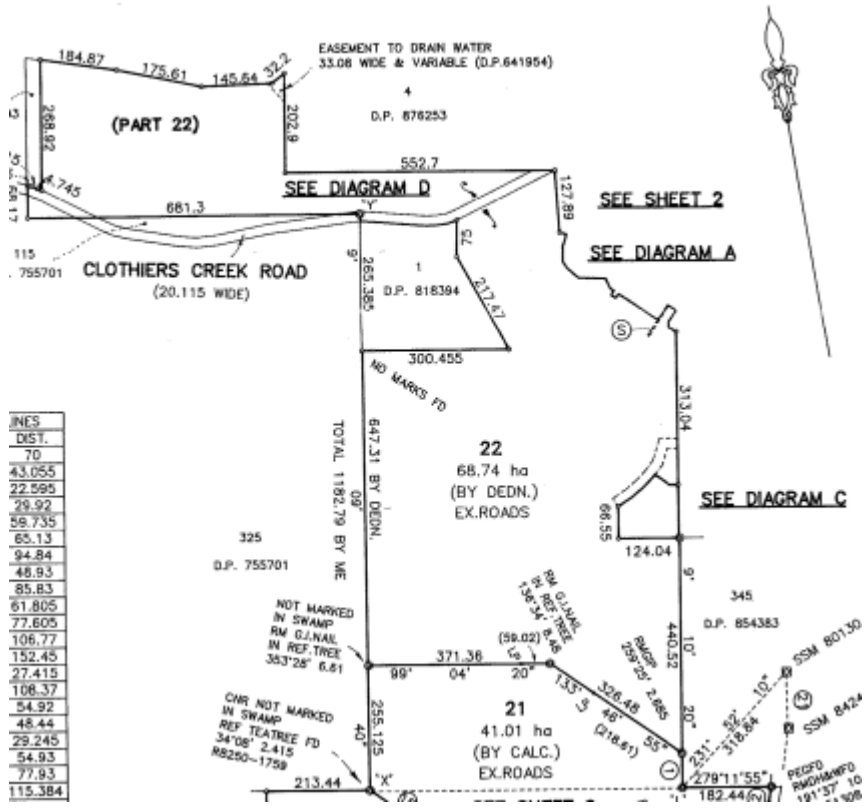


In 1970 (below left), the parcel was bisected by Clothiers Creek Road and resulted in a reduction in size and a fragmented division configuration.

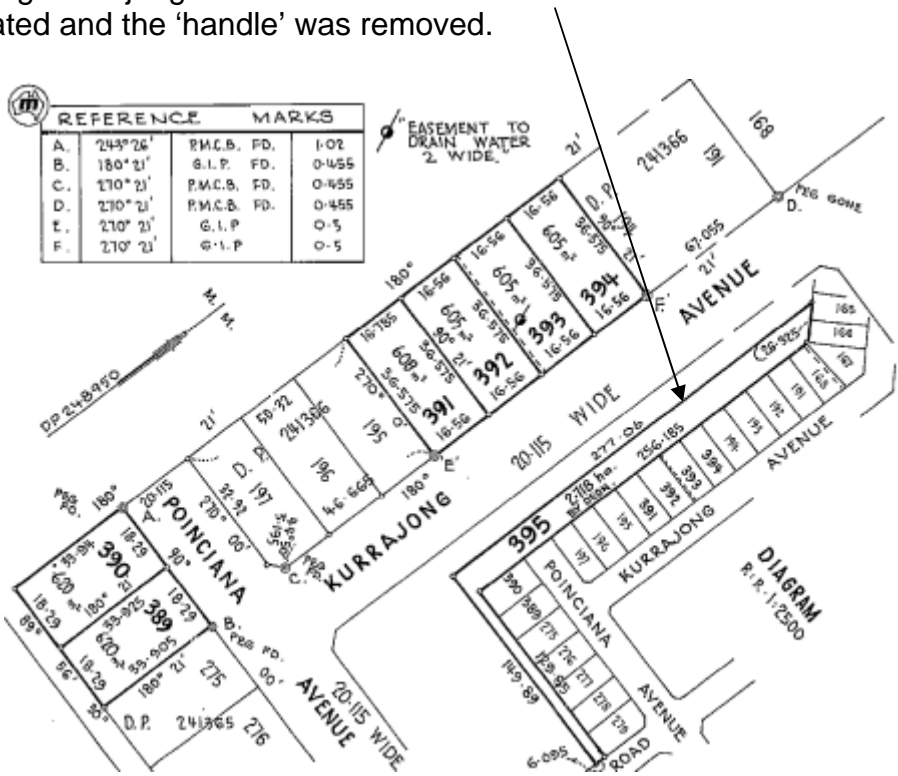
In 1999 (below), a realignment of boundaries resulted in two internal allotments of different sizes and configurations over the north-eastern sections of both portions of the site, retention of access to Kurrajong Avenue and acquisition of community land by Council on the eastern boundary of the southern portion.



Finally, in 2003 (below), the lower portion of Lot 22 was transferred to the southern adjoining allotment (Lot 21), resulting in the current configuration of allotments bisected by Clothiers Creek Road.



Lot 2 in DP 873399 was created in 1975 as Lot 395 in DP 248950 (below) with a narrow 'handle' that linked with Cabarita Road. It was created in association with residential allotments along Kurrajong Avenue and at the end of Poinciana Avenue. In 1997, current Lot 2 was created and the 'handle' was removed.

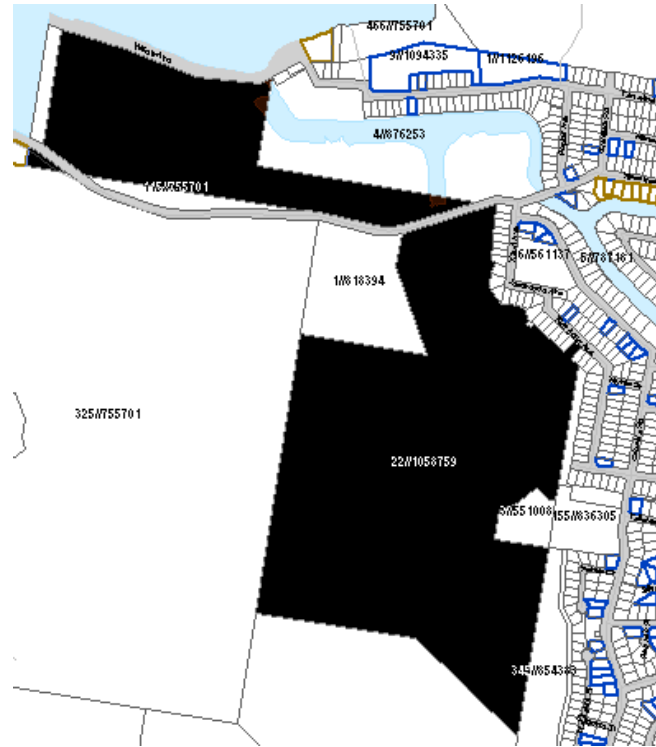


The small 'toe' of Lot 192 in DP 217678 was created in 1963 for unknown reasons.

The Subject Site

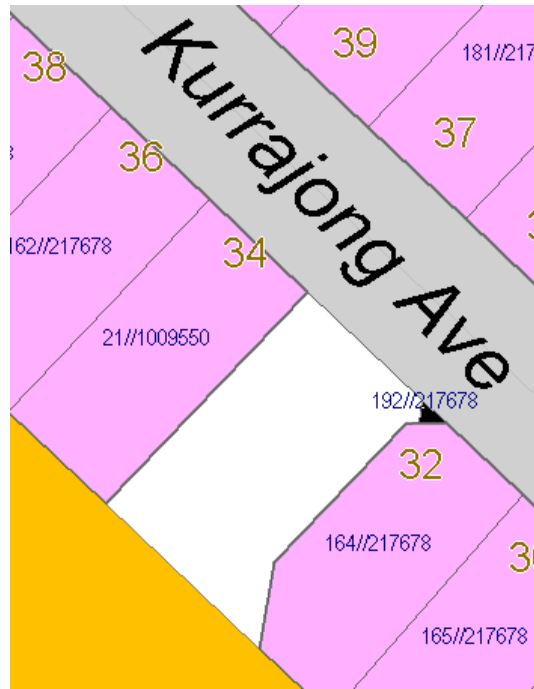
The subject site which is located north and south of Clothiers Creek Road currently comprises a total area of 74.634ha. It comprises three (3) parcels described as:

- Lot 22 in DP 1058759 – this parcel contains land to the north and south of Clothiers Creek Road with an area of 68.74ha. Land zoning within this parcel is varied – 1(a), 2(a), 7(a), 7(l) and unzoned land.



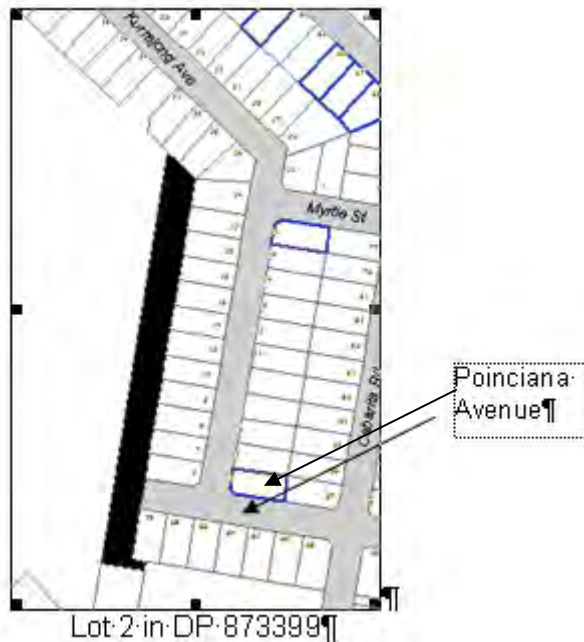
Lot 22 in DP 1058759

- Lot 192 in DP 217678 – this tiny unzoned parcel has an area of 5.2m<sup>2</sup> and is located adjacent to Kurrajong Avenue and the unzoned portion of Lot 22 that is proposed to be Lot 1. The purpose of this small fragment of land is unknown.



Lot 192 in DP 217678

- Lot 2 in DP 873399 – this parcel of land has a total area of 5706m<sup>2</sup> and is zoned entirely 2(a). Currently, the land serves as an informal hazard buffer and recreational open space along the rear of properties fronting Kurrajong Avenue to the end of Poinciana Avenue. The section north of Poinciana Avenue (proposed Lot 4) is highly constrained.



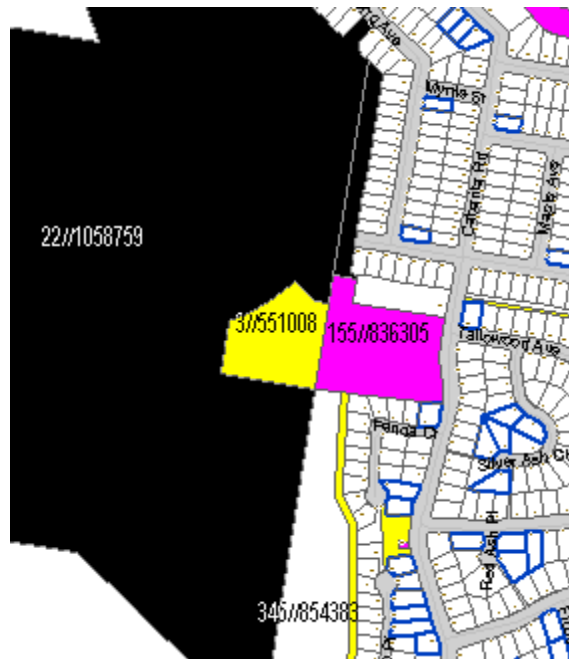
Lot 2 in DP 873399

Adjacent to the site to the south east (below) are two pieces of land owned by Council and one that is privately owned.

- Lot 3 in DP 551008 – this is a 1.278ha piece of community land managed as a public reserve



- Lot 155 in DP 836305 – this is a 1.829ha piece of operational land managed for water treatment works
- Lot 345 in DP 854383 – this is a 3.83ha, privately owned piece of environmentally sensitive land.



Adjacent parcels

To the east of the site is the western fringe of residential development associated with Bogangar. Residential properties fronting Kauri, Jacaranda, Kurrajong and Poinciana Avenues are adjacent to the subject site where development is proposed.

To the south of the subject site is a 41 hectare piece of environmentally sensitive land (Lot 21 DP 1058759) in the same ownership as the subject site. Similarly, located 'between' the northern and southern portions of the subject site adjacent to Clothiers Creek Road is a 6.102 hectare piece of environmentally sensitive land (Lot 1 DP 818394) in the same ownership as the subject site.

### The Proposed Development

The proposal includes:

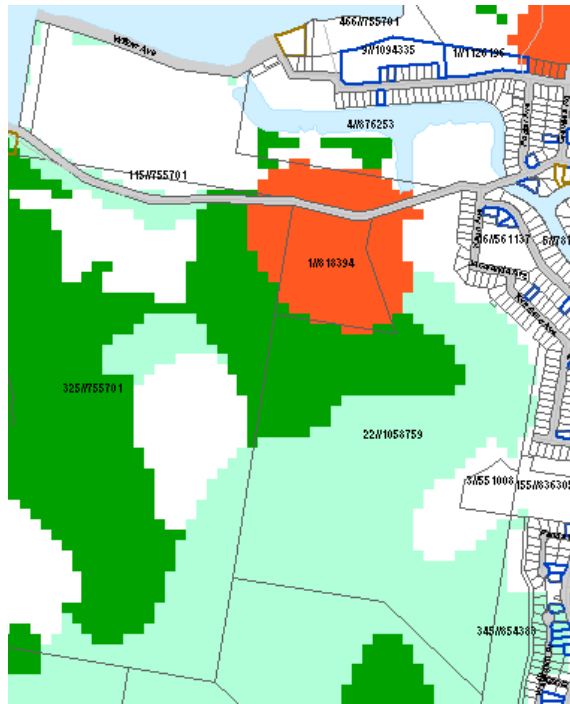
- Subdivision of the site into five (5) lots:
  - Lot 1 = 768m<sup>2</sup> (an existing 3m wide easement for services is located along the north-western boundary from Kurrajong Avenue into existing Lot 22 (proposed Lot 2))
  - Lot 2 = 50.29ha
  - Lot 3 = 18.37ha
  - Lot 4 = 4306m<sup>2</sup>
  - Lot 5 = 900m<sup>2</sup>

- A new cul-de-sac head at the end of Poinciana Avenue to extend the public road  
An existing 10m wide right of carriageway exists at the end of Poinciana Avenue over existing Lot 22 (proposed Lot 2) to allow Council access to Lot 3 in DP 551008.
- Earthworks in association with proposed Lots 4 and 5 to facilitate future dwelling construction above design flood level at RL 3.1m AHD  
The southern end of Lot 4 and a small portion of the cul-de-sac head are proposed to be filled to at least RL 3.4m AHD with 450m<sup>3</sup> of material 'cut' from proposed Lot 5 and the bulk of the cul-de-sac head.
- Indicative dwelling sites on proposed Lots 1, 4 and 5  
Dwelling pads are 10m x 15m in dimension.
- Associated off-site Asset Protection Zones (APZ's) for Lots 1, 4 and 5  
The proposed subdivision plan indicates that the APZ associated with proposed Lot 1 extends 20m into proposed Lot 2.  
The proposed subdivision plan indicates that the APZ's associated with proposed Lots 4 and 5 extend 25m into proposed Lot 2.  
The proposed APZ's shown in figures provided in association with the ecological assessment are reduced in size and inconsistent with those proposed in the subdivision plan.  
APZ's require management of vegetation in order to keep fuel loads low in the event of bushfire threat. Clearing of vegetation is required to maintain a covering of no more than 20% within the APZ area.

The original proposal included the location of dwelling pads and associated earthworks on proposed Lots 2 & 3. The proposed dwelling pads were subsequently withdrawn given their prohibited status.

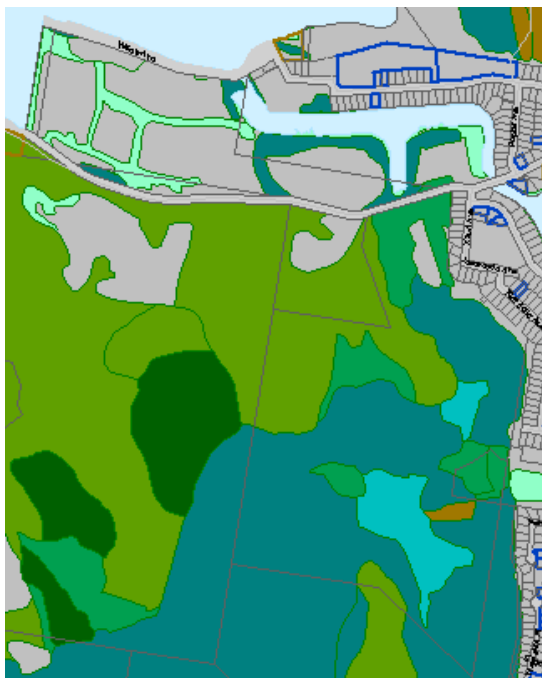
### Site Constraints

The site contains primary and secondary (Classes A and B) Koala Habitat as sourced from the Australian Koala Foundation. Secondary Class B Koala Habitat is located within proposed Lot 4 and the associated Asset Protection Zone (APZ) areas for proposed Lots 4 and 5. Potential impact upon Koala Habitat is discussed elsewhere within this report.



Primary (orange), Secondary Class A (dark green) and Class B (light green) Koala Habitat

In accordance with the Vegetation Management Strategy 2008, significant vegetation located on site is mainly contained south of Clothiers Creek Road. Sclerophyll forests / woodlands and Melaleuca / Swamp She-oak forests are located within close proximity to earthworks and future dwelling sites associated with proposed Lots 4 and 5.

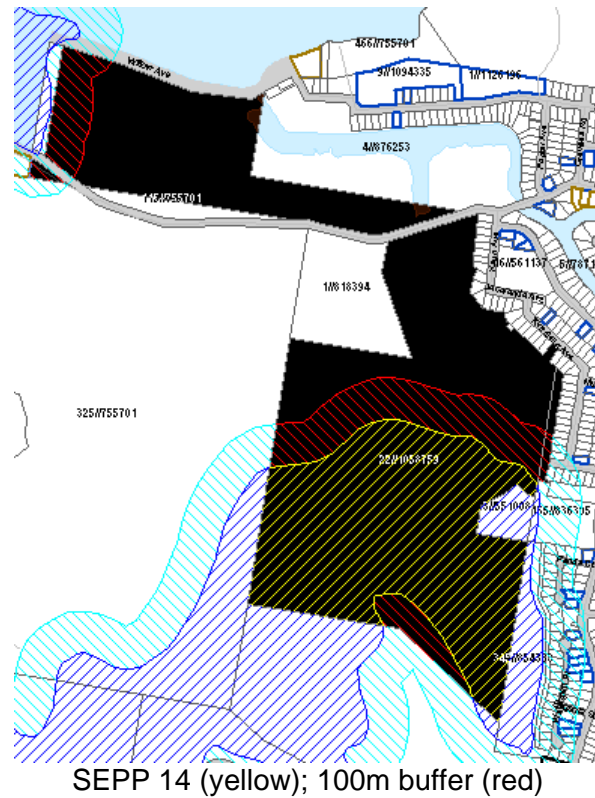


Key to mapped vegetation within the site:

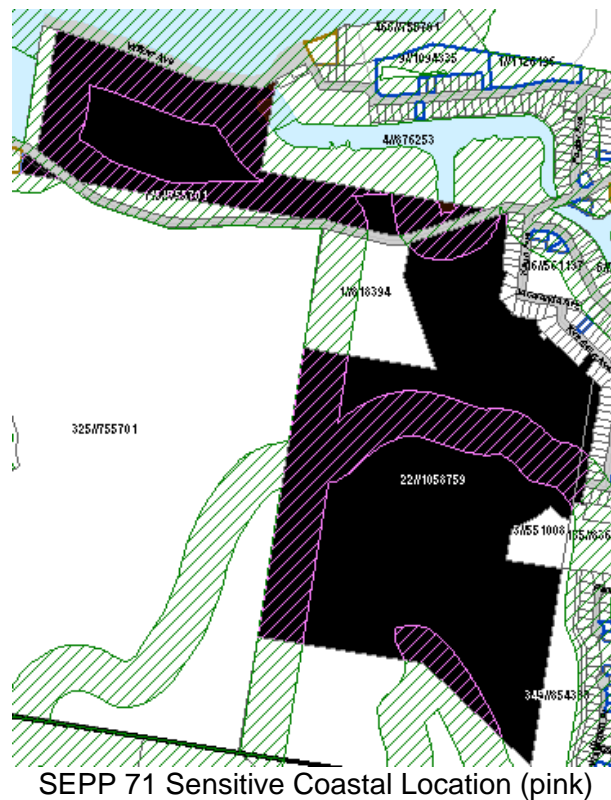
	Heathlands
	Highly Modified / Disturbed
	Melaleuca and Swamp She-oak Forests
	Miscellaneous Map Units
	Rainforest and Riparian Communities
	Sclerophyll Forests / Woodlands on Sand Substrates
	Sclerophyll Open Forests on Bedrock Substrates
	Sedgeland and Related Communities

Tree Protection Orders apply to proposed Lot 2 (2004) and proposed Lot 3 (1990).

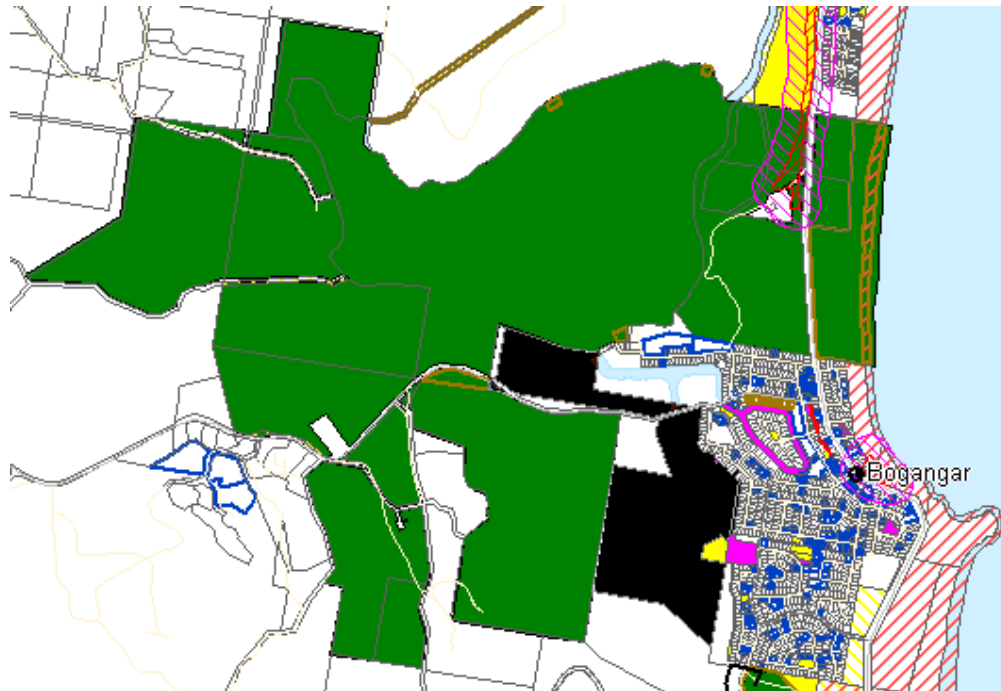
The north-eastern and southern portions of current Lot 22 (proposed Lot 2) within the site contain areas mapped as Coastal Wetland under State Environmental Planning Policy (SEPP) No. 14. The 100m buffer to this area extends into proposed Lots 4 and 5 where future dwellings are to be located.



The entire site is located within the SEPP 71 Coastal Protection Zone. The site is also designated as a sensitive coastal location. Indicative dwelling pads for proposed Lots 4 and 5 are located within a sensitive 'strip' of such land.



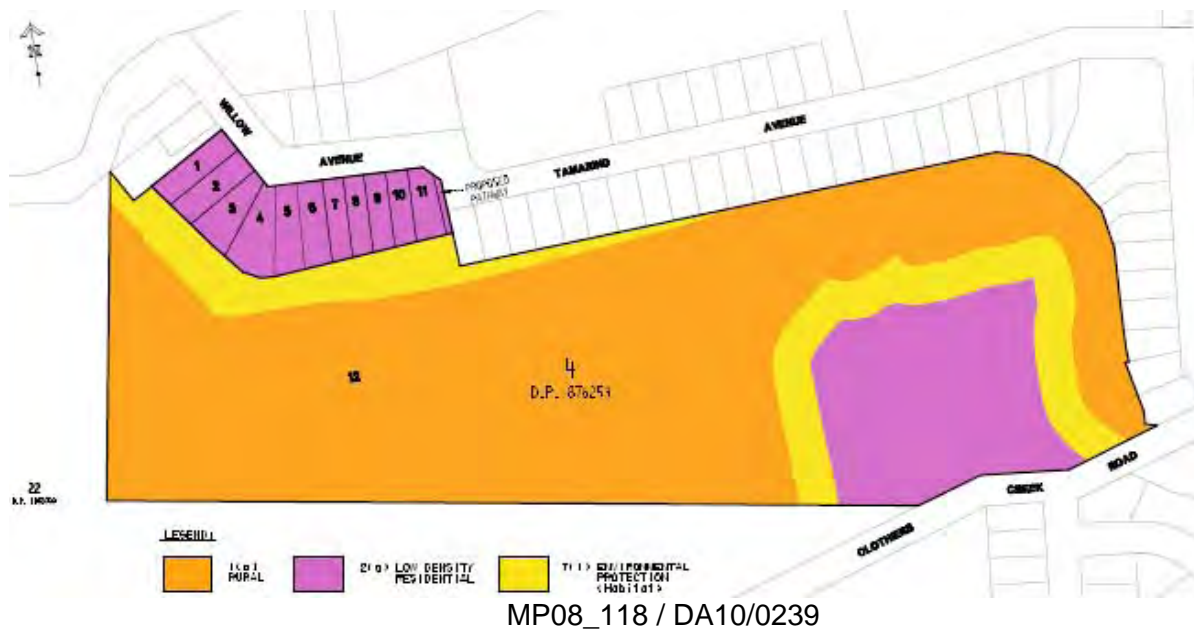
The subject site is located adjacent to Cudgen Nature Reserve and Cudgen Lake. As such, the application was referred to National Parks and Wildlife (DECCW) for comment, the content of which is addressed elsewhere within this report.



Cudgen Nature Reserve (green); Subject Site (black)

Major Project adjacent to subject site

A 12-lot residential subdivision of Lot 4 DP 876253 Willow Avenue, Bogangar (MP08\_118 / DA10/0239) was approved by the Minister for Planning on 2 December 2010. This site is to the north of Clothiers Creek Road and is adjacent to proposed Lot 3. The residential subdivision (below) includes Lot 12, an 11.37ha residue lot comprising of 1(a), 2(a), 7(a) and 7(l) zoned land.



The application has been determined, however, the proposed lots are yet to be legally created.

### Road Widening along Clothiers Creek Road

Council is currently in the process of acquiring land owned by the applicant in order to carry out road widening works along Clothiers Creek Road to correct an existing road alignment anomaly.

The proposed road widening impacts upon Lot 22 DP 1058759 (subject site north and south of Clothiers Creek Road) and Lot 4 DP 876253 (major project site).

In summary, approximately 0.18ha is to be acquired by Council from the northern side of Lot 22 with approximately 0.27ha to be granted to the southern side of Lot 22. Council will also acquire approximately 0.12ha from Lot 4. Road widening is not expected to significantly impact upon the proposed subdivision but will result in alteration of Lot areas.

### Public Submissions

The proposed development attracted 41 individual objections and a petition containing 70 signatures following notification of the application.

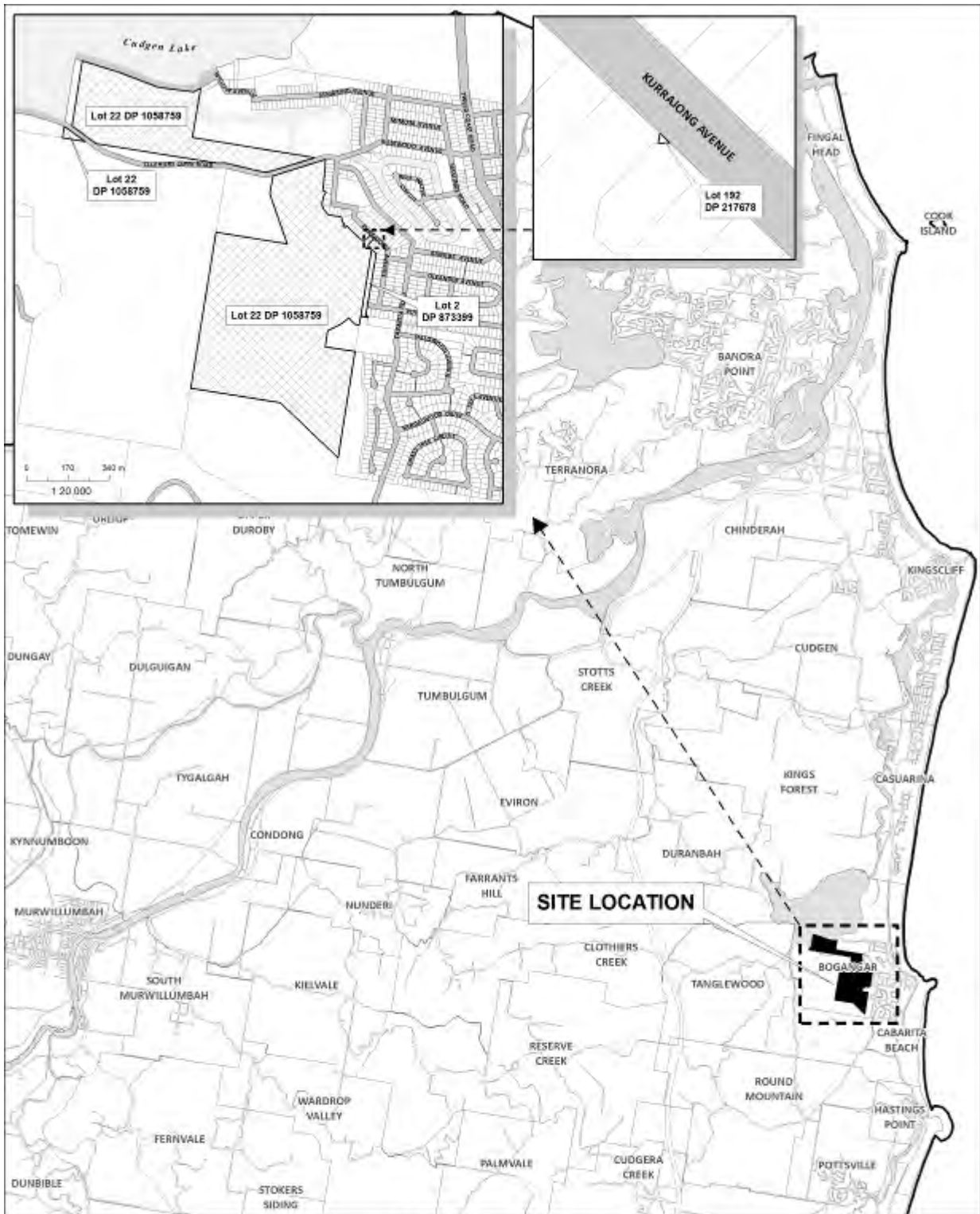
The objections were focused on the suitability of the site given the impacts of the development upon the sensitive environment, threatened species, koala habitat (in particular at the end of Poinciana Avenue), introduced domestic pets, amenity of adjacent residential properties, 2005 flooding, 2004 and 2009 bushfires, increased traffic movements and restriction of access to proposed Lot 2 via proposed Lot 1 for Emergency Services.

### Summary

Having regard to relevant statutory controls and an assessment against SEPP 14 and Clause 20(2)(a) in particular, of the Tweed LEP 2000, the proposed five (5) lot subdivision is not considered suitable for the location and therefore the proposed development is recommended for refusal.



**SITE DIAGRAM:**

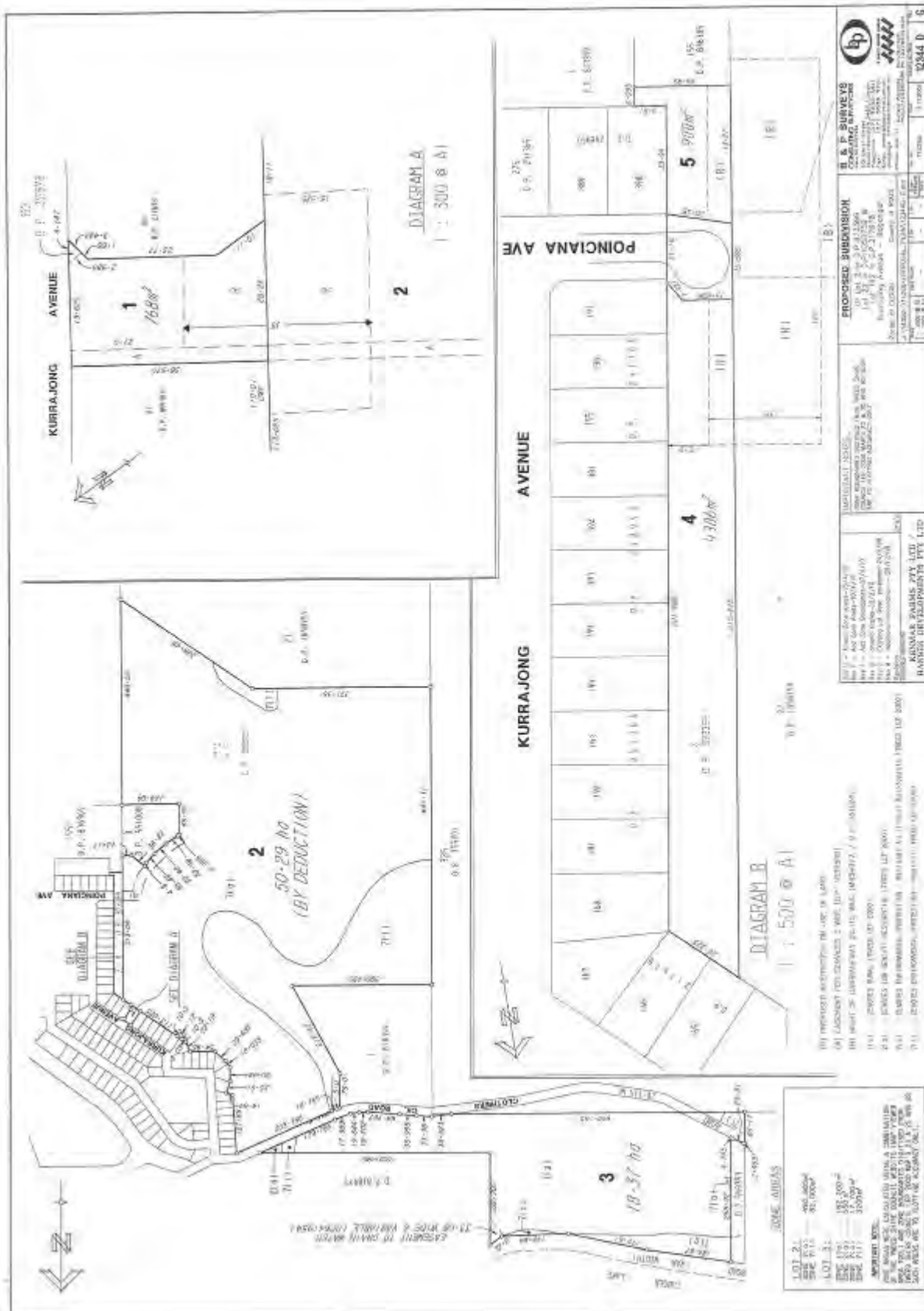


**Locality Plan**

Lot 192 DP 217678, Lot 22 DP 1058759 Poplar Avenue and  
Lot 2 DP 873399 Poinciana Avenue, Bogangar

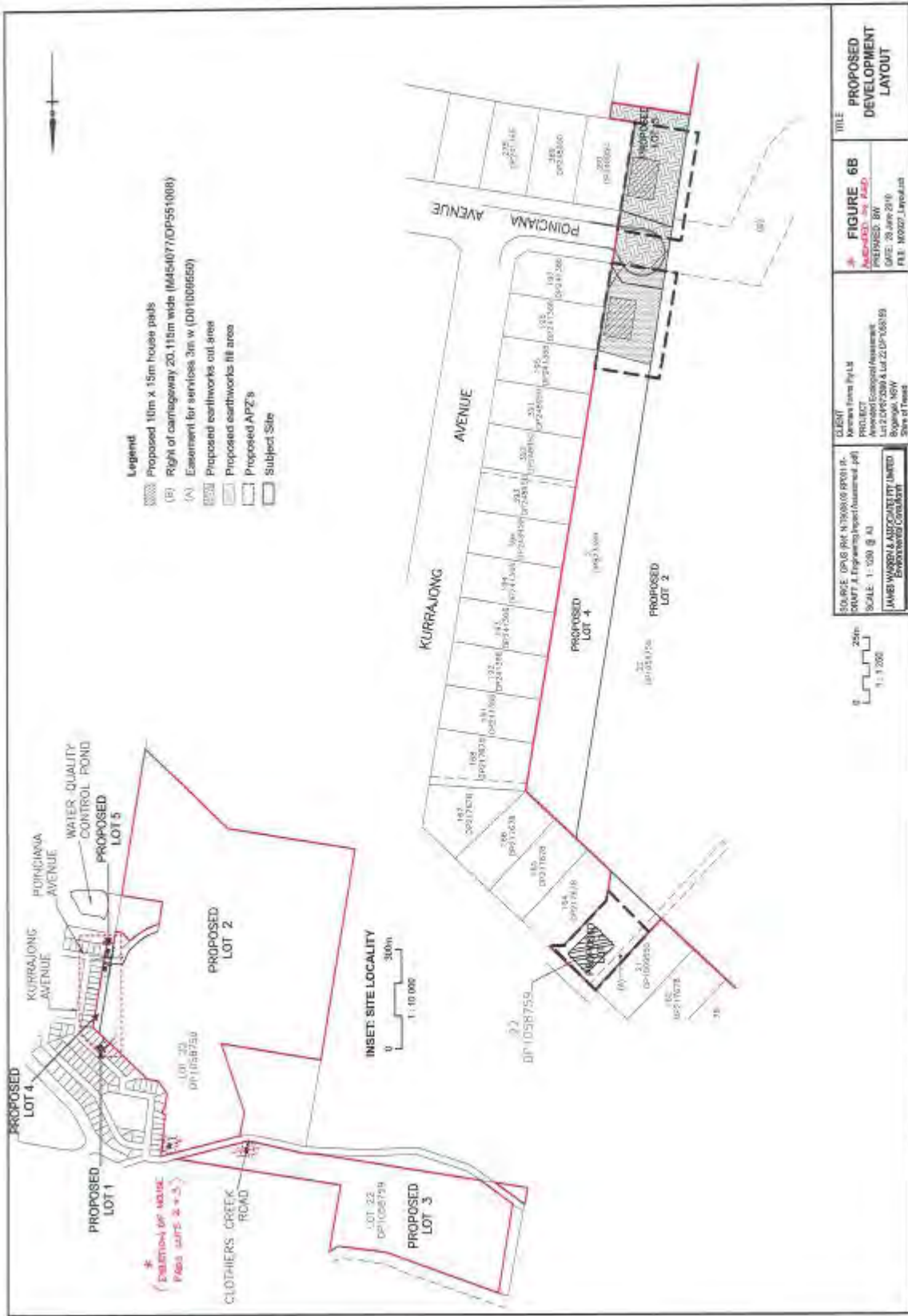
<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose, and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being incorrect in any way and for any reason. This information is provided for the general guidance and is to be considered inductive and diagnostic only. It should not be used for survey or construction purposes and prior to any residential or "like better facilities" enquiry must be made by calling 1100. The information contained on this document remains valid for 12 days from the date of supply.</p>	<p>Cadastral: 23 January, 2011 © Land and Property Management Authority (LPM) &amp; Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>1:100,000 A4 Portrait DO NOT SCALE COPY DATE - NOT CONTAINED</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T: (02) 6671 2400   1300 292 872 F: (02) 6670 2429 W: www.tweed.nsw.gov.au E: planning@tweed.nsw.gov.au</p>	<p><b>TWEED</b> SHIRE COUNCIL</p>
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DEVELOPMENT PLANS:









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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

One of the aims of the plan is:

- (d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

In order for future dwellings to be located upon proposed lots 1, 4 and 5, considerable Asset Protection Zones need to be maintained off-site that encroach into sensitive ecological land. In addition, substantial earthworks need to take place in order to create acceptable dwelling pads upon Lots 4 and 5 requiring existing sensitive vegetation to be removed in the process.

As such, it is questionable whether the proposed development sustains economic development of the area without compromising the area's environmental qualities.

Clause 5 - Ecologically Sustainable Development

Clause 5 aims to promote development that is consistent with the four principles of ecologically sustainable development, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

It is not clear whether irreversible environmental damage may be caused by earthworks and the off-site location of Asset Protection Zones for proposed Lots 1, 4 and 5 given the ecological significance of the site. Impacts upon inter-generational equity and conservation of biological diversity and ecological integrity have not been resolved.

Clause 8 – Consent Considerations

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

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

Although consistent with the relevant 2(a) zone and adjacent unzoned land objectives, the cumulative impact of development where future dwellings are proposed is a concern.

It is becoming more common for applicants to request that Asset Protection Zones be located in areas other than that of the subject site, that is, beyond the proposed allotment for the future provision of a dwelling.

In this instance, Asset Protection Zones extend into areas containing sensitive vegetation, mapped wetland and evidenced Koala habitat. For this to occur, the applicant needs to demonstrate 'exceptional circumstances'. This has not been demonstrated.

Loss of important biodiversity in this locality constitutes an unacceptable cumulative impact on the community.

#### Clause 11 – Zone Objectives

Proposed Lot 1 consists of unzoned land. Please refer to an assessment of the suitability of the proposed development below under Clause 13.

Proposed Lot 2 consists of land zoned 7(a) and 7(l). Subdivision is permissible in these zones if the area of land within each zone totals 40 hectares or more. In this case, land within the 7(a) zone has a total area of 42.09 hectares. This is considered acceptable.

Subdivision including the undersized portion of 7(l) land (8.2 hectares) requires an application to vary the development standard. An assessment of the application to vary the development standard for proposed Lot 2 is discussed elsewhere in this report.

Bushfire hazard reduction within the 7(a) zone for the creation of Asset Protection Zones for proposed Lots 1, 4 and 5 requires development consent.

No further development is proposed for Lot 2.

Proposed Lot 3 consists of land zoned 1(a), 2(a), 7(a) and 7(l). Subdivision is permissible in the 2(a) zone with a minimum allotment size of 450m<sup>2</sup>. Subdivision is permissible in the 1(a), 7(a) and 7(l) zones only if the area of land within each zone totals 40 hectares or more. In this case, land within each of these zones is undersized.

As outlined above, an application to vary the development standard is required. An assessment of the application vary the development standard for proposed Lot 3 is discussed elsewhere in this report.

No further development is proposed for Lot 3.

Proposed Lots 4 and 5, contained within the existing parcel Lot 2 DP 873399 are zoned 2(a). Subdivision (and associated earthworks) within the 2(a) zone is permissible with consent with a minimum allotment size of 450m<sup>2</sup>. The location of future dwellings is permissible with consent on a minimum lot size of 450m<sup>2</sup>.

Clause 15 - Essential Services

All essential services can be supplied to proposed Lots 1, 4 and 5.

Clause 16 - Height of Building

There are no buildings proposed.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The area of the subject site where earthworks are proposed is classified as Class 3 land. A preliminary Acid Sulfate Soil Management Plan was submitted which proposes soil testing to be undertaken prior to the commencement of works, thus necessitating the submission of a detailed site investigation and detailed management plan for further consideration.

**Specific Clauses**

Clause 13 – Unzoned Land

Part of the subject land (proposed Lot 1) is zoned 'uncoloured' under the Tweed LEP 2000. Relevant objectives of Clause 13 are:

- to enable the control and development on unzoned land, and
- to ensure that development of unzoned land is compatible with surrounding development and zones.

In deciding whether to grant consent to development on unzoned land (above the mean high-water mark or waterways), the consent authority must consider:

- whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.

Proposed Lot 1 is adjacent to developed residential land zoned 2(a). The creation of a residential lot on this unzoned land is consistent with the permissible use, future character and existing character of adjacent land.

Although Lot 1 will not have a dwelling entitlement, Clause 13(2) enables development approval to be sought for a future dwelling house which will need to be assessed on merit.

It is noted that the draft zoning for proposed Lot 1 is 2(a) in accordance with the Draft Tweed Shire LEP 2010.

Clause 19 – Subdivision (General)

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

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

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

Clause 20(2)(a) states that consent may only be granted to subdivision of land within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of zoned land within each allotment created is at least 40 hectares.

Proposed Lot 3 has a total area of 18.37ha and is inclusive of 1.622ha of 1(a) zoned land, 1.7ha of 7(a) zoned land and 3200m<sup>2</sup> of 7(l) zoned land, all of which are less than 40ha as required by the development standard.

Proposed Lot 2 has a total area of 50.29ha and is inclusive of 8.2ha of 7(l) zoned land which is less than 40ha as required by the development standard.

Variations to this standard are therefore the subject of a SEPP 1 Variation Report which has not received the concurrence of the Director General and is discussed in full at a later stage within this report.

Clause 22 – Development near Designated Roads

Clothiers Creek Road is a Council Designated Road. The objectives of this clause are to protect and improve the operation of designated roads and prevent development being unsuitably located near a noisy designated road, or prevent development spoiling the scenic attractiveness of such a road.

There are several existing access roads into the subject site (proposed Lots 2 and 3) from Clothiers Creek Road. No changes are proposed to access and existing land use of these lots fronting this designated road.

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

Clause 25 – Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The objective of this clause is to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the Tweed.

Consent must not be granted to the carrying out of development on land within Zone 7(a) or on land adjacent to land within Zone 7(a) unless the consent authority has taken into consideration:

- (a) the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest; and
- (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing; and
- (c) a plan of management showing how any adverse effects arising from the development can be mitigated; and
- (d) the likely effects of the development on the water table; and
- (e) the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavation or filling.

The five (5) proposed lots contain or are adjacent to land within Zone 7(a). As discussed previously in this report, earthworks are required for the creation of dwelling pads on proposed Lots 4 and 5. Removal of vegetation is required in association with these earthworks. In addition, off-site Asset Protection Zones (APZ's) are required in order to maintain proposed Lots 1, 4 and 5 as residential lots. These APZ's encroach into sensitive vegetation, habitat and mapped wetlands.

The degree of impact and potential for disturbance in relation to the above points is not clear and has not been adequately justified by the applicant.

The degree of impact and potential for disturbance in relation to the above points is not clear and has not been adequately justified by the applicant, nor have they provided any Plan of Management as required.

Clause 28 – Development in Zone 7(l) Environmental Protection (Habitat) and on adjacent land

The objective of this clause is to protect wildlife habitat from the adverse impacts of development. Similar points for consideration as those above apply to assessment of development proposals.

Proposed Lots 2 and 3 contain land zoned 7(l). There is no development proposed within the vicinity of, nor any change to the existing use of the land contained within the proposed lots. As such, there does not appear to be any conflict in this regard.

Clause 29 - Development adjacent to Zone 8(a) National Parks and Nature Reserves

The objective of this clause is to ensure that development of land adjacent to Zone 8(a) does not have a significant impact on wildlife habitat.

Proposed Lots 2 and 3 are adjacent to Cudgen Nature Reserve. However, the existing use of these lots will not change as a result of the proposed development.

### Clause 31: Development Adjoining Waterbodies

The clause applies to land that adjoins the MHWM of a waterbody.

The objectives of this clause include:

- protection and enhancement of scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors
- provision of adequate public access to waterways, and
- minimisation of the impact on development from known biting midge and mosquito breeding areas.

The proposed development subdivision is not likely to impact upon waterbodies located within or adjacent to proposed Lot 3.

### Clause 34 – Flooding

Clause 34 of the TLEP refers to flood liable land and requires Council to ensure that appropriate development occurs in order to minimise future flood damage on the local community.

Flooding impact has been considered for Lots 1, 4 and 5 where dwelling pads are proposed.

Council's adopted design level within this vicinity is RL 3.1m AHD with an adopted minimum floor level of RL 3.6m AHD applicable to any future dwellings.

Proposed Lot 1 currently provides existing ground levels within the range of RL 3.8m – 4.0m AHD and therefore complies with Council's DCP A3 requirements.

Part of proposed Lot 4 is proposed to be filled (from cut material from Lot 5) to provide a pad level above RL 3.4m AHD. Proposed Lot 5 is to be the subject of earthworks (cut) and will result in finished levels greater than 3.4m AHD.

From an engineering perspective, these levels comply with Council's DCP A3 requirements subject to works not impacting upon adjacent properties by way of causing ponding or drainage issues.

An assessment in consideration of Probable Maximum Flood (PMF) inundation requirements would take place at dwelling application stage.

### Clause 39 – Remediation of Contaminated Land

This clause requires contaminated land to be remediated adequately prior to development occurring in accordance with SEPP 55.

The application was lodged with the intention to locate dwelling sites within proposed Lots 2 and 3.

An assessment of potentially contaminated land involved consideration of a former above ground fuel storage tank located approximately 300m from the (now deleted) indicative dwelling site on proposed Lot 2.



However, since this component of the proposal has since been deleted, no further consideration of potentially contaminated land is necessary.

#### Clause 39A – Bushfire Protection

The objective of Clause 39A is:

- to minimize bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the NSW Rural Fire Service on 11 March 2010 for consideration and comment, as the subject site is bushfire prone land. The first response received 16 April 2010 recommended conditions be attached to the development consent, should it be granted.

Subsequent to the applicant withdrawing proposed dwelling pads on Lots 2 and 3, clarification of the referral conditions was required. A second response was received 14 October 2010. Again, the Service recommended conditions be attached to the development consent, should it be granted.

The conditions relate to Asset Protection Zones, Water and Utilities and Access.

Asset Protection Zones that encroach upon proposed Lot 2 were generally accepted by the Service. It was advised that future dwellings were likely to require an alternative solution to meet the construction requirements of revised standards for construction of buildings in bushfire-prone areas.

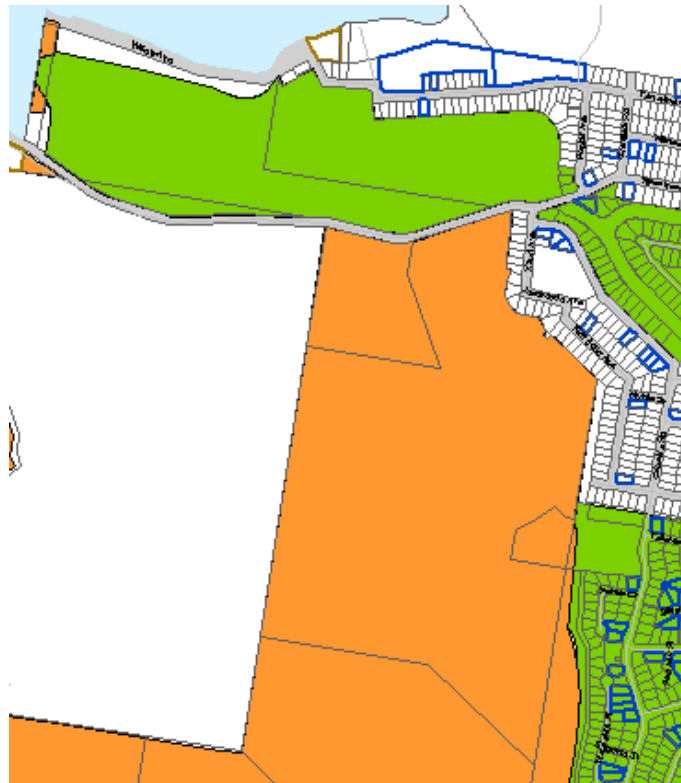
As discussed elsewhere in this report, the off-site location of Asset Protection Zones is likely to result in an unacceptable impact to sensitive 7(a) zoned land and SEPP 14 mapped land and is generally not supported in planning terms.

#### Clause 54 – Tree Preservation Order

The objective of this clause is to enable the protection of vegetation for reasons of amenity or ecology.

The subject site is affected by both the 1990 and 2004 Tree Preservation Orders (TPO's). The 1990 TPO affects proposed Lot 3 and the 2004 TPO affects proposed Lot 2 and a small portion of proposed Lot 3.

In effect, the TPO's prohibit clearing of vegetation without development consent.



1990 TPO (Green) and 2004 TPO (Orange)

Asset Protection Zones for proposed Lots 1, 4 and 5 encroach upon sensitive, vegetated areas within proposed Lot 2 which is zoned 7(a) and covered by the 2004 TPO.

In granting approval of Asset Protection Zones, it is expected that unacceptable clearing and subsequent maintenance of vegetation would take place for the purpose of bushfire threat reduction.

### **State Environmental Planning Policies**

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

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

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

Part of proposed Lot 3 is zoned 1(a). It is low quality agricultural land that is currently used for low intensity cattle grazing. This land use will not change. Therefore, the development would not lead to a loss of prime crop and pasture land, or adversely impact upon nearby agricultural activities.

##### **Clause 15: Wetlands or Fishery Habitats**

The proposal involves the location of an off-site Asset Protection Zone for proposed Lot 5 that encroaches upon land mapped as wetland in accordance with SEPP 14.

Clause 15 requires the applicant to consider the impact of the development upon the wetland.

Application documentation does not address this matter.

Clause 29A: Natural areas and water catchment

This clause considers the impact the development may have upon wildlife habitat, scenery and site erosion.

As stated previously in this report, the impact that vegetation clearing may have upon the sensitive nature of the 7(a) zone to create bushfire Asset Protection Zones for proposed Lots 1, 4 and 5 is not clear and has not been addressed adequately by the applicant.

Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

Clause 43: Residential development

The proposed road width of the Poinciana Road extension is not excessive for the function of the road and so complies with this clause.

The issue here is whether the proposed development and density upon Lots 1, 4 and 5 adversely affects 'the environmental features of the land' via the location of Asset Protection Zones upon adjacent Lot 2.

Clause 81: Development adjacent to the ocean or a waterway

Proposed Lot 3 north of Clothiers Creek Road contains a portion of canal and is adjacent to Cudgen Lake.

The proposal does not contradict the objectives of this Clause as proposed works are generally removed from the immediate lake / canal area. It does not reduce the scenic quality of the locality or impact on Cudgen Lake in this respect.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding:

- minimum allotment size in the 7(l) zone for the purposes of creating proposed Lot 2, and
- minimum allotment size in the 1(a) zone and the 7(a) zone for the purposes of creating proposed Lot 3

As contained within Clause 20(2)(a) of the Tweed LEP 2000. Council notes that the applicant has not included the undersized portion of 7(l) land within proposed Lot 3 as part of the SEPP 1 objection.

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

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

This clause specifically says consent may only be granted to the subdivision of land within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l). As such, Council's and the Department of Planning's interpretation of this clause is that each portion of zoned land must be 40 hectares in order to comply with this clause.

This being the case, a SEPP 1 variation is required for proposed Lot 2 to cater for the 8.2ha of 7(l) zoned land which is less than 40ha as required by the development standard.

A SEPP 1 variation is also required for proposed Lot 3 to cater for the 1.622ha of 1(a) zoned land, 1.7ha of 7(a) zoned land and 3200m<sup>2</sup> of 7(l) zoned land, all of which are less than 40ha as required by the development standard.

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

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

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

#### Lot 2 - Applicant Assessment

The applicant submits that the objectives of the standard are achieved notwithstanding non-compliance with the standard, as follows:

- This part of the site is unsuitable for any form of intensive agriculture. Accordingly, it is clear that the proposed subdivision will not adversely affect the continuance of, or aggregation of, sustainable agricultural units
- The proposed development will facilitate the orderly and economic development of the land in accordance with the current land use zones
- The ecological impacts of the proposal have been addressed in the assessment prepared by James Warren and Associates. That assessment concludes that the proposal will not result in a significant effect. Therefore, the subdivision application is unlikely to have any adverse impact on the ecological or scenic values of the land

- The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment.

The applicant concludes that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

#### Lot 2: Council Assessment

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy.

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

Whilst it is acknowledged that residential development is prohibited upon Lot 2 and there is no risk of creating isolated and uncoordinated residential development, and that the manner of subdivision does not alter the existing environmental purpose of the land, Council notes that further consolidation of fragmented environmentally sensitive land in the ownership of the applicant could have been achieved with the inclusion of adjacent Lot 1 DP 818394 in the proposed subdivision plan.

This would have resulted in the valuable addition of a further 6.102 hectares to consolidate the fragmented 8.2 hectares of 7(l) zoned land within proposed Lot 2, resulting in a total of 14.302 hectares and an outcome that serves to mitigate the potential for on-going and continuing fragmentation of ownership of rural land in the locality.

#### Applicant Assessment - Lot 3:

The applicant submits that the objectives of the standard are achieved notwithstanding non-compliance with the standard, as follows:

- The land is unsuitable for any form of intensive agriculture and is currently utilised for low intensity cattle grazing
- The proposed subdivision will not adversely affect the aggregation of sustainable agricultural units - the rural zoned land to the north contains

a drainage canal and if consolidated, does not provide the minimum 40 hectares

- The development facilitates the orderly and economic development of the land
- The subdivision does not affect the ecological or scenic values of the land as no physical works are to be undertaken
- The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment.

The applicant concludes that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

### Council Assessment - Lot 3

The applicant could have coordinated the proposed subdivision with the 12-lot residential subdivision of Lot 4 DP 876253 Willow Avenue, Bogangar (MP08\_118 / DA10/0239) which was approved by the Minister for Planning on 2 December 2010. The residential subdivision creates an 11.37ha residue lot comprising of 1(a), 2(a), 7(a) and 7(l) zoned land that should be consolidated into Lot 3.

Other adjacent small allotments in the ownership of the applicant need to be incorporated into Lot 3.

As such, the proposed subdivision does adversely affect the aggregation of sustainable agricultural units and is not an orderly or economic development of the land. This view is upheld by the Department of Planning.

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

### Applicant Assessment - Lot 2:

The applicant states that compliance with the 40 hectare development standard in relation to only land located within the 7(l) zone (within the one allotment) would preclude a logical subdivision of the land which will create an allotment of 50.29 hectares in total area.

Further, this view hinders attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

### Council Assessment – Lot 2

The objects specified within Section 5(a)(i) and (ii) relate to the proper management, development and conservation of natural and artificial resources,

including agricultural land and the promotion and co-ordination of the orderly and economic use and development of land.

As stated previously, had the applicant intended to maximise the orderly and economic use of the land, the balance of 7(l) land in the same ownership within Lot 1 DP 818394 may have been added to the subdivision plan. In short, the achievement of greater consolidation of fragmented environmentally sensitive land is desirable.

Flexibility in planning controls is required here to allow the addition of an undersized value of 7(l) land to a complying value of 7(a) land to generally increase the overall size and value of environmentally sensitive land.

Applicant Assessment - Lot 3:

The applicant reiterates the points raised previously and does not believe that further consolidation of adjacent allotments is necessary or practical to increase the future agricultural potential of the site, therefore putting forth that the proposal is consistent with the aims of SEPP 1

Council Assessment Lot 3:

Flexibility in planning controls in relation to the creation of proposed Lot 3 could be applied if the applicant were to maximise consolidation of fragmented rural land within the applicant's ownership.

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

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

Applicant Assessment - Lot 2:

The applicant offers the following points:

- no change in land use results from the subdivision
- proposed Lot 2 will provide an allotment with an area of 50.29 hectares
- the boundary of proposed Lot 2 which includes all non-urban zoned land within the site south of the alignment of Clothiers Creek Road is a logical and efficient layout
- the proposed subdivision will create lots that are similar to the size of other lots in the immediate locality
- no adverse impacts are likely to be created by the proposal on the surrounding area.

In conclusion, the applicant states that there are no such significant matters raised and that there is no public benefit in maintaining the standard.

Council Assessment - Lot 2:

Matters of significance for State or regional planning would be raised if the land use were to change and if adverse impacts were to arise as the result of this change of use.

The creation of Lot 2 does not allow residential development. The use of the land is to remain as existing.

There is a public benefit in allowing the consolidation of 7(a) land with 7(l) land. That public benefit may have been greater with the inclusion of adjacent 7(l) zoned Lot 1 DP 818394 in the subdivision plan.

Applicant Assessment - Lot 3:

The applicant concludes that, since the creation of Lot 3 involves no change of land use, no physical disturbance to the landform or vegetation, a logical and efficient layout and a comparable lot size, the subdivision does not raise any matters of Regional planning significance and that there is no public benefit in maintaining the standard.

Council Assessment - Lot 3:

Matters of significance for State or regional planning have been raised consistent with the lack of opportunity within the subdivision application for consolidation of fragmented parcels in the same ownership adjacent to the subject site. Accordingly, the creation of Lot 3 is considered not to be in the public interest.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. The proposed non-compliance of Lot 3 with the Tweed LEP 2000 is not considered to be justified in this instance and is likely to result in an adverse planning precedent within the Shire that perpetuates fragmentation of environmentally sensitive and rural land. As such, the granting of this application is likely to impact upon public benefit.

Concurrence

As stated previously in this report, concurrence was not granted by the Director General in this instance to permit the creation of proposed Lot 3 of 18.37ha for the following reason:

*The subdivision would create an undersized lot on rural and environmental protection land that would result in a total of four undersized lots in this location in the same ownership. This amounts to rural-residential development outside the strategic planning process and is not in the public interest.*

Conclusion

Council does not support the request to vary the development standard regarding minimum allotment sizes as specified in Clause 20(2)(a).

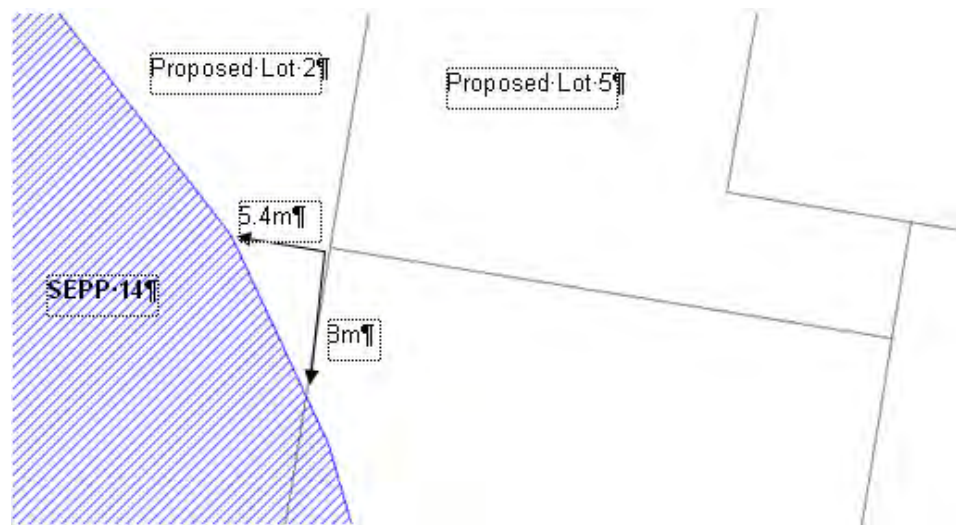


SEPP No. 14 - Coastal Wetlands

The north-eastern and southern portions of current Lot 22 (proposed Lot 2) within the site contain areas mapped as Coastal Wetland under State Environmental Planning Policy (SEPP) No. 14. Refer to the map located within the "Site Constraints" section for overall location details.

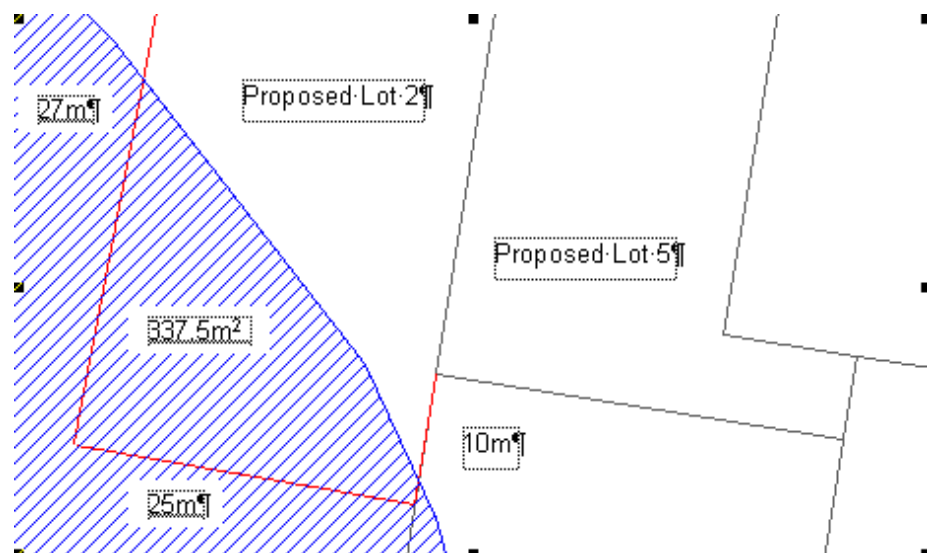
The applicant has stated that the proposal does not involve any of the works within the mapped area as nominated in Clause 7 of the policy (ie. clearing, constructing a levee, draining, or filling that land).

However, the edge of the mapped wetland is located approximately 8m south and 5.4m west of the south-west corner of proposed Lot 5 as indicated below.



The proposed Asset Protection Zone for Lot 5 as indicated on the proposed subdivision plan extends into proposed Lot 2 including the area 10m south and 25m west of the south western corner of proposed Lot 5.

As such, an approximate area of 337.5m<sup>2</sup> of SEPP 14 wetland is included in the proposed Asset Protection Zone for proposed Lot 5, as outlined in red below.



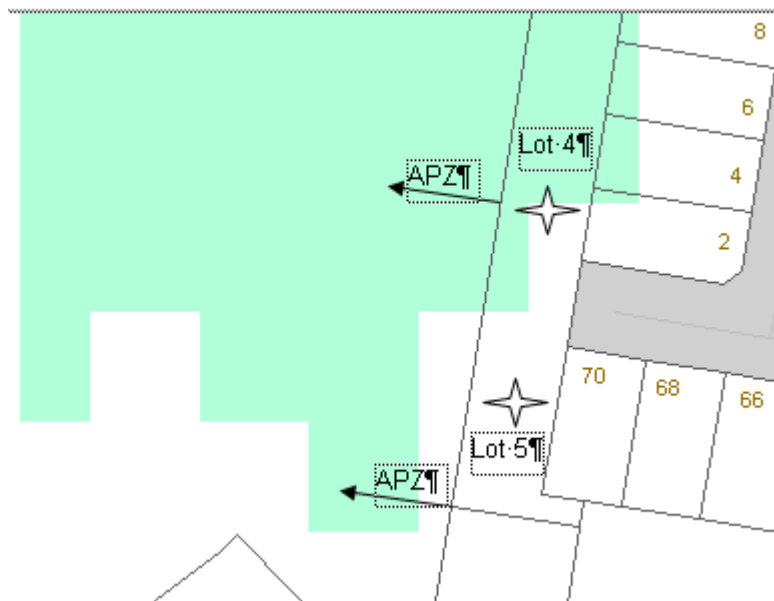
It is expected that maintenance and clearance works may be undertaken within an Asset Protection Zone for the purpose of bushfire threat reduction.

The inclusion of this APZ in the proposal results in a significant area of vegetation and habitat mapped as wetland being compromised which is contrary to Clause 7(1)(a) of SEPP 14 which states that a person shall not clear the land without the consent of the Council and the concurrence of the Director of National Parks and Wildlife. Such development is determined as “designated” and requires an Environmental Impact Statement (EIS).

SEPP No. 44 - Koala Habitat Protection

The site which is greater than 1ha in area contains primary and secondary (Classes A and B) Koala Habitat as sourced from the Australian Koala Foundation. Refer to the map located within the “Site Constraints” section for overall location details.

Secondary Class B Koala Habitat is located within proposed Lot 4 and the associated Asset Protection Zone (APZ) areas for proposed Lots 4 and 5 as indicated below. Indicative dwelling pad locations are starred.



As previously discussed, it is intended that maintenance and clearance works may be undertaken within an Asset Protection Zone (APZ) for the purpose of bushfire threat reduction.

The applicant states that there are no trees listed in Schedule 2 as Koala feed trees on the narrow Lot 2 DP 873399 where proposed Lot 4 and 5 are to be located. A vegetation survey in support of this statement has not been supplied by the applicant.

It was agreed that there was evidence of Schedule 2 Koala food tree species and koala activity upon Lot 22 DP 1058759 (proposed Lot 2). However the applicant did not supply a vegetation survey or discuss the impact of clearance and earthworks activities in association with the indicative dwelling sites and APZ's for

proposed Lots 4 and 5. Council acknowledges that there are Swamp Mahogany Koala Food Trees within the associated APZ's for proposed Lots 4 and 5.

The majority of submissions objecting to the proposed development make reference to koala activity within the vicinity of Kurna, Jacaranda and Poinciana Avenues.

As such, it is unclear as to the degree of impact the proposal may have upon Koala habitat within the subject site.

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

This policy provides controls and guidelines for the remediation of contaminated land and aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

The application was lodged with the intention to locate dwelling sites within proposed Lots 2 and 3. An assessment of potentially contaminated land involved consideration of a former above ground fuel storage tank located approximately 300m from the (now deleted) indicative dwelling site on proposed Lot 2.

However, since this component of the proposal has since been deleted, no further consideration of potentially contaminated land is necessary.

#### SEPP No 71 – Coastal Protection

The proposed development does not compromise public access to, or result in any overshadowing of the coastal foreshore.

Clause 8 of SEPP 71 sets out matters for consideration. Of note is:

- g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act) and their inhabitants

Application documentation does not clarify the impact that the proposal may have, in terms of earthworks for proposed Lots 4 and 5 and the location of Asset Protection Zones for proposed Lots 1, 4 and 5 on sensitive adjacent land and habitat located within the 7(a) zone, some of which is mapped as wetland under SEPP 14.

Clause 18 of this policy provides that a Development Control Plan is required if the subdivision relates to land within a residential zone and creates 25 lots, or less if the land proposed to be subdivided and any neighbouring land in the same ownership could be subdivided into more than 25 lots.

The site is within a sensitive coastal location (refer map in "Site Constraints" section) and when considered in association with adjoining land owned by the applicant, the total land holdings for the purpose of the SEPP would yield more than 25 lots.

Therefore, in accordance with Clause 18, a Development Control Plan would normally be required. However, the Department of Planning has waived the requirement for a Development Control Plan in accordance with Clause 18(2) of the Policy.

#### SEPP (Major Development) 2005

The Major Development SEPP was gazetted on 25 May 2005. Schedules 1 and 2 of Clause 6 of the SEPP identify State Significant Development. The proposal was caught by Schedule 2 of the SEPP.

The applicant sent a submission to the Department of Planning on 15 September 2008 seeking a declaration of Local Planning Significance. The Minister for Planning declared that the project was only of Local Planning Significance on 26 February 2009.

Following amendments to the SEPP on 1 July 2009, Schedule 2 was amended and no longer includes the proposed development. As such, Tweed Shire Council is the consent authority for the development application.

#### SEPP (Rural Lands) 2008

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

Provisions contained within this SEPP must be taken into account in consideration of granting consent for a dwelling on rural land. A residential use must not conflict with existing uses, adjoining uses and/or preferred uses.

Measures designed to reduce these land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities.

Proposed Lot 3 contains a small portion of Regionally Significant Farmland along the boundary with Clothiers Creek Road. However, this SEPP does not specifically apply to this development as no dwellings (indicative dwelling sites) are proposed on rural land.

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

The Shire-wide Draft Local Environmental Plan was placed on exhibition in early 2010. In accordance with the draft Plan, draft zonings for the subject site are as follows:

Current Zone	Min. Lot Size	Draft Zone	Min. Lot Size
Unzoned Land	Not specified	R2	450m <sup>2</sup>
1(a)	40 hectares	RU2	40 hectares
2(a)	450m <sup>2</sup>	R2	450m <sup>2</sup>
7(a)	40 hectares	E2	40 hectares
7(l)	40 hectares	E2	40 hectares

Proposed Lots 1, 4 and 5 with areas greater than 450m<sup>2</sup> and indicative dwelling sites are permitted with consent within the draft R2 – Low Density Residential zone.

The entirety of proposed Lot 2 on the southern side of Clothiers Creek Road (which currently contains 7(a) and 7(l) zoned land) is draft zoned E2 – Environmental Conservation. The proposed lot has an area greater than 40ha within the draft zone and therefore complies with the minimum lot size. There would be no need for further consideration of the creation of this lot by the Director-General as is currently required through SEPP 1.

Proposed Lot 3 would consist of undersized components of RU2 and E2 zoned land that are less than 90% of the minimum area specified for such a lot by the 40 hectare minimum lot size development standard. As such, concurrence would be required from the Director-General, consistent with the current application process.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

Flooding impact has been considered for Lots 1, 4 and 5 where dwelling pads are proposed.

Council's adopted design level within this vicinity is RL 3.1m AHD with an adopted minimum floor level of RL 3.6m AHD applicable to any future dwellings.

Proposed Lot 1 currently provides existing ground levels within the range of RL 3.8m – 4.0m AHD and therefore complies with Council's DCP A3 requirements.

Part of proposed Lot 4 is proposed to be filled (from cut material from Lot 5) to provide a pad level above RL 3.4m AHD. Proposed Lot 5 is to be the subject of earthworks (cut) and will result in finished levels greater than 3.4m AHD.

From an engineering perspective, these levels comply with Council's DCP A3 requirements subject to works not impacting upon adjacent properties by way of causing ponding or drainage issues.

An assessment in consideration of Probable Maximum Flood (PMF) inundation requirements would take place at dwelling application stage.

A5-Subdivision Manual

Part A5 of the Tweed Consolidated DCP provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State.

Physical works and provision of services are not proposed to take place on proposed Lots 2 and 3.

Indicative dwelling pads are located on proposed Lots 1, 4 and 5 with 10m x 15m building envelopes possible on these sites. Minimum lot sizes are met.

Earthworks are proposed for proposed Lots 4 and 5.

Existing title restrictions (fencing, rights of carriageway, easements for services) are to remain. Additional easements are required to cater for the provision of existing and proposed drainage, stormwater and sewer services.

Council's Development Assessment Engineer has reviewed the proposal with regard to compliance with DCP A5 and agrees that these are reasonable restrictions to place on the title.

#### B19-Bogangar/Cabarita Beach Locality Plan

Council's vision for Bogangar/Cabarita Beach is:

*To retain and enhance the unique natural environmental character and coastal lifestyle offered by Bogangar/Cabarita Beach, whilst embracing high quality development promoting the area as a popular location for residential living, tourism and business.*

Objectives for Bogangar/Cabarita Beach that are relevant in particular to the proposed subdivision include:

#### **Land Use:**

The compact village form is retained and enhanced through appropriate forms of infill development and protection of environmental attributes.

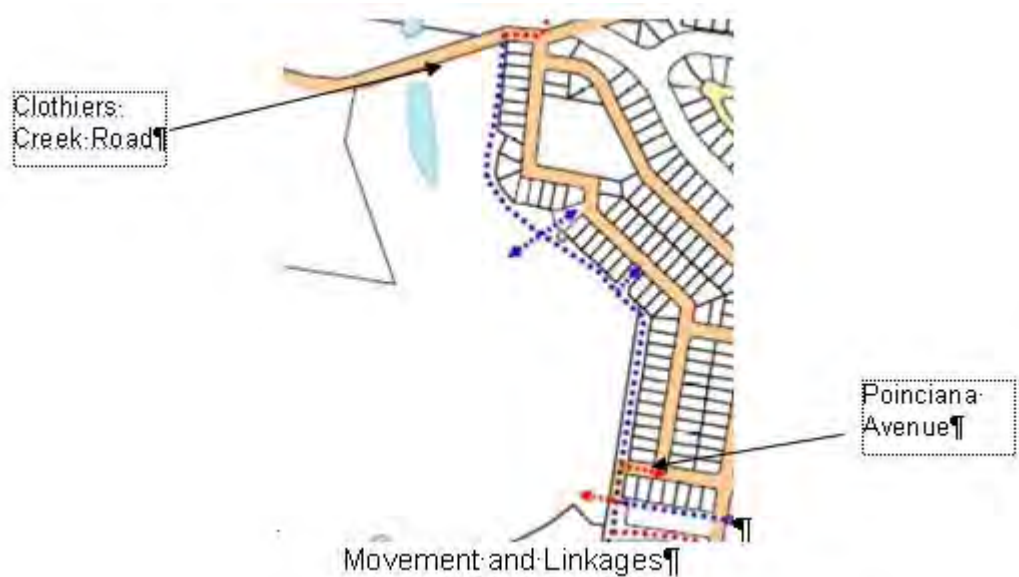
#### **Environmental Hazards:**

New development is adequately protected from environmental hazards such as flooding, bushfire risk and coastal processes.

#### **Environmental Management:**

Ecologically significant areas and the natural processes occurring therein are protected from any impact arising from existing and future developments.

The Movement and Linkages plan indicates an existing pedestrian link from Clothiers Creek Road to Poinciana Avenue to the west of Kurrajong, Jacaranda and Kauri Avenues and continues this link through proposed Lots 4 and 5 to enable such access opportunities. Residential development on proposed Lots 4 and 5 obstructs pedestrian access along this route to Poinciana Avenue.



Proposed Lot 4 is located within the Open Space and Recreation Precinct (below). This precinct comprises the structured and unstructured parks, open spaces and organised sporting venues dispersed throughout Bogangar/Cabarita. These areas are intended to continue to provide for the passive and active recreational pursuits of the local community.



Development in the Open Space and Recreation Precinct is to be supported only where the proposal does not compromise the environmental qualities or recreation function and is consistent with this policy. The proposed residential development of Lot 4 impacts upon both the environmental quality and recreational function of this parcel.

An anomaly currently exists within B19 in that Lot 2 DP 873399 (proposed Lots 4 and 5) is represented as also being located within the Detached Residential Precinct. This anomaly will require further investigation from the Planning Reform Unit in order for it to be resolved.

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

Clause 92(a) Government Coastal Policy

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

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

Flora and Fauna

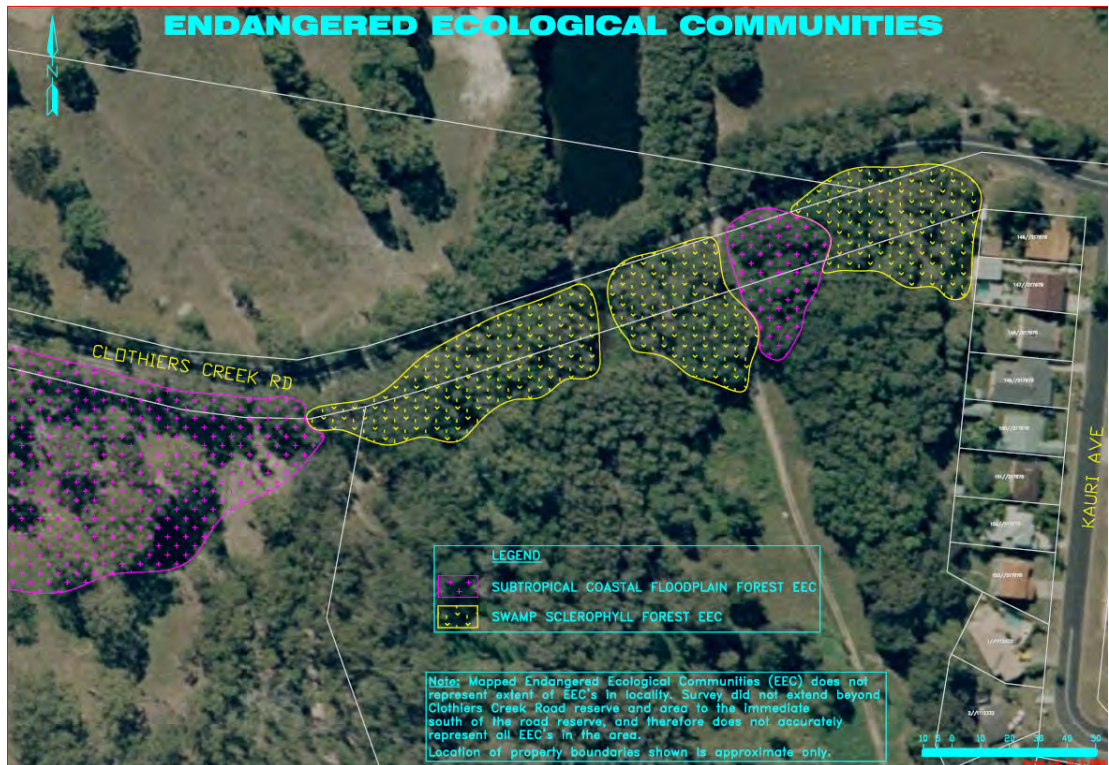
*Ecological Site Values*

The development proposes a five lot subdivision between Bogangar village and Cudgen Nature Reserve. The site subject to the development application contains vegetation communities of very high ecological and habitat value including Endangered Ecological Communities (EECs), with numerous records of threatened species including Koala, Grey-headed Flying Fox, Wallum Sedge Frog, Black-necked Stork and Glossy Black Cockatoo, as well as known habitat for the Wallum Froglet.

Indicative dwelling locations initially proposed for each of the five lots have subsequently been removed from proposed Lot 2 and Lot 3 and this is supported. In particular, the dwelling site and surrounds on proposed lot 2 is entirely zoned for environmental protection with dwellings prohibited in the 7(a) zone, is known Core Koala Habitat (as observed by Ecologist 2008 and 2009) and has been previously assessed by Council's Design Unit as consisting of two EEC's, as illustrated by the Figure 1 below. Subtropical Coastal Floodplain Forest has not been recognised by the applicant's ecological consultant and this is not agreed by Council. Despite the submission of revised engineering plans removing the indicative dwellings from Lots 2 and 3, they remain within the ecological assessment and list significant tree removal within proposed Lot 2 as forming part of the application.

The recent Tweed Coast Koala Habitat Study (subject of a separate Council report) has mapped this area as Primary Koala Habitat (Figure 2), recording significant Koala activity. Given the very limited remaining Primary Koala Habitat on the Tweed Coast and the dramatic decline in Koala numbers and distribution over the last decade, any development which would remove primary and secondary Koala food trees, increase traffic and introduce dogs to the area should not be supported. This development proposes, or does not intend to prohibit, all three of these threats.

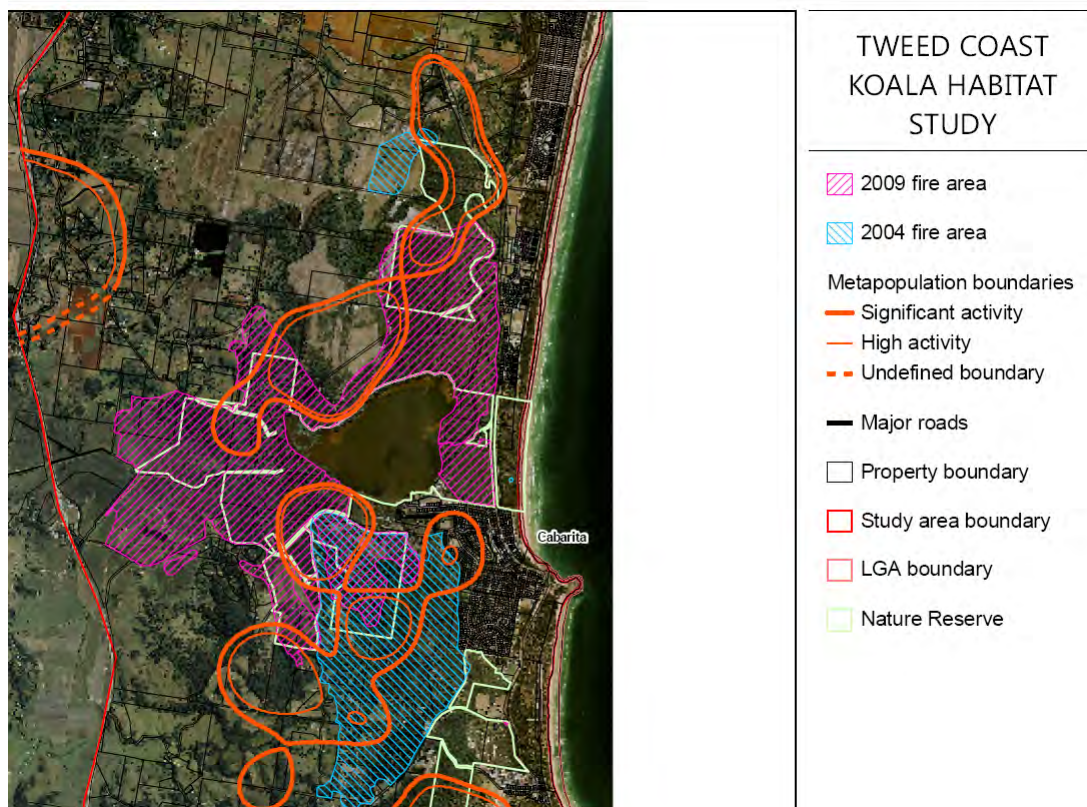




**Figure 1:** Extract from Council's Design Unit assessment of the previous proposed Clothiers Creek Road realignment back into the road reserve resulted in the decision not to proceed due to ecological constraints.



**Figure 2:** Extract from Tweed Coast Koala Habitat Study (Figure 5.3a) indicates Primary Koala Habitat (red shading) on Proposed Lot 2 dwelling location where nine larger and unknown small Primary food trees were proposed for removal.



**Figure 3:** Extract from Figure 5.2 of Tweed Coast Koala Habitat Study indicates significant Koala activity within, and in proximity to, the proposed dwelling sites on proposed Lots 1, 2, 4 and 5. Major bushfire events are also indicated.

*Ecological Assessment Deficient*

The Ecological Assessment undertaken for the proposal is deficient in survey effort and impact assessment. Survey effort consisted of one day on 25<sup>th</sup> June 2009 and one additional day in October 2009. No targeted fauna survey (spotlighting, call playback, trapping, anabat recording etc.) has been undertaken at all and only observation during the day and some log turning has been done. This is not adequate to determine the suite of species reliant on the habitat on and adjacent the site for all or part of their lifecycle. Previous surveys within the vicinity have consistently recorded Koalas and other threatened species in the area.

No threatened flora were initially considered at all until requested by DECCW, despite records within close proximity to the proposal. The naturally occurring hybrid of Swamp Mahogany and Forest Red Gum (*Eucalyptus patentinervis*, also a known Koala food tree) is known from the site but has not been recognised within the assessment.

Survey effort does not accord with minimum survey requirements as per the accepted guidelines *Threatened Species Survey and Assessment: Guidelines for Developments and Activities Working draft* (DEC 2004). In the absence of sufficient survey effort, presence of threatened species must be assumed, however, this has also not been the approach taken. Assessments of significance contain only generalised statements and local populations have not been defined, such that the response that local populations will not become extinct cannot be justified. No amphibians, no reptiles and no threatened species



(besides Osprey overhead) were recorded from the site despite known records and high habitat value. Initial reports clearly refer to Cobaki Lakes and a golf course etc and information has clearly been cut and pasted from other documents. Although these anomalies have since been removed, it is indicative of the lack of care and site specificity of the ecological assessment, which cannot be relied upon, the conclusions of which in relation to presence of EEC's and core Koala habitat are contested.

#### *SEPP 14*

Clearing is proposed within mapped SEPP 14 wetland for provision of an asset protection zone for proposed Lot 5. Under Clause 7 of the policy such works comprise 'designated development' and must be submitted as an Environmental Impact Statement. This has not been undertaken, nor addressed within the application. A recent policy change allows some clearing for bushfire protection within SEPP 14, but only where an immediate hazard exists to already existing dwellings.

#### *SEPP 44*

The approach taken to the SEPP 44 assessment is considered to be flawed. An assessment of potential Koala Habitat requires consideration of whether trees (listed in Schedule 2 of the SEPP) constitute 15% of the total number of trees. The approach taken considers these species over the entire combined allotments and concludes that they do not total 15%, however, pockets of vegetation within the site, particularly along the edges of Lot 2 where impacts are proposed, are most certainly higher than 15% and would thus invoke the policy. The high level of Koala Activity as evidenced by scats and scratch marks recorded by Council's ecologists and within the Tweed Coast Koala Habitat Study as well as historical and anecdotal Koala records is considered to represent Core Koala Habitat under the policy and require a Koala Plan of Management. This has not been provided despite proposed clearing of at least nine large Swamp Mahogany trees amongst others.

#### *Bushfire*

Construction of dwellings on Lots 4 and 5 are considered by the NSW Rural Fire Service to be within BAL-FZ (flame zone) where no alternative solutions are available in terms of construction requirements, thus creation and maintenance of asset protection zones at least 35m in width is the only solution, requiring ongoing clearing. Maintenance of APZ's within mapped wetland on an adjacent allotment is not considered a sustainable development solution. The proximity of major fires in 2004 and 2009 to the proposed development is indicative of the bushfire risk within the area. Further dwellings closer to the hazard increases the risk of fire spread from residences into bushland.

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

#### Flora and Fauna

For all of the above reasons, the site is considered unsuitable for the development and should be refused. Apart from the stated planning reasons for

refusal, it is considered that insufficient ecological survey and assessment has been provided to support the conclusion that there will not be a significant impact upon threatened species, populations or ecological communities. Given the uncertainty over continued viability of Koalas on the Tweed Coast, it is considered that the development represents an unwarranted risk to the species.

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

Public Authority Submissions Comment

The application was referred to the Department of Climate Change and Water (National Parks and Wildlife) as the subject site is adjacent to Cudgen Nature Reserve.

An initial response was received 13 April 2010 that dealt in detail with the original proposal, in particular the deficiencies of the ecological assessment.

A final response was received 10 September 2010 following a review of the proposal following removal of dwelling sites from proposed Lots 2 and 3.

Both responses are included as separate attachments to this report.

Public Submissions Comment

The proposal was required to be notified to adjoining owners for a period of 14 days from 17 March to 31 March 2010. A petition with 70 signatures and 41 individual submissions were received during the notification period.

Two dozen of the submissions followed a template format with consolidated issues raised such as:

- Ecological sensitivity of the locality, threatened wildlife species and impact upon the Koala population
- Regular flooding of the area and high bushfire maintenance
- Impact upon flora and fauna through use of access roads by trail bikers and 4WD vehicles
- Request for Council to acquire and dedicate a hazard buffer zone to the rear of Kurrajong, Jacaranda and Kauri Avenues, similar to that behind Watergum Place
- Advice that the sewerage system is 'struggling' already.

Other submissions raise the following issues and/or offer the following information and local knowledge:

- Impact of vegetation / habitat clearing required for house and Asset Protection Zone construction (inclusive of Outer Protection Areas) on threatened species and Endangered Ecological Communities (EEC's)
- Habitats extending into back yards adjoining Lot 22 DP 1058759 include: koala, bush turkey, goanna, bearded dragons, blue tongues, tawny frogmouths, bandicoots, possums, kingfisher birds, snakes, sea eagles, wallum sedge frog and green thighed frog

- There are significant problems and inaccuracies within the various environmental impact statements
- The subject land adjoins National Parks land and forms part of a valuable wildlife corridor
- Any clearing of vegetation (especially Lots 4 and 5) will have a significant impact
- Owner has cleared land directly behind the Kauri Avenue area – is continually and significantly clearing and not allowing young saplings to grow
- Disregard of the applicability of SEPP 44 to the proposal – it is highly likely that SEPP 44 Schedule 2 trees comprise 15% of the tree strata and the site is potential koala habitat as defined by SEPP 44
- The status of the koala in the vicinity is precarious - in conjunction with development at Tanglewood and Kings Forest, we are planning the extinction of the Koala
- Koalas have a daily struggle dealing with traffic on Clothiers Creek Road
- There is a koala habitat at the end of Poinciana Avenue that continues behind the last house
- The proponent should be required to prepare a Koala Plan of Management
- The subject site is contained within an area of very high bushfire risk as demonstrated by bushfires that burnt out of control in 2004 and 2009
- The Fire Brigade should have access to the rear of Kurrajong Ave to the south west end of the village as further development puts residents in danger through lack of access for emergency vehicles – proposed Lot 1 has been used for this purpose
- Loss of the current fire protection area for existing residents through the development of proposed Lot 5
- Location of dwelling pad on Lot 5 impacts negatively upon the existing dwelling to the east and is a result of the substantial APZ required for that new lot
- In 2005, local streets were waist deep in flood and sewerage water
- Drainage issues have not been addressed in respect of the drainage pond at the rear of Cabarita Road and the drainage system fronting 10 Kurrajong Avenue which is prone to flooding the road during the wet season
- The flood plain is vital in holding back water that would otherwise end up in the village
- Developments at Salt, Casuarina and King's Forest will impact upon the release of floodwater through Cudgen Lake and Creek
- Council should not entertain thoughts of more development in low lying coastal areas
- Land reclaiming and filling to create Lots 4 and 5 will create major flooding issues
- Flood water has encroached properties at 4, 6, 8 and 10 Kurrajong Avenue in recent years
- Domestic animals should be restricted
- Lack of community consultation

Applicant's Response to the Submissions

The applicant's response to the submissions is as follows:

Issue	Comment
Ecological Impact	The ecological impact of the development has been the subject of appropriate flora and fauna studies, which have concluded that the proposal is not likely to result in significant effect. The area of the site to be developed for residential purposes will involve minimal tree removal associated with maintenance of bushfire asset protection zones.
Flood Impact	The filling proposed in association with this Development Application is very minor, in the order of 1m of fill for the dwelling site of proposed Lot 4 approximately 450m <sup>2</sup> in area. This is considered to be minor in the context of the wider site area of 746,340m <sup>2</sup> (0.06% of the site area).
Drainage / Runoff	The Engineering Impact Assessment provides adequate details in relation to the existing and proposed drainage.
Bushfire Hazard	An assessment of the bushfire hazard affecting the site accompanied the application and demonstrates that the proposal complies with the Rural Fire Service Guidelines for subdivision. Any future dwellings will need to demonstrate compliance with relevant building standards under AS3959-2009 at the time of the application for construction of the dwellings.
Access for Trail Bike Riding	The proposed subdivision will increase passive surveillance of the residual land and will act as a deterrent to unauthorised trail bike riding.
Access for Emergency Services	Access to proposed Lot 2 will remain from Clothiers Creek Road and Poinciana Avenue.

Council Comment on Submissions

It is clear that the ecological assessment provided in the application documentation is deficient and does not fully address the impact the proposed development may have on the sensitive environmental nature of the land and the habitat therein.

Flooding and drainage issues remain unknown as any proposed works (excavation – cut and fill) on proposed Lots 4 and 5 would be subject to a condition stipulating that filling must not cause ponding or drainage issues on neighbouring properties. This would need to be demonstrated by the applicant.

As stated previously, bushfire hazard reduction will involve the removal of vegetation and/or habitat within the environmentally sensitive zone and a portion of land protected by SEPP 14.

State Emergency Services would need to provide comment on the need for access to continue through proposed Lots 1 and 4 for emergency vehicles in time of bushfire threat or flood.

**(e) Public interest**

The issues considered in the assessment of the proposal are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for the location of Asset Protection Zones within environmentally sensitive land and the perpetuation of the fragmentation of such land. Therefore it is in the public interest for this application to be refused.

**OPTIONS:**

1. Refuse this application in accordance with the recommendation for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

Council will incur costs as a result of legal action, however, upon resolution of the matter the Land & Environment Court may award costs.

**POLICY IMPLICATIONS:**

The proposed development does not take advantage of consolidation of rural and environmentally sensitive zoned land within the same ownership. This results in fragmentation of land parcels and rural-residential development outside the strategic planning process which is not in the public interest.

**CONCLUSION:**

The application submitted is deficient in detail. However, sufficient information has been submitted to determine that the nature of the proposal is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application.

Notwithstanding the above, as a result of the Department of Planning not issuing concurrence, Council cannot approve the application in its current form. Any future amendments to the subdivision proposal must be by way of lodgement of a fresh development application.

Having undertaken an assessment against SEPP 14 and Clause 20(2)(a) of the Tweed LEP 2000 taking into account the potential to consolidate fragmented parcels of land in single ownership and the environmental sensitivity of the area, the proposed subdivision is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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. DECCW (National Parks and Wildlife) submission received 13 April 2010 (ECM 28177458)
  2. DECCW (National Parks and Wildlife) submission received 10 September 2010 (ECM 28177458)
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- 19 [PR-CM] Development Application DA08/1024 for a Six (6) Storey Mixed Use Development Comprising 50 Units and 1 Commercial Premise with Basement Carparking at Lot 7 & 8 Section 4 DP 2379, No. 41-43 Boyd Street, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1024 Pt2**

**SUMMARY OF REPORT:**

The proposed development is a multi-storey development comprising fifty (50) units, a commercial premises and common community space over two allotments within Boyd Street at Tweed Heads.

The subject site involves two (2) allotments, with the southern allotment zoned 3(b) General Business and the northern allotment zoned 2(b) Medium Density Residential.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 50 of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 1:1 Floor Space Ratio (FSR) development standard for land zoned 3(b) in Tweed Heads. The Local Environmental Plan (LEP) does not limit FSR in any other zone. Therefore the SEPP1 objection relates to the southern portion of the site only.

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

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

**RECOMMENDATION:**

**That:**

- 1. State Environmental Planning Policy No. 1 objection to Clause 50 of Tweed Local Environmental Plan 2000 regarding the Floor Space Ratio (FSR) of 1:1 for land zoned 3(b) General Business with a site area of less than 2000m<sup>2</sup> height be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA08/1024 for a six (6) storey mixed use development comprising 50 units and 1 commercial premise with basement carparking at Lot 7 and 8 Section 4 DP 2379, Nos. 41-43 Boyd Street, Tweed Heads be approved subject to the following conditions:**

## GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans:

- Dwg DA01 - A (Rev H) – Ground Floor / Site Plan, dated 19 May 2010;
- Dwg DA02 - A (Rev B) – Units Typical Floors, dated June 2008;
- Dwg DA03 (Rev H) – Basement 1, dated 19 May 2010;
- Dwg DA04 (Rev C) – Basement 2, dated 15 April 2010;
- Dwg DA05 (Rev A) – Boyd St Elevation, dated June 2008;
- Dwg DA06 - A (Rev B) – North Side Elevation, dated June 2008;
- Dwg DA07 (Rev C) – South Side Elevation, dated 15 April 2010;
- Dwg DA08 (Rev A) – Rear Elevation, dated June 2008;
- Dwg DA09 - A (Rev B) – Section AA, dated June 2008;
- Dwg DA10 (Rev B) – Unit Types, dated June 2008;
- Dwg DA11 (Rev A) – Roof Plan, dated June 2008;
- Dwg DA14 - A (Rev B) – Car Ramp Cross Section, dated 19 May 2010;

prepared by Freespace Design, except where varied by the conditions of this consent.

[GEN0005]

2. Submission of a further Development Application(s) for the first use of the ground floor commercial premises, such to be approved by Council prior to their use or occupation.

[GEN0055]

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

[GEN0115]

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

[GEN0135]

5. The applicant shall arrange for a site inspection to be carried out with Council's Environmental Health Officer and key representatives involved in the dewatering activity including consultants and personnel responsible under any Dewatering Management Plan approved by Council's General Manager or his delegate. Such site inspection shall be arranged and carried out prior to the commencement of any offsite dewatering activity occurring.

[GEN0180]

6. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]

7. A separate development application is to be submitted to Council for demolition of the existing structures.  
[GENNS01]
8. The existing 1.2 metres wide concrete ribbon footpath shall be maintained along the sites frontage to Boyd Street.  
[GENNS02]
9. The Basement 1 commercial parking and visitor parking spaces are to have unrestricted access to the general public.
10. An intercom system is to be installed at the main entrance of the residential component of the development.  
[GENNS03]
11. The applicant shall consent to the installation of a 150mm diameter sewer vent pipe at the rear wall of the premises from below ground level to above the roofline to facilitate the venting of the adjoining sewer pump station at a level above the roofline of the proposed structure, including the acceptance of a positive covenant or easement to facilitate access for maintenance of the vent. Council will negotiate the design of the vent so as not to detract from the amenity of building and be responsible for all costs inclusive of legal, design and construction.  
[GENNS04]

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

12. The developer shall provide the following parking facilities including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.
  - A minimum of 50 car parking spaces designated to the residence of the development,
  - A minimum of 11 designated visitor car spaces,
  - A minimum of 9 car spaces designated to the Commercial component of the development,
  - One designated loading bay, as referenced on Drawing No. DA03 Revision C, dated 06/2008,
  - A minimum of 2 bunded car wash bays, being nominated parking spaces 20 and 21 on Drawing No. DA03 Revision C, dated 06/2008,
  - Storage for a minimum 2 bicycles per residential unit,
  - Parking for a minimum 4 bicycles for the Commercial component of the development,

**Note – Council will accept nominated parking spaces No. 7, 8 and 11 as tandem spaces only, provided they are designated as staff parking only for the Commercial precinct of the development.**

**Full design detail of the proposed parking and manoeuvring areas shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.**

Access to the basement car park must be designed accordingly to provide sufficient clearance to allow appropriate vehicles to access the basement stormwater treatment device for servicing or the building proper must provide acceptable alternative access facilities.

The access to the basement car park must also be designed accordingly to provide sufficient clearance to allow all service vehicles access to the designated loading bay.

[PCC0065]

13. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form, be accompanied by the required attachments and prescribed fee.

Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

14. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:

222.32 Trips @ \$656 per Trips \$145,842

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

S94 Plan No. 4

Sector1\_4

(b) Open Space (Casual):

25.085 ET @ \$526 per ET \$13,195

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

S94 Plan No. 5

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<b>(c) Open Space (Structured):</b>	
25.085 ET @ \$602 per ET	<b>\$15,101</b>
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	
<b>(d) Shirewide Library Facilities:</b>	
25.085 ET @ \$792 per ET	<b>\$19,867</b>
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
<b>(e) Bus Shelters:</b>	
25.085 ET @ \$60 per ET	<b>\$1,505</b>
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
<b>(f) Eviron Cemetery:</b>	
25.085 ET @ \$120 per ET	<b>\$3,010</b>
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
<b>(g) Community Facilities (Tweed Coast – North)</b>	
25.085 ET @ \$1305.6 per ET	<b>\$32,751</b>
(\$1305.6 base rate + \$0 indexation)	
S94 Plan No. 15	
<b>(h) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	
25.2954 ET @ \$1759.9 per ET	<b>\$44,517.37</b>
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
<b>(i) Cycleways:</b>	
25.085 ET @ \$447 per ET	<b>\$11,213</b>
(\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
<b>(j) Regional Open Space (Casual)</b>	
25.085 ET @ \$1031 per ET	<b>\$25,863</b>
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	
<b>(k) Regional Open Space (Structured):</b>	
25.085 ET @ \$3619 per ET	<b>\$90,783</b>
(\$3619 base rate + \$0 indexation)	

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**S94 Plan No. 26**

[PCC0215]

**15. Section 94 Contributions**

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

**Heavy Haulage Component**

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

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

where:

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

and:

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

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

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

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

[PCC0225/PSC0185]

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's

"Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP4: 16.18 ET @ \$11020 per ET \$178303.60

Sewer Banora: 25.52 ET @ \$5295 per ET \$135128.40

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

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

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

[PCC0265]

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

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

18. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

19. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 2.6m AHD in accordance with Tweed Shire Council Development Control Plan Part A3 - Development of Flood Liable Land. This immunity shall be provided at all accesses including external stairs to the basement car park. The pump system shall be designed for a storm event with a 10 year average return interval (ARI 10) and shall have failsafe measures in place such that property (onsite and adjacent) is protected against pump failure. Consequences of the 100 year ARI storm event must also be addressed. Details of the basement stormwater pump-out system shall be submitted to and approved by the Principle Certifying Authority prior to the issue of a Construction Certificate.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS3500.3.2 1998 *“National Plumbing and Drainage – Part 3.2: Stormwater Drainage – Acceptable Solutions”*

[PCC0685]

20. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

- (a) Provision of a unit development access in accordance with Section A2 – *“Site Access and Parking Code”* of Council’s consolidated Tweed Development Control Plan and Council’s *“Driveway Access to Property – Part 1 ”* Design Specification June 2004.

The access shall provide the required 2m x 2m “sight triangle” envelope.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

21. Any sheet piling that utilises ground anchors that extend under public roads or land must not be used unless the applicant or owner enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

[PCC0955]

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

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

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management



**Plan and Councils Development Design Specification D7 - Stormwater Quality.**

- (c) Specific Requirements to be detailed within the Construction certificate application include:
- (d) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks being undertaken.
- (e) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 – *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
- (f) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

**23. Erosion and Sediment Control shall be provided in accordance with the following:**

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

**24. The development will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.**

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

[PCC1185]

**25. Prior to the issue of a Construction Certificate, applications shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any of the following works including (but not limited to):**

- (a) water;
  - Disconnection of existing water meters and provision of a Bulk meter,
- (b) sewerage, including;
  - The car wash bays must be bunded and treated to remove pollutants prior to discharge in accordance with Council policy. If levels permit, discharge must be via the sewer network.
  - Decommissioning of the existing public sewer main within the site and construction of new sewer infrastructure, central to a 3m easement along the site northern property boundary,
  - Relocation must be made whilst maintaining service to all upstream properties
- (c) drainage works, including;
  - the connection of a private stormwater drain to a public stormwater drain,
  - the installation of stormwater quality control devices,
  - erosion and sediment control works.

The Legal Point of Discharge for piped stormwater for the development is via direct connection into the existing kerbside inlet pit along developments frontage to Boyd Street.

[PCC1195]

26. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

27. Prior to the issue of the construction certificate details of the proposed sewer diversion are to be submitted to and approved by Councils Water/Sewer Engineer.

[PCCNS01]

28. An assessment of the capacity of the downstream piped drainage network within Boyd Street will be required with the s68 Stormwater Application and, if found necessary, details of on-site detention of roof runoff will be required to demonstrate that total stormwater volumes (pre and post development) do not exceed the capacity of the downstream network.

[PCCSN02]

29. Privacy screens are required on the balconies of the north facing units. Details of the screening devices are to be submitted and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCCNS03]

30. Details of the design of the sewer vent pipe at the rear wall of the development are to be negotiated with Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCCNS04]

**PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0005]

32. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

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

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and

other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

35. Residential building work:

(a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

- \* in the name and licence number of the principal contractor, and
- \* the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- \* the name of the owner-builder, and
- \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

(b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

36. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

37. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

38. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:

- (a) The person must, at the person's own expense:
  - (i) preserve and protect the building / property from damage; and
  - (ii) if necessary, underpin and support the building in an approved manner.
- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

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

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

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

[PCW0985]

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

[PCW1065]

41. An Approval to Install a Waste Treatment Device shall be obtained prior to the commencement of the installation of the facility.

[PCW1105]

42. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[PCW1075]

#### **DURING CONSTRUCTION**

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

[DUR0005]

44. The provision of 50 residential, 11 visitor, 1 loading bay and 9 commercial car parking spaces including parking for the disabled where applicable. Appropriate signage for all visitor, commercial and staff parking shall be installed and maintained. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DUR0085]

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

**Monday to Saturday from 7.00am to 6.00pm**

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

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

[DUR0205]

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

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

**$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.**

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

**$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.**

[DUR0215]

47. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the

satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

48. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Councils General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Councils General Manager or his delegate prior to installation and shall include a water sampling outlet.

[DUR0235]

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

[DUR0245]

50. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

51. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

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

[DUR0815]

56. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

57. Provision to be made for the designation of 2 car wash-down area/s. The area/s must be appropriately sized and identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must be treated prior to discharge into the sewer system.
- [DUR0975]
58. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.
- [DUR0985]
59. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of an Occupation Certificate.
- [DUR0995]
60. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - dust during filling operations and also from construction vehicles
  - material removed from the site by wind
- [DUR1005]
61. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited.
- [DUR1015]
62. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.
- [DUR1025]
63. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.
- [DUR1045]
64. All works shall be carried out in accordance with the Acid Sulfate Soil Assessment for 41-43 Boyd Street, Tweed Heads prepared by Soil Surveys Engineering Pty Ltd dated June 2009 (Report: 208-8024).
- [DUR1065]
65. A survey certificate signed by a registered surveyor is to be submitted to the Principal Certifying Authority at floor stage to certify that the habitable floor level of the building to be at a level of not less than RL 3.1m AHD.
- [DUR1445]
66. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the



Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[DUR1715]

67. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

68. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

69. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to any use or occupation of the building.

[DUR1875]

70. Where existing kerb, footpath or driveway laybacks are to be removed for new driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb, footpath or layback must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

71. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

72. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

73. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties.

[DUR1965]

74. **Swimming Pools (Building)**

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

[DUR2075]

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

[DUR2085]

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

[DUR2185]

77. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

78. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.

[DUR2245]

79. Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.

[DUR2315]

80. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

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

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

[DUR2485]

**82. Plumbing**

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

[DUR2495]

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

[DUR2505]

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

[DUR2515]

- 85. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.**

[DUR2525]

- 86. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.**

[DUR2535]

- 87. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**

[DUR2545]

- 88. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-**

- \* 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- \* 50°C in all other classes of buildings.**

**A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.**

[DUR2555]

- 89. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water.**

[DUR2595]

- 90. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter.**

[DUR2615]

91. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

92. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the sewer main.

[DUR2645]

93. A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.

[DUR2675]

94. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

[DUR2685]

95. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

96. A sewer service is to be maintained to all upstream properties during any sewer relocation works.

[DURNS01]

97. Prior to acid sulfate soil material being removed from the subject site for treatment, written documentation from the owner(s) of all properties receiving such material shall be provided confirming that this activity is permitted at the receiving site.

[DURNS02]

98. The names and 24 hour contact phone numbers of the site manager, project manager and all other persons provided with responsibilities under the provisions of the Amended Dewatering Management Plan for 41-43 Boyd Street, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC 2009.079) shall be provided to Council's Environmental Health Officer prior to the commencement of dewatering operations.

99. Prior to the commencement of de-watering operations an examination of the quantity of pre-existing sediment within the stormwater drainage network that is intended to receive the de-watering discharge shall be undertaken by methods considered acceptable to Council's Stormwater Maintenance Engineer. Closed circuit television (CCTV) footage and a report of the findings of the examination shall be provided to Council's Stormwater Maintenance Engineer prior to the commencement of de-watering operations.

100. Prior to the commencement of de-watering operations the applicant or their nominated representative shall consult with Council's

Stormwater Maintenance Engineer in respect to the most appropriate method of connection of the de-watering system to Council's stormwater drainage system. The applicant or their nominated representative shall comply with any and all directions as may be provided by Council's Stormwater Maintenance Engineer.

101. All dewatering operations shall be carried out in accordance with the provisions of the Amended Dewatering Management Plan for 41-43 Boyd Street, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC 2009.079). A copy of the Plan shall be provided to the site manager, project manager and all other persons provided with responsibilities under the provisions of the Plan. In addition a copy of the Plan shall be kept onsite while dewatering operations are being carried out.
  102. Hourly inspections extending over a 24 hour period of the stormwater discharge network that is receiving dewatering discharge shall be undertaken at the responsibility of the project manager during rainfall events. If the combined stormwater and dewatering flows are exceeding the capacity of the stormwater network, dewatering must temporarily cease until the peak flows from the catchment have subsided.
  103. The frequency of the monitoring regime for the various parameters as listed within Section 12 of the Amended Dewatering Management Plan for 41-43 Boyd Street, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC 2009.079) shall be increased at the direction of Council's Environmental Health Officer.
  104. Upon completion of the dewatering operations, the applicant shall arrange for an inspection of any dewatering connection point to Council's stormwater system with Council's Stormwater Maintenance Engineer. The applicant shall comply with any directions issued by Council's Stormwater Maintenance Engineer in respect to the dewatering connection point.
- [DURNS03]
105. Swimming pool pumps, air conditioning units, heat pump water systems and any other mechanical plant and equipment shall be located and installed so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DURNS04]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

106. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

107. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to

the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

108. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professional painted in black numbers 100mm high.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

109. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

110. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

111. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate.

[POC0855]

112. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

113. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

114. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

115. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

116. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained by Council for all works required under Section 68 of the Local Government Act.

[POCNS01]

117. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of a minimum 3m wide easement for drainage of sewer, located over any reticulated public sewer within the subject property. This easement shall be created in favour of Council.

No permanent structures are permitted within this easement.

[POCSN02]

118. Prior to the issue of an Occupation Certificate, Section 88B (Conveyancing Act 1919) Covenant(s) shall be placed over the subject land to ensure that all measures in the "Flood Response Assessment Plan" (Planit Consulting, August 2008) shall be enforced in perpetuity, to ensure compliance with flood emergency response provisions of Council's Development Control Plan Section A3 - Development of Flood Liable Land and Council's Flood Risk Management Policy.

[POCSN03]

119. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of a positive covenant or easement to facilitate access for maintenance of the sewer vent pipe. This easement shall be created in favour of Council.

[POCSN04]

## USE

120. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

121. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

122. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

123. All commercial and residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.

[USE0875]

## 124. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).

- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

125. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

126. All externally mounted air conditioning units, heat pump water systems, swimming pool pumps and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive or intrusive noise to any occupant of neighbouring or adjacent premises.

127. Swimming pool pumps, air conditioning units, heat pump water systems and any other mechanical plant and equipment shall not be operated should it be heard in a habitable room of a residence during restricted hours or at any other time should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USENS01]

128. The ground floor common community space / gym are to be for the use of the residential component (Floors 1 – 5 above) only and are not to be used for commercial purposes.

[USENS02]

## **GENERAL TERMS OF APPROVAL FOR A LICENSE UNDER THE WATER ACT 1912 FOR DEVELOPMENT APPLICATION NUMBER DA08/1024**

### **NSW OFFICE OF WATER**

- Before commencing any works or using any existing works for the purpose of groundwater de-watering an approval under Part 5 of the Water Act 1912 must be obtained from the NSW Office of Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
- Before commencing any works or using existing works for groundwater monitoring purposes an approval is required under Part 5 of the Water Act 1912 must be obtained from the NSW Office of Water
- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
- When the NSW Office of Water grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.



- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry or sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
- If and when required by the NSW Office of Water, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained and tested as and when required by the NSW Office of Water to ensure its accuracy.
- Works for construction of bore must be completed with such period as specified by the NSW Office of Water.
- Within two months after the works are completed the NSW Office of Water must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.
- Officers of the NSW Office of Water or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be extracted from the works for any purpose other than dewatering for construction purposes
- The use of water shall be conditional on no tailwater drainage being discharged into or onto:
  - Any adjoining public or crown road
  - Any other person's land
  - Any crown land
  - Any river, creek or watercourse
  - Any groundwater aquifer
  - Any area of native vegetation
  - Any wetlands
- The work shall be managed in accordance with the constraints set out in the "Dewatering Management Plan" prepared by HMC Environmental Consulting Pty Ltd for Baycrown Pty Ltd C/- Planit Consulting Pty Ltd,

**dated March 2010, Report No.2009.079 presented as Amended Dewatering Management Plan for the proposed development.**

- **The work shall be managed in accordance with the constraints set out in the “Acid Sulphate Soils Assessment” prepared by Soil Surveys Engineering Pty Limited for Planit Consulting Pty Ltd dated June 2008 Report No.208-8024 presented as part of the Statement of Environmental Effects for the proposed development.**
- **All works must be constructed and maintained to properly control the water extracted to prevent wastage or any reduction in quality of the sub-surface water. The NSW Office of Water may direct that any necessary repairs or alterations be undertaken to maintain the works in good working order.**
- **The volume of groundwater extracted as authorised must not exceed 15 megalitres.**
- **The NSW Office of Water has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.**
- **The license shall lapse within three (3) months of the date of the issue of the license.**

**REPORT:**

**Applicant:** Baycrown Pty Ltd  
**Owner:** Baycrown Pty Ltd  
**Location:** Lots 7 & 8 Section 4 DP 2379, No. 41-43 Boyd Street, Tweed Heads  
**Zoning:** 2(b) Medium Density Residential and 3(b) General Business  
**Cost:** \$8,000,000

**BACKGROUND:**

The subject site is located over two allotments on the western side of Boyd Street at Tweed Heads. The site has a frontage to Boyd Street of approximately 40.2m on its eastern boundary, with a total site area of 2028.31m<sup>2</sup>.

The site is currently occupied by a single storey fibro cement building on Lot 7, with Lot 8 containing a two (2) storey unit block. Consent for the demolition of these buildings will be obtained by way of separate approval. The existing vegetation on site is made up of domestic garden variety trees and shrubs, which are not considered to be of any ecological significance.

The surrounding properties are a mix of commercial and residential, with the property to the north being a three storey unit block. The western properties include a pumping station and storage facilities, with the southern adjacent property being a car park for the adjoining dental surgery. Across Boyd Street to the north-east is a medical centre and RSPCA animal hospital.

The site falls across two (2) zonings, with Lot 7 being zoned 2(b) Medium Density Residential and Lot 8 zoned 3(b) General Business. The properties to the north are zoned the same as Lot 7, with the western and southern adjoining properties the same as Lot 8. The exception is Lot 2 DP555141 (the pumping station) to the west, which is zoned 5(a) Special Uses.

**PROPOSAL:**

The proposed development involves the construction of a six (6) storey (plus two basement levels) multi dwelling residential development, including a ground level commercial premises and common community space. The residential component comprises fifty (50) one-bedroom units.

Vehicle access is from Boyd Street, ramping down to the first basement level. A total of 75 car spaces are proposed, with ten (10) residential spaces, nine (9) commercial spaces, thirteen (13) visitor spaces, loading bay and two (2) car wash bays on Basement Level 1. The second basement level comprises forty (40) residential spaces.

The Ground Level contains a commercial space of 420m<sup>2</sup>, two (2) common community spaces for use by residents only, and a plaza/foyer area. Bathroom and kitchen facilities for the common community space are also proposed. Access to the ground floor is via a main entry ramp from the street frontage to the open plaza area, with two (2) sets of stairs and a lift for access to the upper residential levels. Adjacent to the driveway is a bulk refuse (temporary) storage area, for two (2) x 3m<sup>3</sup> bulk bins. The bins are to be stored in Basement Level 1 when not being collected. The rear landscaped area of the property incorporates a pool for the residents.

Levels One through to Level Five contain ten (10) one-bedroom (with study) units each, resulting in fifty (50) units overall. Internal access to the units is via a central corridor, with

access to the lift and the two stairwells, each located on the eastern and western sides of the development.

As the southern allotment is zoned 3(b) General Business, Clause 50 of the Tweed Local Environmental Plan 2000 (which limits Floor Space Ratio) applies. The proposed development does not comply with the required 1:1 floor space ratio. As such, a SEPP1 Objection accompanies the proposal, which results in the application being forwarded to a full Council meeting for determination.

**SITE DIAGRAM:**



**Locality Plan**

Lots 7 & 8 Section 4 DP 2379;  
No. 41-43 Boyd Street, Tweed Heads

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential 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 excavation a 'dig before you dig' enquiry must be made to calling 1208. The information contained on this document remains valid for 30 days only from the date of supply.

Created: 28 January, 2011  
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Boundaries shown should be considered approximate only.



Chief and Cultural Officer  
3 Tumbulgum Road  
Murrumbidgee NSW 2484

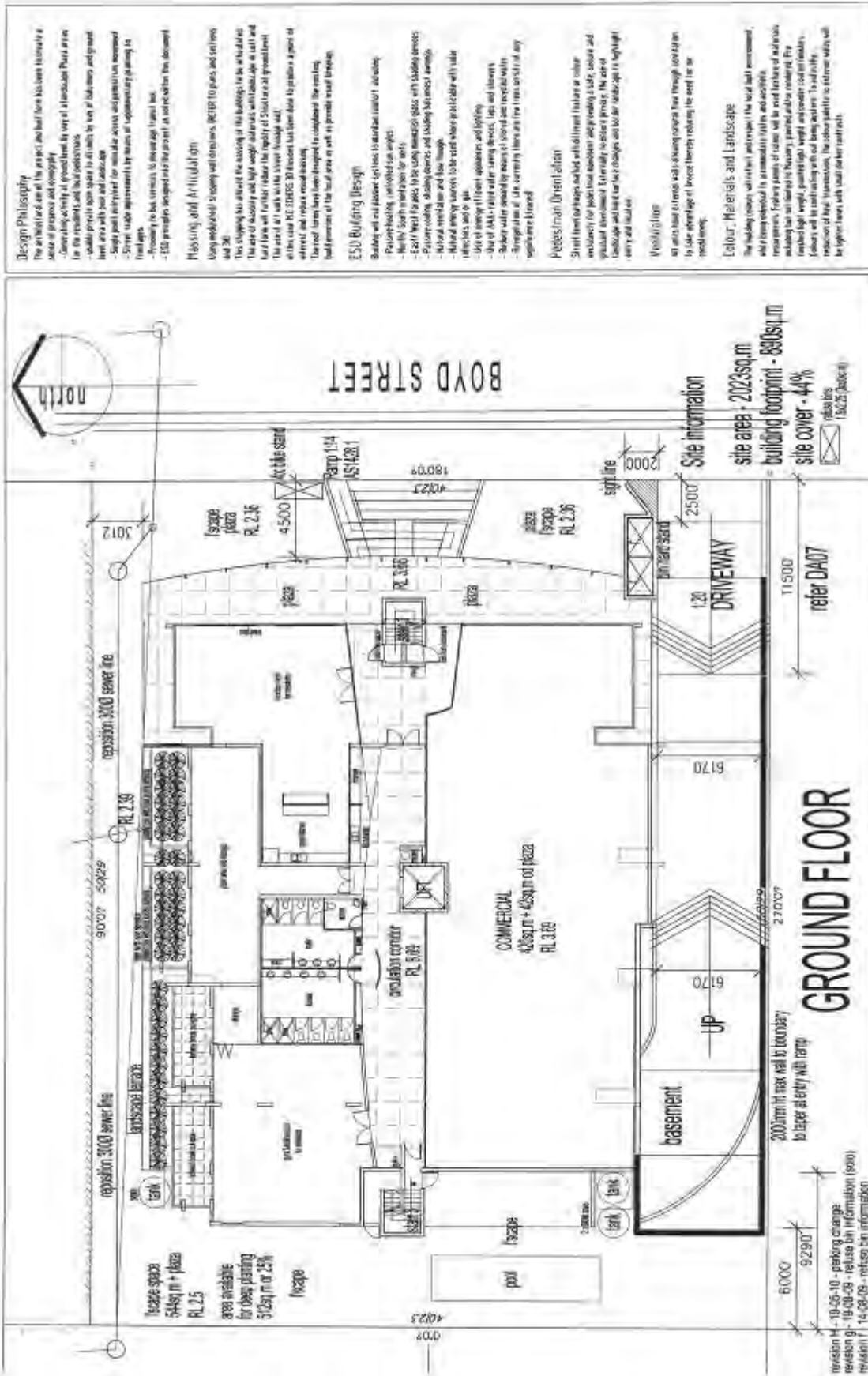
PO Box 316  
Murrumbidgee NSW 2484

T: (02) 6678 2400 | 1300 292 872  
F: (02) 6678 2429  
E: [info@tweed.nsw.gov.au](mailto:info@tweed.nsw.gov.au)  
C: [planning@tweed.nsw.gov.au](mailto:planning@tweed.nsw.gov.au)



June 2008/28 February 2011

DEVELOPMENT PLANS:



**Design Philosophy**  
The architect and the project and how his team has been to create a sense of purpose and identity.  
- Create a sense of purpose and identity.  
- Create a sense of purpose and identity.  
- Create a sense of purpose and identity.  
- Create a sense of purpose and identity.  
- Create a sense of purpose and identity.

**Missing and Attention**  
Using modern materials and techniques. REFER TO plans and sections and 3D.  
The design has been the subject of the building to be a landmark. The site of the building and the way it is designed to be a landmark. The site of the building and the way it is designed to be a landmark. The site of the building and the way it is designed to be a landmark.

**ESD Building Design**  
Building with a focus on being sustainable. (sustainable) - reducing. (sustainable) - reducing. (sustainable) - reducing.  
- Reduce energy consumption.  
- Reduce energy consumption.  
- Reduce energy consumption.  
- Reduce energy consumption.  
- Reduce energy consumption.

**Materials and Landscape**  
The building materials and landscape will be chosen to be a landmark. The building materials and landscape will be chosen to be a landmark. The building materials and landscape will be chosen to be a landmark.

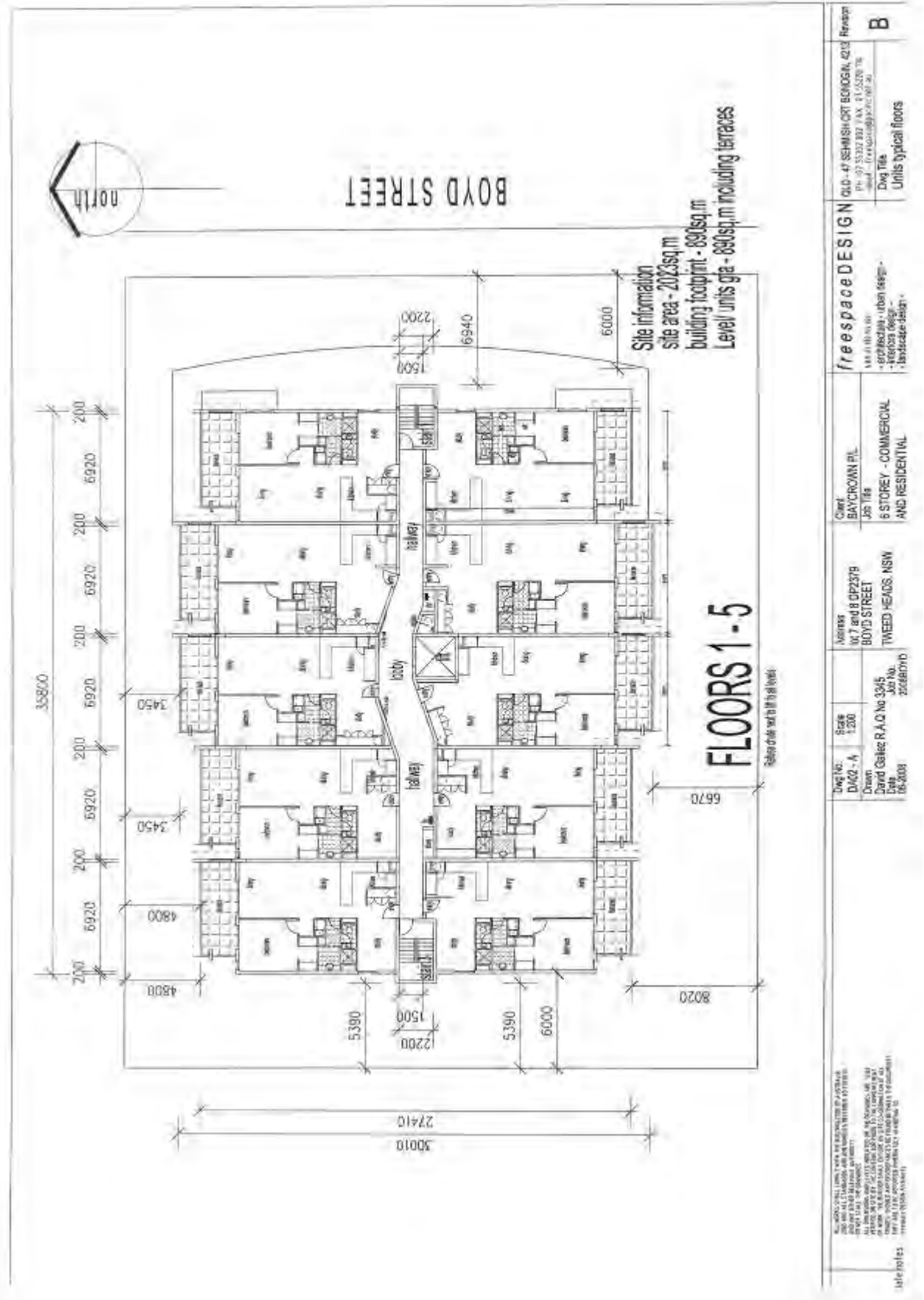
**Site Information**  
site area - 202350.0m  
building footprint - 88050.0m  
site cover - 44%  
reposition 3000 sewer line

**GROUND FLOOR**

**revision 14-19-05-10 - parking change**  
**revision 11-19-08-08 - refuse bin information (800)**  
**revision 16-14-08-08 - refuse bin information**

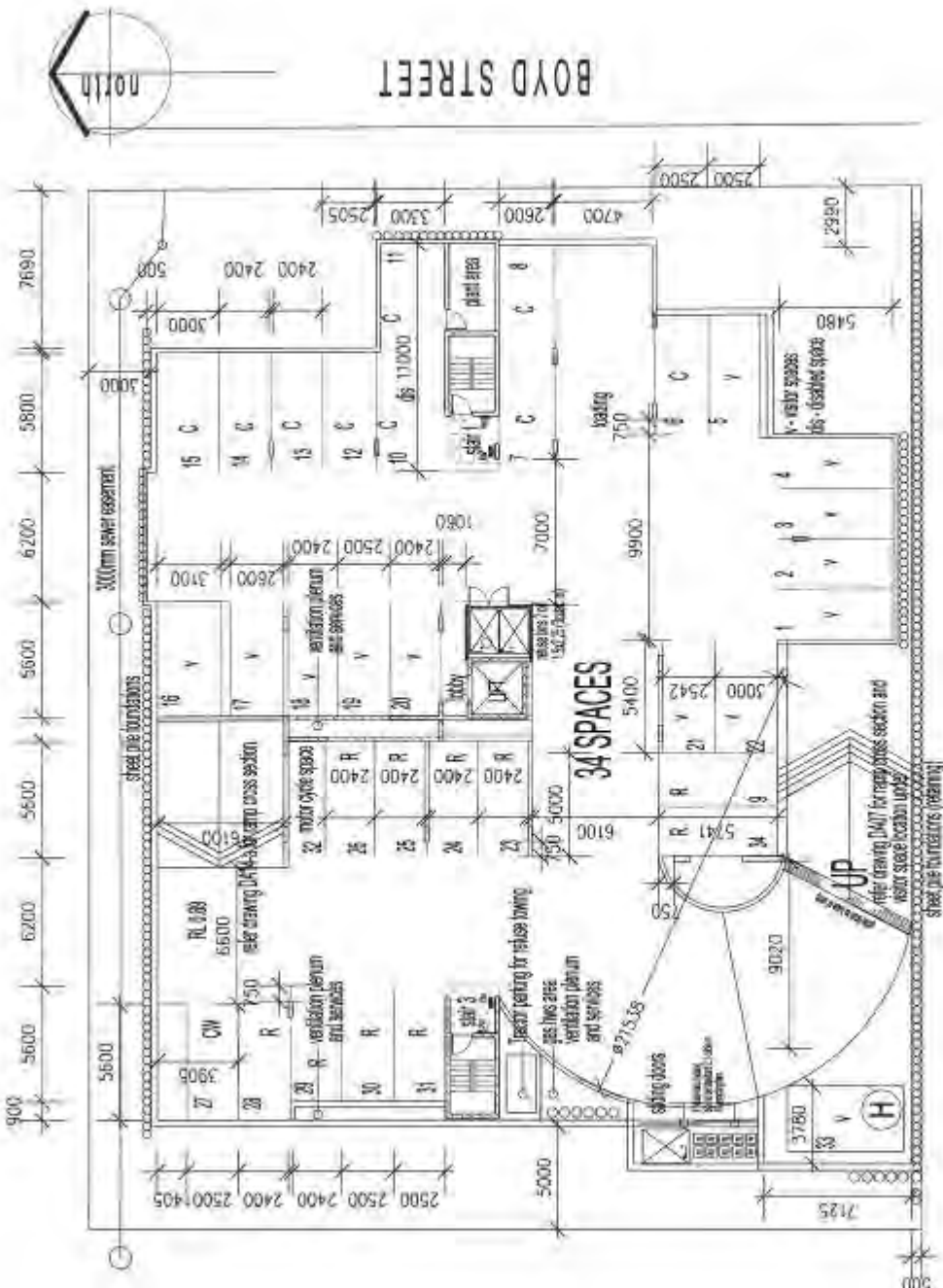
**Client:** BAYCROWN PL  
**Address:** 62, and 6 DP2379 BOYD STREET, TWEED HEADS, NSW  
**Scale:** 1:200  
**Drawn:** David Galbraith R.A.Q. No 3545, 30 Nov 2008  
**5 STOREY - COMMERCIAL**

**freespace DESIGN** (OLD-4) SEMI-SHARED WORKING 4702 Revision  
24, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



<p><b>freespaceDESIGN</b>                  4/10-47 SHAMSHOOT BOWEN QLD                  Ph: 07 5322 882 FAX: 07 5328 776                  Email: freespace@freespace.com.au</p>		<p><b>Revise</b>                  Drawn: David Galvez R.A.C. No. 3245                  Date: 05-2008</p>		<p><b>Client:</b> BAYCROWN PL                  JAS Tills                  6 STOREY - COMMERCIAL                  AND RESIDENTIAL</p>		<p><b>Address:</b> W7 and 8 DP2379                  BOYD STREET                  TWEED HEADS, NSW</p>		<p><b>Job No.:</b> 2268(DYD)</p>		<p><b>Scale:</b> 1:200</p>		<p><b>Drawn:</b> David Galvez R.A.C. No. 3245                  Date: 05-2008</p>		<p><b>Revise:</b> B                  Draw Title: Units typical floors</p>	
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ALL RIGHTS RESERVED. THIS PLAN IS THE PROPERTY OF FREESPACE DESIGN AND ALL DIMENSIONS AND NOTATIONS WITHIN A CONTRACT DOCUMENT ARE TO BE USED AS A GUIDE ONLY.  
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**basement 1** RL 0.89 Area of basement 1333sq.m

revision 14 - 19-05-10 - parking change  
 revision 13 - 15-04-10 - another RFI by council  
 revision 12 - 19-03-09 - RFI re-use bin information (solid)  
 revision 11 - 04-08-09 - re-use bin information

Client	BAYCROWN P/L
Job Title	6 STOREY - COMMERCIAL
Job No.	1333
Job No.	1333

Address	617 and 6 DP1379 BOYD STREET TWEED HEADS NSW
Site No.	617 and 6 DP1379
Job No.	1333

Drawn	DAVID GALLER
Check	DAVID GALLER
Date	12/05/10

Scale	1:50
Drawn	DAVID GALLER
Check	DAVID GALLER
Date	12/05/10

Drawn	DAVID GALLER
Check	DAVID GALLER
Date	12/05/10

Drawn	DAVID GALLER
Check	DAVID GALLER
Date	12/05/10

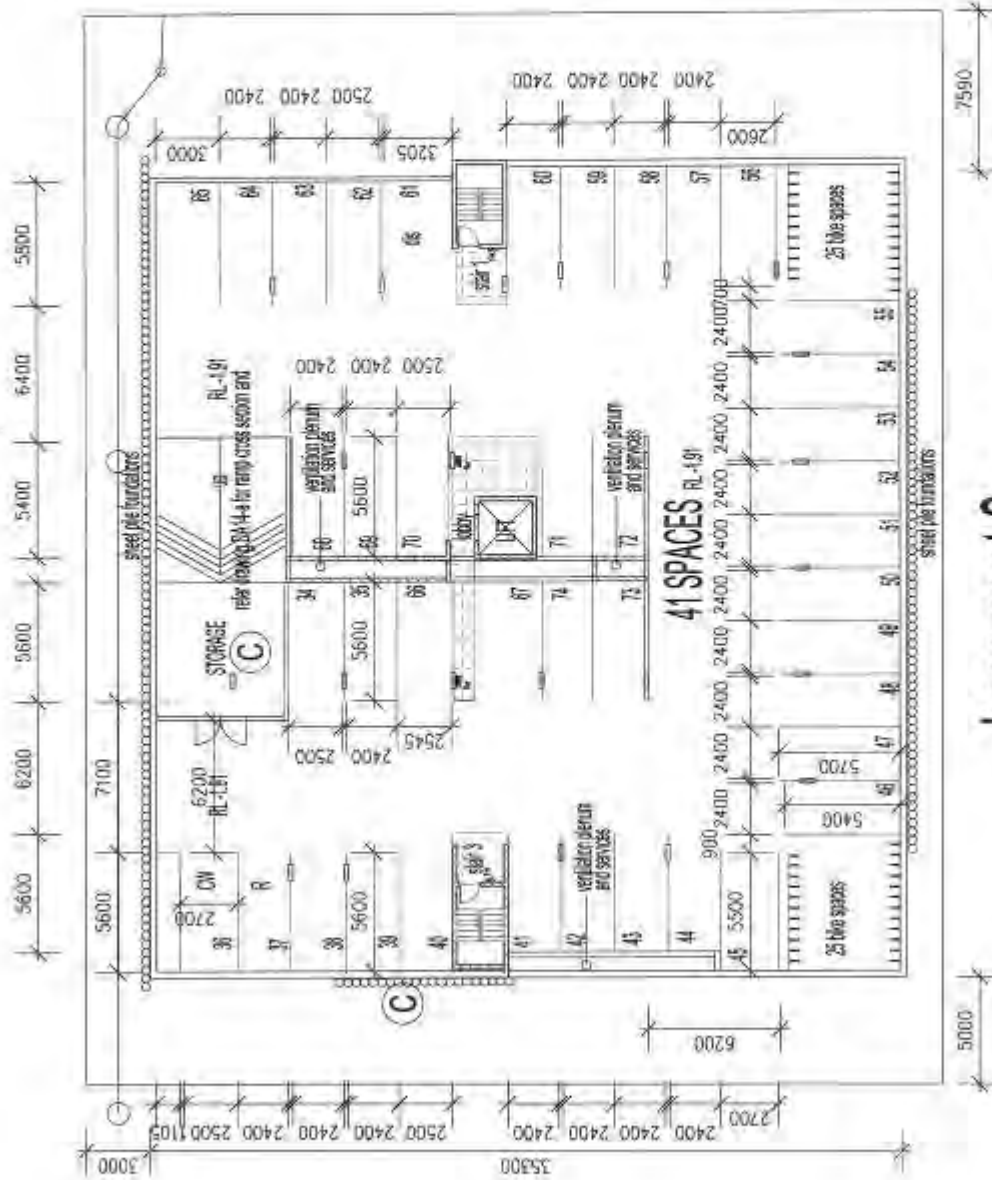
Drawn	DAVID GALLER
Check	DAVID GALLER
Date	12/05/10

Drawn	DAVID GALLER
Check	DAVID GALLER
Date	12/05/10





BOYD STREET



**basement 2** RL - 1.91 Area of basement 1275sq.m

revision C-15-04-10 - another RFI by council  
 revision B-19-06-09 - RFI 2 basement recessing with bike spaces

Prop No. DA04 Design David Galea R.A.O. No. 5349 (Ref No.)	Scale 1:200	Address No. 7 and 8 DP2079 BOYD STREET TWEEDE HEADS, NSW	Client BAYCROWN P/L JAR Tole	Project 8 STOREY - COMMERCIAL	Design Title C
Project Name freespace DESIGN OLD-47-SEMI-CORR BONDUGH, NSW No. 07-03-00-01-00-01-03-03-01-01 freespace design					

ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METERS  
 ALL WALLS AND PARTITIONS ARE 100MM THICK UNLESS OTHERWISE SPECIFIED  
 ALL DOORS AND WINDOWS ARE TO BE AS SHOWN UNLESS OTHERWISE SPECIFIED  
 ALL FINISHES ARE TO BE AS SHOWN UNLESS OTHERWISE SPECIFIED  
 ALL WORK IS TO BE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS  
 THESE PLANS ARE TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY MENTIONED





**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The subject site is an existing infill site and therefore the proposed development is considered to be in keeping with the ESD principles.

Clause 8 – Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is part zoned 2(b) Medium Density Residential and part zoned 3(b) General Business, the primary objectives of which are outlined below.

The proposed development is considered to be consistent with the primary objectives of both zones as it will be for medium density housing and provides a

component of commercial development, which is compatible with the surrounding residential areas.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed development generally complies with the aims and objectives of each.

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the changing medium density residential nature of the local area.

#### Clause 11 - Zone objectives

The two allotments involved with this application have different zonings. That is, the northern Lot 7 is zoned 2(b) Medium Density Residential, and the southern Lot 8 is zoned 3(b) General Business.

The primary objective for land zoned 2(b) Medium Density Residential under the Tweed Local Environmental Plan 2000 is to:

- *Provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good design outcomes.*

The primary objectives for land zoned 3(b) General Business are:

- *To provide business centres in which the community's shopping, business, welfare and social needs can be met and to provide business locations within residential areas.*
- *To ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.*

Although predominantly being multi dwelling housing, the proposed development incorporates a small component of commercial premises. As a result of commercial premises being prohibited in land zoned 2(b), the applicant has specifically located the commercial space on the southern allotment (Lot 8), which is zoned 3(b) and is therefore permissible with consent. The design of the ground floor common community space was revised to ensure that they would reflect the residential nature of the development on the 2(b) zoned component of the site.

The predominant land use (Multi Dwelling Housing) is permissible with consent in land zoned 2(b) Medium Density Residential, but relies on the provisions of Clause 51(B) when located in land zoned 3(b) General Business (see Clause 51B assessment below). Overall, the proposed development is permissible with consent and is considered to be consistent with both of the zone objectives of the site.

#### Clause 15 - Essential Services

Clause 15 of the TLEP requires that Council be satisfied that the subject land has the benefit of essential services before issuing consent. Connections to Council's reticulated water and sewer services along Boyd Street are available. The proposal incorporates an alteration to the alignment of the existing sewer line located along the northern boundary. Applicable conditions have been applied in this regard.

Stormwater services are also available. However, the proponent has not investigated whether the existing piped drainage network in Boyd Street has

capacity for the additional runoff from the development site. Applicable conditions have been applied, requiring investigations of the downstream drainage network or stormwater detention be provided on site as required.

#### Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject land is identified as having a six (6) storey height limit, with an objective to ensuring that *the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land*. The proposed development complies with Clause 16, being six (6) storeys in total.

#### Clause 17 - Social Impact Assessment

Clause 17 of the TLEP relates to social impact assessment, with the objective to *ensure proper consideration of development that may have a significant social or economic impact*. DCP A13 requires a social impact assessment for development incorporating more than 50 dwellings. As a result of the proposal incorporating only fifty (50) units, the requirements of DCP A13 are not triggered and Clause 17 does not apply to the proposed development.

#### Clause 34 - Flooding

Clause 34 of the TLEP refers to flooding. The subject site is flood liable, with a minimum floor level of RL 3.1m AHD being required. The proposal complies with minimum habitable floor levels of at least 0.5m above AHD Design Flood Levels, with the commercial component and ground level common community space located at RL 3.69m. The two storey basement is proposed below Design Flood Level, and the applicant has proposed a bund on the driveway at RL 3.69m. This issue is discussed in further detail later in this report.

#### Clause 35 - Acid Sulfate Soils

Clause 35 relates to Acid Sulfate Soil (ASS) management. Council's GIS indicates that the site is classified as Class 2 soils. The applicant has provided a preliminary ASS assessment report, which indicates that low levels of ASS may exist on site. The report notes that treatment of the ASS (upon removal from the ground) will be off-site. Council's Environmental Health Unit has undertaken an assessment the proposed development in this regard, with no objections. Applicable conditions of consent have been applied.

#### Clause 50 – Floor Space Ratios in Zones 3(a) and 3(b) at Tweed Heads

Clause 50 of the TLEP regards floor space ratios (FSR) in Tweed Heads. For sites having an area of less than 2000m<sup>2</sup>, the maximum FSR permitted in the 3(b) – General Business zone is 1:1 (without bonuses). The proposal incorporates a total of 2371.16m<sup>2</sup> of gross floor area within the 3(b) portion of the site, which results in an FSR of 2.34:1.

As a result of the proposal being above the 1:1 FSR, a SEPP 1 Objection accompanies this development application. Details of the SEPP 1 objection are discussed later in this report.

#### Clause 51B – Multi Dwelling Housing in Zones 3(a) and 3(b)

Clause 51B of the TLEP refers to multi dwelling housing in zones 3(a) and 3(b). The objective of Clause 51B is to:

- *allow multi-dwelling housing on land zoned 3(a) or 3(b), but only if it meets certain criteria to ensure the development of the land does not undermine its commercial use and the objectives of those zones.*

Clause 51B requires multi-dwelling housing on land to which this clause applies to be attached to shops, commercial premises, or other non-residential development on the same site. The proposed development incorporates a ground level commercial premise, which satisfies all of the applicable provisions of Clause 51B. As such, the proposed multi dwelling housing development on levels one to five are permissible with consent within the area zoned 3(b) General Business.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### **Clause 32B: Coastal Lands**

In accordance with Clause 32B of the NCREP, the proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy and Coastline Management Manual. In particular, as the property is not situated on the coastline, there is no overshadowing of any beaches at any time.

The proposal does not incorporate any physical restriction of access to a foreshore area, or detrimental impacts upon the coastal character and amenity of the site, due to its location away from any beaches or open space waterways. Accordingly, the proposal complies with this clause of the NCREP.

##### **Clause 43: Residential development**

Clause 43 of the NCREP provides that the consent authority shall consider density, environmental constraints, and road widths.

The proposed density is considered to be a reasonable response to the existing and future land use character of the area, and will not result in the creation of any adverse physical impacts upon the locality. Further, the existing road widths are satisfactory for the proposal and a detailed sedimentation and erosion control plan will be applied in relation to the construction.

The proposal is considered to be consistent with the relevant provisions of Clause 43 of the NCREP 1988.

#### **SEPP No. 1 - Development Standards**

As discussed, a SEPP 1 objection accompanies the application. The objection is in respect of the planning standard identified within Clause 50 of the Tweed Local Environmental Plan 2000; specifically seeking variance to the maximum floor space ratio of 1:1 for sites less than 2000m<sup>2</sup> for land zoned 3(b) at Tweed Heads.

The development site incorporates two allotments, each having a site area of 1012m<sup>2</sup>. The southern allotment is zoned 3(b) General Business and is subject to the provisions of Clause 50 of the LEP, relating to floor space ratios (FSR).

The LEP's development standard for limiting FSR only applies to 3(a) and 3(b) zoned land in Tweed Heads. Therefore the SEPP1 objection refers only to the southern portion of the development site.

The northern portion of the site is zoned 2(b) Medium Density Residential, which is governed by development controls within DCPB2 – Tweed Heads (DCPA1

does not apply as the proposal is greater than 3 storeys in height). Assessment against DCPB2 is discussed later in this report.

The proposal provides for 2371.16m<sup>2</sup> of Gross Floor Area (GFA) on the 3(b) zoned portion of the site, equating to an FSR of 2.34:1. In terms of GFA, the variation is for an additional 1359.16m<sup>2</sup> of floor area on the 3(b) portion of the allotment. When looking at the entire development over both allotments (i.e. the combined 3(b) and 3(a) land), the proposal incorporates a GFA of 4508.86m<sup>2</sup>, which equates to an FSR of 2.22:1.

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

**In support of the proposed variation, the applicant has provided an assessment of the proposal against the three principles set by Chief Justice Preston for SEPP 1 Objections:**

*“The objective providing foundation for the FSR requirement within the 3(b) zoned areas of Tweed Heads states, inter alia:*

**(1) Objective**

- *To control by floor space ratio the intensity of retail uses in Zone 3 (a) (the Sub-regional Business zone) and certain parts of Zone 3 (b) (the General Business zone), and encourage the consolidation of lots.*

*As discussed above and confirmed by judgments supported by the Land & Environment Court, the ability of a proposal to attain the objective of the standard and its intent are fundamental to the appropriateness of applying the standard in the first instance. Specifically the objective of Clause 50 seeks to limit the size of retail spaces and encourage lot consolidation.*

*As proposed the application includes no retail uses and consolidates two adjoining allotments. Imposing the standard is clearly not required in order for the mixed use commercial and residential development to achieve the objective and imposing the standard is clearly inappropriate in this instance.*

*The site is located across the 3(b) and 2(b) zones, a situation not specifically envisaged by Clause 50 and as a result a significant and unjustified development restriction results from its application. Applying the standard creates a situation where a consolidated development site of greater than 2000m<sup>2</sup> within the Tweed Heads CBD area is subject to a prohibitively low FSR requirement.*

*Imposing a development control which is aimed at limiting the scale of retail uses on 3(b) zoned lands, to a commercial and residential development with a combined zoning of 3(b) and 2(b), is a clear hindrance to meeting the objectives included within the EP&A Act 1979; specifically the proper and orderly development of the site and Councils own objective of consolidation.*

*Imposing Clause 50 on the development would effectively override a well established set of site specific development controls aimed at shaping the future character of the locality and achieving orderly development with the FSR control effectively acting as a defacto height, setback and other design control limit. In this regard, the proposals extent of compliance with all other*



requirements of the TLEP 2000, specifically building height and Section B2 of the TDCP 2008 are noted.

The SEPP No. 1 Objection is considered to warrant support in that flexibility in planning controls is achieved and imposing compliance with the development standard is clearly a hindrance to the objects as listed in s 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979.

The proposed non compliance raises no matters of significance for State or Regional Planning and no public benefit results from maintaining the development standard in this particular case. The proposal is a unique situation non envisaged by Clause 50 and applying the standard creates a situation where a consolidated development site of greater than 2000m<sup>2</sup> within the CBD area is subject to a prohibitively low FSR requirement.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However in this instance, enforcing compliance with Clause 50 would effectively override a well established set of site specific development controls aimed at shaping the future character of the locality and achieving orderly development. In this regard the FSR requirement applicable under Clause 50 would effectively act as a restrictive defacto height and setback control limit.

In this regard, the proposals extent of compliance with all other requirements of the TLEP 2000, specifically building height and Section B2 of the TDCP 2008 are noted. The proposed non-compliance with Clause 50 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it relates to a specific development situation which does not readily occur in the locality."

#### **Assessment of the applicant's submission:**

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council* [2007] NSW LEC 827).

- 1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

As noted by the applicant, the objective of Clause 50 is:

- **to control by floor space ratio the intensity of retail uses in Zone 3(a) (the Sub-regional Business zone) and certain parts of Zone 3(b) (the General Business zone), and encourage the consolidation of lots.**

The proposed development is considered to be consistent with the objectives of Clause 50 in that there is no retail component within the proposal and the two lots involved with the development will be consolidated.

The objection is considered to be well founded. As such, strict compliance with the maximum FSR of 1:1 for land zoned 3(b) is considered unreasonable and unnecessary in this instance.

2. **The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*; and**

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

Strict compliance with Clause 50 would radically reduce the density of the residential component of the proposed development in the 3(b) zone, which is not considered to be the intent of the clause. Rather, density is controlled by other provisions of the LEP (Clause 16 – height) and DCP (B2 – Tweed Heads).

In terms of GFA, the extent of the variation is for an additional 1359.16m<sup>2</sup> of GFA on the 3(b) portion of the allotment. To put this in perspective, the residential component on each level of the allotment zoned 3(b) is approx 350m<sup>2</sup>. A reduction of 1359.16m<sup>2</sup> of GFA is effectively 4 floors of residential development in the 3(b) zone, which is a loss of affordable housing (20 units) having close proximity to the Tweed CBD. Strict compliance would result in an outcome which is clearly a hindrance to the objectives of Section 5(a)(i) and (ii) of the EP&A Act, with regard to the orderly and economic use and development of land. The fact that the draft City Centre LEP 2009 zones both allotments as Medium Density Residential land suggests that the proposed development is appropriate for the locality.

The SEPP1 Objection is considered to warrant support in that flexibility in planning controls is achieved and approval of the development would not hinder the attainment of the above objectives.

3. **It is also important to consider:**
- a. **whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
  - b. **the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 50 of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this particular case. As noted above, strict compliance with the FSR of 1:1 would dramatically reduce the density of the proposal, which reduces the ability to provide affordable housing, particularly for university students attending the nearby Southern Cross University.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with Clause 50 of the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is quite unique and site specific. As such, the granting of this application is unlikely to impact upon public benefit.

### Conclusion

Given that the three principles set by Chief Justice Preston have been met, strict compliance with the development standard under Clause 50 of the Tweed LEP is considered unreasonable and unnecessary in this instance. As such, the SEPP1 Objection warrants support, particularly when the FSR provisions of the draft Tweed City Centre LEP 2009 (2.5:1) are taken into consideration.

### **SEPP No. 65 - Design Quality of Residential Flat Development**

Clause 30 of the SEPP 65 requires the consent authority to consider each of the ten (10) design quality principles when determining a development application for a residential flat building.

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles. It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design, thereby satisfying the requirements of SEPP 65.

### **SEPP No 71 – Coastal Protection**

The proposed development is not located within 100m of a sensitive coastal region and is not of State significance; therefore Council is the consent authority.

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered suitable, given its type, location and design and its relationship with the surrounding area.

### **SEPP – Affordable Rental Housing**

The applicant has advised that the subject application was lodged prior to the introduction of the SEPP and as such is not applicable to the proposal. In addition the development is not proposed as “affordable rental housing” (although it is intended to function as student accommodation to a degree) and the development provisions applicable under the SEPP have not been applied to the proposal.

Part 3 of the SEPP relates to the retention of existing affordable housing. This component is limited to land within the Sydney region and land within the Local Government Area of Newcastle and Wollongong city therefore Part 3 is not applicable. The applicant has also noted that the existing structures on the site are aged and have varying degrees of dilapidation. The building located on Lot 7 is currently abandoned and has been for some time.

The Affordable Rental Housing SEPP is not considered to be applicable to the proposed development.

## **(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

### **Draft Tweed City Centre Local Environment Plan 2009**

The Draft Tweed City Centre Local Environment Plan 2009 zones both Lot 7 and Lot 8 as R3 – Medium Density Residential. The residential component of the proposed development is permissible under the Draft Tweed City Centre Local Environment Plan 2009. However, it is noted that the commercial premises component of the development is prohibited under the Draft LEP, unless it is utilised for a neighbourhood shop or the like.

Clause 4.3 of the TCCLEP is related to building height. The general objectives for this clause include establishing the maximum height of a building, ensuring the height relates to the lands capability to maintain an appropriate level of urban character, and to encourage greater population density. The maximum height for the subject site under the Draft LEP is 28m. The maximum height of the proposed development is 20.555m; therefore the proposal complies with the Draft LEP in terms of height provisions.

Clause 4.4 relates to floor space ratio, and states that the *maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map*. The FSR map indicates a maximum of 2.5:1 for the subject site. The proposed total FSR for the development is 2.22:1, which complies with the Draft LEP.

Clause 6.6 regards minimum street frontage of land for buildings in Zones R3, B2, B3 and B4 [local]. As the site is situated in zone R3 – Medium Density Residential, this clause applies. Development consent must not be granted unless the building has at least one (1) street frontage of 20m or more. Having a 40m street frontage, the proposed development exceeds this minimum requirement.

(a) (iii) **Development Control Plan (DCP)**

**Tweed Development Control Plan**

**A2-Site Access and Parking Code**

Required Car parking

Off-street car parking needs to be supplied in accordance with DCP A2. The following is an assessment of the proposed development against the requirements of the DCP.

Use	Parking Rate	Required Spaces
Multi Dwelling Housing	1 space per 1 bed unit plus 1 per 4 units (visitors)	50 units x 1 = 50 spaces + 50 units / 4 = 12.5 spaces  Total required = 62.5 spaces (Rounded up to <b>63 spaces</b> )
Commercial Premises	<u>Staff Parking</u> 1 space for every 40m <sup>2</sup> GFA  <u>Service Vehicle</u> 1 / 200m <sup>2</sup> GFA (Min 1 HRV / SRV)	420m <sup>2</sup> GFA / 40 = 10.5 Less 20% ESD = 10.5 x 0.8 = 8.4 spaces (Rounded up to <b>9 spaces</b> )  420m <sup>2</sup> GFA / 200 = 2.1 spaces (Council's Engineer recommends only <b>1 large bay</b> )

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*Resident and Visitor Parking*

As noted in the table above, 63 spaces are required for residential and visitors. The final design (submitted in May 2010) incorporates a basement layout with fifty (50) residential spaces and thirteen (13) visitor spaces within the two levels.

DCP B2 requires car wash areas in the form of 1 wash bay per 10 units, (minimum 1 car wash bay). Under these provisions, the proposed development would require 5 car wash bays. This figure was deemed to be excessive and Council's Development Engineer has noted that two (2) car wash bays would be adequate. The revised basement plans identify a car wash bay in both levels, thereby satisfying Council's requirements in this regard.

*Staff and Customer Parking*

After several attempts, the car parking layout is now in a satisfactory configuration, with nine (9) spaces allocated to the commercial component of the development. Although some of the spaces are tandem spaces (i.e. stacked spaces, one car parked in front of the other), this is considered to be acceptable on the provision that those spaces (identified as spaces 7, 8 and 11 in Basement Level 1) are dedicated to staff. Space No. 10 has been identified as a disabled space due to its width. This is considered to be acceptable if space 11 is nominated as staff parking only (as noted above).

*Delivery, Service Vehicle Parking*

As noted in the table above, the DCP requires 2.1 spaces for service vehicles. The original design allocated two (2) on-street loading bays on Boyd Street. This was not considered to be acceptable by Council. A revised car parking layout proposed two SRV loading bays in Basement level 1. Heavy Rigid Vehicles (HRV's) will have to utilise the road reserve due to height and manoeuvrability restrictions within the basement, however it is considered unlikely that the small commercial component of the development will require deliveries from an HRV. Council's Development Engineer recommended the two smaller loading bays be replaced with just one (1) large loading bay area clear of any other car parks, with no on-street loading bays allowed. Revised plans have been submitted to comply with this requirement.

*Bicycle Parking*

The DCP requires two (2) per unit for residential development, which equates to 100 bicycle spaces and 1 bicycle space per 100m<sup>2</sup> GFA. In total, the DCP requires 104 bicycle spaces. The revised car parking layout incorporates two areas of areas of 25 bike spaces each and have noted that an additional bike hook will be provided in each of the residential car spaces. It is also noted that a bike stand with provisions for four (4) bikes is proposed at ground level adjacent to the front stairs / ramp at the front of the development. This results in 104 bike spaces, which meets the provisions of the DCP.

*Access Provisions*

Council's assessment of the proposed development identified several issues with the proposed car parking configuration. Compliance with ramp grades and head clearances was questioned, particularly where services were proposed. The applicant provided revised plans, which indicated that signage would be provided

to warn of lower clearances, as per AS2890.1 where the height of the basement is lower than 2300.

In terms of the lower height clearances (2.2m), the applicant was requested to confirm that the Gross Pollutant Trap (GPT) in the lower basement could still be accessed by an appropriate vehicle to be cleaned. A letter was provided from the waste contractor confirming that access would be attainable.

The wall at the driveway entrance was noted as being 2.0m high to the boundary, which did not comply with Council's requirement for walls at driveway entrances to be no higher than 600mm. Revised plans identified the boundary wall as being 2000mm max in height, tapering to 560mm high at driveway's entry point.

#### *Waste Collection*

Prior to the revised basement plans being submitted, the applicant was requested to clarify how the bulk bins were to be transported from Basement 1 to the collection point at the top of the driveway. If this were to be done by a tractor, parking space for the tractor needed to be incorporated in the revised carparking layout. Revised plans now incorporate a parking space for a tractor, if the need arises for one to be utilised for bringing the rubbish up from Basement 1 for collection.

Overall, the revised basement design is considered to satisfy the provisions of DCP A2, subject to conditions of consent.

#### **A3-Development of Flood Liable Land**

Council's Development Engineer has provided the following comments with regard to flooding:

*"The Design Flood Level of the site is 2.6m. The proposal complies with minimum habitable floor level requirements of Design Flood Level + 0.5m with residential uses located at RL3.69m.*

*The proposal incorporates a basement below design flood level. In this regard, the proposed driveway ramp is transitioned to provide a 'bund' at the level above RL3.69m, which complies with the flood immunity requirements.*

*The site is identified as being located within the Probable Maximum Flood (PMF being Level of 4.3m AHD) area. As Boyd Street is located wholly within the PMF area, the proposal is required to demonstrate adequate flood refuge area. A Flood Response Assessment Plan has been provided.*

*The floor level of the proposed Commercial Tenancy has been designed to comply with the Design Flood Level + 0.5m. As such it complies with Council requirements.*

*To ensure the safety of all residents of the building a Flood Response Assessment Plan (Plan) has been developed. The plan outlines that as the site does not have access to an evacuation road (above the PMF), suitable refuge provisions on the upper levels will be provided. This has been accepted by Council Planning and Infrastructure Engineer on previous developments within the area.*

*The Applicant has also confirmed that as the development is not a "Sensitive Use", back-up power via generators is not mandatory and will not be provided in case the basement plant is flooded'.*

The proposed development is considered to comply with the relevant provisions of DCP A3.

#### **A4-Advertising Signs Code**

The proposed development does not incorporate any details on the proposed use within the commercial premises component of the application. A first use application will be required, at which point signage will be assessed.

#### **A11-Public Notification of Development Proposals**

The proposed development was placed on public exhibition for a period of 30 days, during which time three (3) objections were received. The issues raised by the submissions are discussed later.

#### **B2-Tweed Heads**

The site falls across two (2) precincts under the site specific DCP for Tweed Heads, with Lot 7 being classified as being in the Western Precinct (high density residential), and Lot 8 contained in the Southern Precinct. The Southern Precinct *primarily caters for commercial development in the 3(b) General Business zones focussed on Wharf Street* while the Western Precinct facilitates *the provision of higher density housing catering for a broad cross section of society in close proximity to the available services and facilities of Tweed Heads.*

##### *B2.4.3 Southern Precinct – Preferred Development*

Within the Southern Precinct, development that is encouraged includes commercial premises and multi-dwelling housing above the non-residential ground floor development. Therefore, the proposal complies.

- *Height Restriction*

A maximum height restriction of three (3) storeys applies to all development on development sites less than 2000m<sup>2</sup>. As the combined size of the two development sites is greater than 2000m<sup>2</sup>, the proposed six (6) storey development complies with this requirement.

- *Floor Space Ratios*

The FSR provisions of the DCP are the same as that of Clause 50 of the Tweed LEP 2000. As such, the proposal does not comply with the DCP in terms of 1:1 FSR for the 3(b) zoned land. However, given that the SEPP1 Objection for Clause 50 is supported, a variation to DCP B2 is considered to be warranted in this instance.

##### *B2.6.2 Western Precinct – Preferred Outcomes*

The DCP notes that development in the high density residential precincts may be supported where the proposal is in accordance with building envelope requirements (B2.9), commercial façade guidelines (B2.10) and any relevant residential guidelines in B2.11. As noted in the assessment below, the proposed development is considered to generally comply with all relevant provisions of B2.9, B2.10 and B2.11. Therefore, the proposal is considered to satisfy the preferred outcomes for the Western Precinct.

##### *B2.9 Building Envelopes*

Clause B2.9.2 specifies the requirements for building envelopes within Business zones, however as the boundary of the site adjoins a Residential zone, Clause B2.9.3 takes precedence.

Clause B2.9.3 states that:

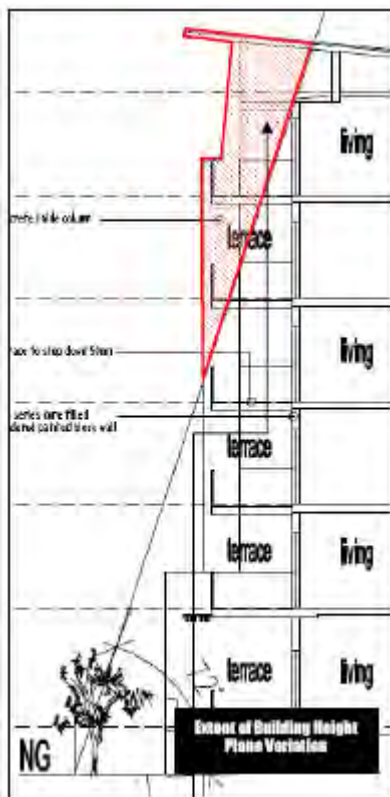
*In the Residential zones and in Business and Special Use zones where the boundary adjoins a Residential zone, development must comply with the Building envelope for Residential zones. The envelope is established by projecting a line from the property boundary over the property, at an angle of 72 degrees. This ensures that a building is setback 1m from the property boundary for every 3m of building height.*

The proposed development does not strictly meet the required building envelope on the northern side of the site (which is zoned 2(b) Medium Density Residential). A triangular shape of approximately 3.5m wide (at its maximum) by 10.5m height is outside the allowable building envelope on the northern side of the development, covering the top three (3) storeys (see figure below).

The SEE notes that the minor encroachment is limited to the upper levels terrace areas and roof structure, rather than actual living area. A large front setback to Boyd Street of 6.94m has been provided to reduce the bulk of the building to the street frontage in an effort to meet the objectives of this clause.

The applicant also notes that the areas of encroachment are not considered to result in an unreasonable degree of overshadowing to surrounding properties, with the majority of over shadowing accruing on the adjacent road reserves.

The applicant's justification is considered to be acceptable in this instance. As such, the proposed variation to the building envelope requirements is considered warranted.



### *B2.10 Commercial Façade*

It should be noted that the proposed commercial space is located within the building, and does not directly address the street.



- *Façade Alignment*

The proposed commercial space on the ground floor of the development is set back from the street frontage of the site, and as the building is more than 8m in height, this complies.

- *Façade Modulation*

As there is not currently a development of this scale along this section of Boyd Street, the proposal provides diversity in the design of its façade, which is to be multi-coloured and also with an “art wall” panel feature.

- *Continuity of Façades*

Once again, as there is currently no development similar to this within the immediate vicinity of the site, continuity of façades is not possible; however this development will set the baseline for future similar developments in relation to continuity of façades.

- *Design Elements*

The street level of the development utilises full length windows leading into the plaza area, which is covered over by a Colourbond roof.

- *Office and Shop Front Design*

Access via stairs and ramps is available off the street level

- *Advertising Signs*

No advertising signs are proposed in the application.

#### *B2.11 Residential Design*

- *Building Mass*

The proposed development does not have any unbroken walls of length greater than 15m, and does vary the building mass through the use of materials, colours, textures, terraces and balconies, and also includes varied setbacks.

- *Energy Efficiency*

The development application is accompanied by a BASIX Certificate, and does comply with Council’s requirements for energy and water efficiency.

- *Ventilation*

Cross ventilation is possible throughout the proposed development, from the northern and southern sides. The apartments allow for air flow to occur from the external balconies and through the open doorways into the central corridor. When the doors are closed, operable louvres above each door are able to be opened so as to not impede air flow throughout the building.

- *Daylight Access*

Natural lighting is able to enter from the north and south of the building due to the open balcony plans. Sliding glass doors between the balcony and internal rooms allow daylight to enter for the majority of the day. During the winter months more sunlight will enter, due to the low position of the sun in the sky.

- *Wind Mitigation*

The proposed building (six (6) storeys high) is not considered likely to cause any significant downdraft to the street.

- *Overshadowing*

Shadow diagrams were submitted with the original application, for 9am June and December 22, 3pm June 22, and 12 noon June and December 22. From these diagrams no unreasonable overshadowing of neighbouring properties occurs, and mid-winter shadowing is not excessive, with the majority extending over the road reserve. It is also noted that the development to the south, which is partially affected by overshadowing is a commercial premises, rather than residential development.

- *Roof Lines*

The proposal includes a “dual skillion” style roof line, and effectively breaks up the view from elevated properties west of Recreation Street in the west. The design provides some variety in the roof line, rather than a tradition flat roof.

- *Privacy*

The development proposes private balconies for each individual unit, with access to these from the living and bedroom areas of each unit. However, upon site inspection, it was revealed that the balconies on the northern side may potentially impact on the privacy of the existing neighbouring properties development. As such, it is recommended that screening is provided on each balcony on the northern side of the development. An applicable condition will be generated in this regard.

- *Entrances*

All entrances to the building are proposed to be easily noticeable, with access to the lift from all levels. However, the DCP states that apartments should be arranged *in clusters to a maximum of eight around a common lobby, to optimise security*. This proposal has clusters of ten (10). The applicant has acknowledged this non-compliance, and has provided mirrors along the corridor walls to enable viewing along its full length. They point to the fact that the distance to the escape stairs is less than 16m. The proposed variation DCP B2 is considered to be acceptable.

- *Surveillance*

The proposal complies with the requirement of on-street surveillance from at least one room that is not a bathroom or bedroom, particularly from those units with frontage onto Boyd Street.

- *Concealment and Illumination*

Although it is not stated in the application the lighting fixtures to be used within the common areas, a condition has been applied requiring sufficient lighting be provided within these areas.

- *Unsupervised Access*

Access is limited to the units via the central corridor on each level, with the central lift and two stairwells providing access to this corridor.

- *Communications*

The application is silent as to whether an audio or video intercom system will be utilised at the entry or in the lobby for visitors to communicate with residents. A condition has been applied requiring the incorporation of an intercom system at the main entrance.

- *Materials*

The proposed materials assist with breaking down the building bulk on all sides, and will be used to effectively define the various units for a diverse look.

- *Colours*

Colours will also assist in effectively defining the various units, and creating a diverse look. Colours include “Resene Thistle”, “Resene Dutch White”, “Resene Guardsman Red”, “Resene Burgundy”, “Resene Coffee”, Resene Baltic Sea” and “Resene Bokara Grey”. The two (2) reddish colours assist with accentuating the development, with the white and thistle colour being the dominant colours used.

- *Access*

The development proposes access to on-site parking via a driveway ramp off Boyd Street, on the southern side of the site, leading down to the basement levels.

- *Parking*

Off-street parking is provided within two basement levels, as noted above. The proposed development is considered to satisfy the provisions of DCP A2 – Site Access and Parking Code.

- *Car Wash Areas*

Two (2) car wash bays are provided on (one on each basement level), which is deemed to be acceptable by Council’s Development Engineer.

- *Open Space and Balconies*

The DCP states that for dwellings under 85m<sup>2</sup> in floor area, a minimum of 20m<sup>2</sup> of landscaped open space must be provided per dwelling. Open space on the ground level should have a minimum dimension of 4m. Dwellings above the ground level and without direct access to the landscaped ground level shall provide private open space in the form of a balcony, with a minimum area of 8m<sup>2</sup> and a minimum dimension of 2m, with direct access from a main living room of the dwelling.

The proposal incorporates fifty (50) dwellings with an individual area of less than 85m<sup>2</sup>, therefore a minimum of 20m<sup>2</sup> of landscaped open space must be provided per dwelling. This results in a minimum amount of open space of 1000m<sup>2</sup>. The proposal provides a total of 1321.6m<sup>2</sup> of open space, inclusive of communal ground floor areas. The upper level units are required under the DCP to have a minimum area of 8m<sup>2</sup> and minimum dimensions of 2m. All proposed units contain private balcony areas measuring 2.4m by 6m, giving an area of 14.4m<sup>2</sup> accessed directly from the living and bedroom areas.

Therefore, 14.4m<sup>2</sup> x 50 units = 720m<sup>2</sup> of private open space. The remaining 601.6m<sup>2</sup> is located on the ground floor, and of this, 512m<sup>2</sup> is available as deep planting area. Therefore, the proposal complies with the DCP.

Overall, the proposed development is considered to comply with the relevant provisions of DCP B2.

**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(a) Government Coastal Policy

The subject land is affected by coastal policy. The proposed development is not considered to be in conflict with the policies and strategies contained within the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

There are two existing structures on the subject sites, with one being a two storey dwelling, the other a single storey. Associated carports are also present. The application for demolition is to be submitted at a later stage, therefore this does not apply at present. An applicable condition of consent has been applied in this regard.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Compatibility with Adjoining Land Uses

The area surrounding the development site is a mix of residential and general businesses (including an RSPCA Animal Hospital, and medical facilities). In terms of future development, the Draft Tweed City Centre Plan identifies the surrounding area as medium density residential, which is compatible with the proposal. Therefore, as the area is redeveloped and changes character, the proposed development is expected to be of similar character to the surrounding locality.

Potential amenity issues were identified between the proposal and the vent for the adjacent sewer pump station. Appropriate conditions have been applied in order to minimise any impact to the upper levels of the proposed development.

Overshadowing

The applicant has supplied shadow diagrams that indicate the level of overshadowing the proposed development would cast upon the adjoining properties. It is considered that the amount of overshadowing cast by the development is acceptable, as the shadows tend to only cover a commercial premises (rather than adjoining residential development), and the Boyd Street road reserve.

Privacy

The proposal incorporates private balconies on the northern and southern sides of the development. There is a potential issue with privacy on the northern side, looking onto the adjacent property. As such, an applicable condition has been applied, requiring screening devices to be utilised along the balconies on the northern side.

Dewatering

The applicant provided a Dewatering Management Plan (prepared by HMC Environmental Consulting Pty Ltd) which was not supported by Council's Environmental Health Unit. A revised Dewatering Management Plan was submitted, with Council's Environmental Health Unit noting that the revised report satisfies the requested changes. Appropriate conditions of consent have been applied.

**(c) Suitability of the site for the development**

The site is centrally located and within walking and cycling distance of the Tweed Heads and Coolangatta business districts, local bowls clubs, sporting fields, medical facilities and beaches of the area. The property is fully serviced by all necessary infrastructure (water, sewer, stormwater, electricity and telecommunications), and has easy access to the main roads to central Tweed Heads or South Tweed. The site and surrounding properties are zoned for general business and medium density residential. It is therefore considered that the site is suitable for the proposed development.

**(d) Any submissions made in accordance with the Act or Regulations**

Three submissions were received during the public exhibition period, which ran from 1 October 2008 to 3 November 2008. The only issue raised in all three submissions was the lack of car parking along Boyd Street, and the concern that the proposed development would add to existing parking problems.

As noted above, since being on public exhibition, the proposed carparking configuration has been modified on several occasions. The final carparking design is now considered to be acceptable, with the proposal meeting the minimum carparking requirements and no on-street loading bays permitted.

Therefore, the carparking issues raised by the submissions are considered to be satisfied. As such, the objections do not warrant refusal of the proposed development.

Department of Water and Energy

The proposed development requires dewatering for the construction of the basement levels. As such, the application was referred to the Department as Integrated Development. The Department has issued General Terms of Approval, which have been incorporated into the recommended conditions of consent.

**(e) Public interest**

It is considered that the proposed six-storey dwelling does not compromise the public interest. As stated by the applicant, a portion of the development is aimed towards students, thereby being marketable to this demographic with the nearby Southern Cross University. The proposal is generally considered to reflect the provisions of all applicable development control plans and intended development for the locality.

**OPTIONS:**

1. Approve the application, subject to the recommended conditions of consent
2. Refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the option to appeal the matter in the NSW Land and Environment Court, should they be dissatisfied with Council's resolution.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments, with an acceptable variation to Clause 50 of the Tweed LEP 2000. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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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**20 [PR-CM] Development Application DA05/0840.02 for an Amendment to Development Consent DA05/0840 for Grazing of Cattle and Associated Works at Lot 76, 272, 323, 326 DP 755701, Duranbah Road, Kings Forest**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0840 Pt3**

**SUMMARY OF REPORT:**

Council has received a Section 96 application to modify an existing development consent for grazing of cattle in the Cudgen Paddock at Kings Forest (DA05/0840.02). This application was requested to be submitted to Council by Councillor Holdom.

The existing consent approved specific grazing areas. The proposed modification seeks to extend grazing beyond the approved areas. The proposed extension areas are within areas future golf course areas approved by the Department of Planning as part of the Kings Forest Concept Plan. It is noted that the applicant has also lodged a Project Application with the Department of Planning for stage 1 bulk earthworks and golf course over this area.

The original consent allowed for grazing of a maximum of 45 cattle. The proposed modification does not increase the number of cattle allowed to graze at the site.

The application was notified and one submission was received from Department of Environment Climate Change and Water (DECCW). DECCW are concerned that despite the Concept Plan approval, the proposed extension areas are pre-emptive of any stage 1 bulk earthworks and golf course approval.

The proposal is recommended for approval with conditions. A condition is recommended to ensure that any future extension of the grazing area does not occur beyond areas approved for earthworks in the Project Application and that grazing in these areas does not commence until such time as an approval is issued by the Department for the stage 1 Project Application.

The applicant also requested an extension of the development period from three years to five years. As grazing does not yet appear to have commenced, it is considered an extension of the development period is reasonable.

**RECOMMENDATION:**

**That Development Application DA05/0840.02 for an amendment to Development Consent DA05/0840 for grazing of cattle and associated works at Lot 76, 272, 323, 326 DP 755701, Duranbah Road, Kings Forest be approved subject to amendment of the following conditions:**

1. Delete Condition No. 2 and replace it with Condition No. 2A which reads as follows:

2A The Applicant shall provide for fencing as shown on the aerial photograph prepared by Aspect North and dated 5 May 2006 showing the location of the proposed paddock fences and fences around waterbodies, attached to this consent and Marked "A." In the event that Project Application 08\_0194 is approved, the grazing area and fencing thereof may be extended to the boundaries of the grazing areas shown on the plan prepared by Land Partners titled "Proposed Amended Grazing Area" and dated 27 May 2010, only to the extent that extension areas are approved for earthworks in the Project Application 08\_0194. The extended grazing areas must be fenced into east and west paddocks, generally in accordance with Aspect North plan dated 5 May 2006 marked "A".

2. Delete Condition No. 3.

3. Delete Condition No. 5 and replace it with Condition No. 5A which reads as follows:

5A The maximum number of cattle permitted to be grazed on the subject land is 45. In this regard the maximum number of cattle permitted in the eastern paddock is 30 and the maximum number of cattle permitted in the western paddock is 15.

4. Insert new Condition No. 6.1 which reads as follows:

6.1 The broadcasting of exotic pasture species shall not occur in any new grazing areas indicated in the Land Partners plan titled "Proposed Amended Grazing Area" and dated 27 May 2010"

5. Delete Condition No. 10 and replace it with Condition No. 10A which reads as follows:

10A The development can occur for a maximum of five years from the date of commencement.



**REPORT:**

**Applicant:** Project 28 Pty Ltd  
**Owner:** Project 28 Pty Ltd  
**Location:** Lot 76, 272, 323, 326 DP 755701 Duranbah Road, Kings Forest  
**Zoning:** 2(c) Urban Expansion, 2(e) Residential Tourist, 6(b) Recreation and 7(a) Environmental Protection (Wetlands and Littoral Rainforests)  
**Cost:** N/A

**BACKGROUND:**

DA05/0840 – Consent for Grazing of Cattle and Associated Works

On 15 June 2006, Development Consent DA05/0840 was issued for grazing of cattle and associated works at the abovementioned address. The application allowed for grazing of cattle in two paddocks. Up to 30 head of cattle are allowed to graze in the eastern paddock and up to 15 head of cattle are allowed to graze in the western paddock. The consent also allowed for fencing (comprised of star pickets and electric fencing) around the paddocks, drains and waterbodies (at least 5 metres from the edge of the drain or waterbody).

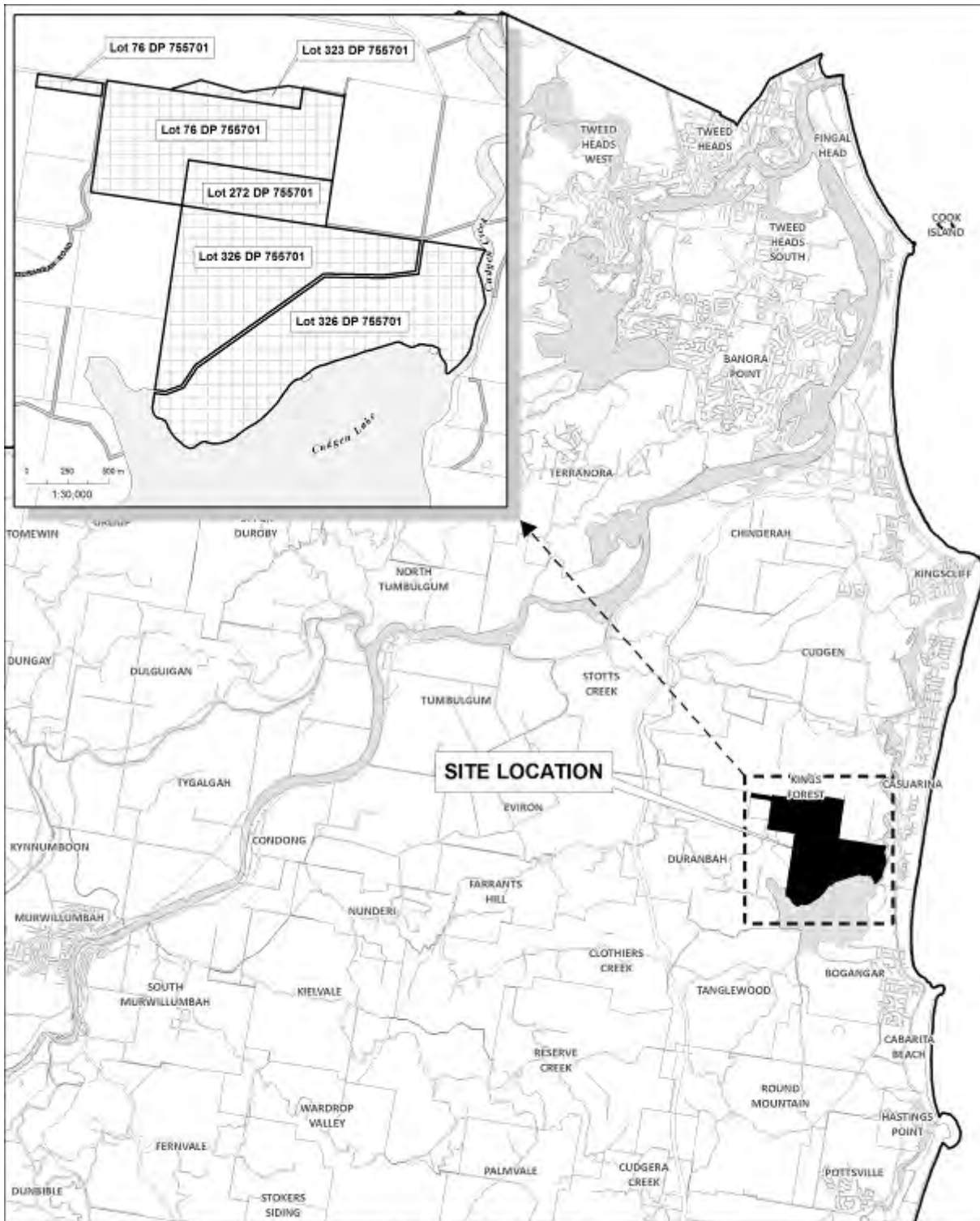
The consent provided for pasture improvement, provision of water troughs, pumped from the existing dam via polythene pipeline laid on the ground.

A section 96 amendment was subsequently approved modifying the permitted author of the required Vegetation Monitoring Programme as availability of the required specific author was an issue for the applicant.

Kings Forest Concept Plan

The Department of Planning has since approved the Kings Forest Concept Plan which includes a golf course over the area approved for grazing. A Project Application for Stage 1 bulk earthworks and reshaping of the golf course has been lodged with the Department of Planning. The Project Application has not yet been determined.

**SITE DIAGRAM:**



**Locality Plan**  
 Lots 76, 272, 323 and 326 DP 755701;  
 Duranbah Road, Kings Forest

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# PROJECT APPLICATION CONTEXT



Attachment 2

**PROPOSED MODIFICATION**

The applicant is seeking to extend the existing grazing areas to reflect the area approved for golf course in the Concept Plan.

**Figure 1 – Extract from lodged plan prepared by Landpartners indicating existing grazing area (green hatch) and approved golf course (Pink)**

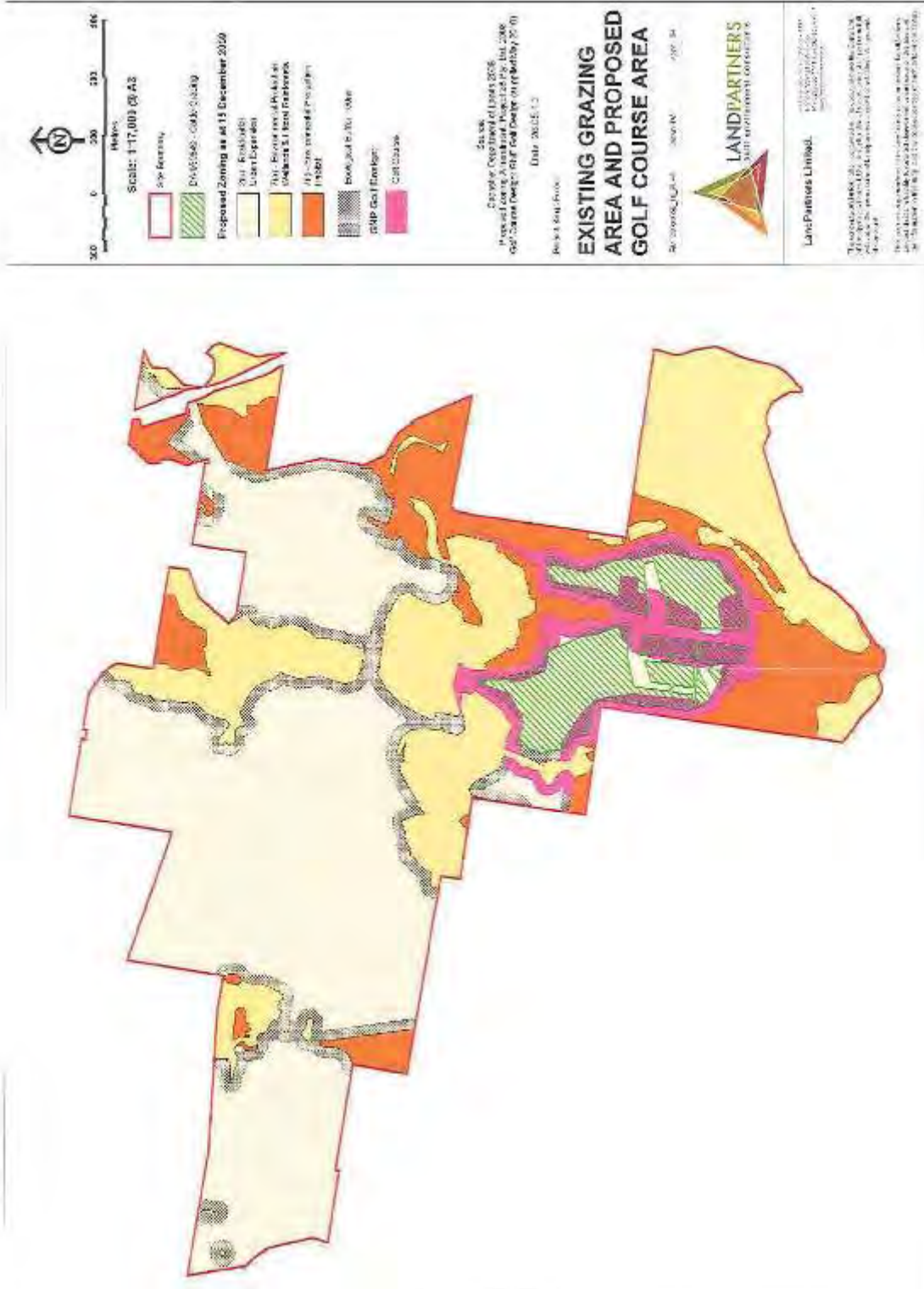
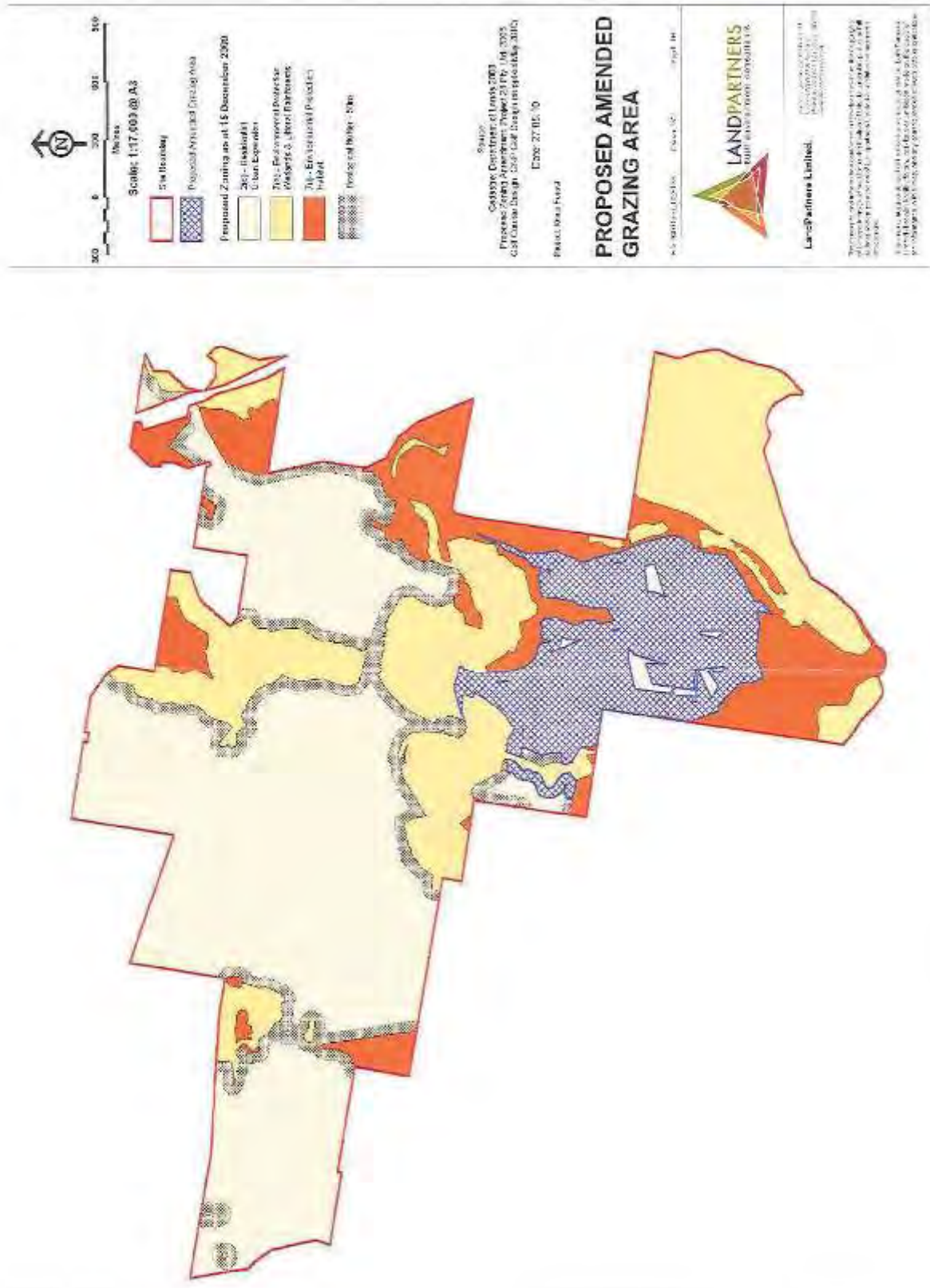




Figure 2 – Extract from submitted Landpartners plan indicating proposed extension to grazing area



The applicant has justified the proposed extension to grazing area as an interim use of the site which will ultimately be subject to future bulk earthworks to form the golf course and residential areas. The applicant also argues that the grazing area is not inconsistent with the approval of the Concept Plan.

In order to give effect to the modified grazing area, the applicant has proposed modifications to condition 2, 3 and 5 as follows:

**Condition 2** which currently reads as:

*The Applicant shall provide for fencing as shown on the aerial photograph prepared by Aspect North and dated 5 May 2006 showing the location of the proposed paddock fences and fences around waterbodies, attached to this consent and Marked "A."*

Is proposed to be amended to the following:

*The applicant shall provide fencing to the boundaries of the grazing areas as shown on the plan prepared by Land Partners titled "proposed Amended Grazing Area" and dated 27 May 2010. The area is to be divided in to an eastern and western paddock.*

**Condition 3** which currently reads:

*The activities permitted by this consent are only permitted within the land zoned for urban development in the draft Local Environmental Plan (Amendment No. 20) for Kings Forest, as ultimately determined by the Minister for Planning. The buffer areas (50metres wide) are to remain intact ie. no cattle grazing permitted in the buffer areas pending further investigation as part of the DCP for urban development in Cudgen Paddock.*

Is proposed to be deleted.

**Condition 5** which currently reads:

*The maximum number of cattle permitted to be grazed on the subject land is 45. In this regard the maximum number of cattle permitted in the eastern paddock is 30 and the maximum number of cattle permitted in the western paddock is 15, subject to such numbers being reduced proportionately to the extent, if any, that the areas of these paddocks (as indicated in the aerial photograph produced by Aspect North) are finally determined in the local Environment Plan as not suited for urban development.*

Is proposed to be modified as follows:

*The maximum number of cattle permitted to be grazed on the subject land is 45. In this regard the maximum number of cattle permitted in the eastern paddock is 30 and the maximum number of cattle permitted in the western paddock is 15.*

The applicant also seeks to modify the condition 10 which limits the consent to 3 years. It is proposed to extend the life of the consent to five years as follows:

*"The consent is valid for five years from the date of commencement of the development."*

With regard to this proposed modification, a search of the files indicates that deferred commencement conditions were satisfied on 22 February 2007. Following that, condition 9 of the consent required vegetation survey prior to commencement of the consent (in particular slashing). Condition 9 was modified on 4 June 2007 allowing for an alternate author of the vegetation survey. The applicant has verbally indicated on-site that whilst slashing has occurred on the site, actual grazing has not.

Notwithstanding, the wording in the condition places a time limitation on the "consent", Council can only lawfully limit the extent of time the development itself can occur. Given that cattle have not yet grazed on the site, it is considered reasonable to extend the time period of the development for a further 3 years from the date of commencement.

## **CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

### **Substantially the Same Development**

The proposed modifications result in essentially the same development as originally approved with extensions of grazing limited to the general vicinity of existing approved paddocks.

The proposed amendments do not increase the intensity of cattle grazing and maintains the two paddocks, fencing and ancillary works. It is considered to be substantially the same development.

## **Considerations under Section 79C of the Environmental planning and Assessment Act 1979**

### **(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

Kings Forest has been excluded from the Draft LEP and the approved Concept Plan applied.

### **(a) (iii) Development Control Plan (DCP)**

#### Tweed Development Control Plan

There are no controls within the Tweed DCP relevant to the grazing operations.

### **(a) (iv) Any Matters Prescribed by the Regulations**

N/A

### **(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

The Tweed Coast Estuaries Management Plan applies to Cudgen Creek. The proposed extension to the grazing areas will not result in additional impact on the management strategies within this plan. Additional earthworks or clearing (other than slashing of exotic species) are not proposed as part of the modification. A condition is recommended to ensure that exotic pasture is not introduced into the extension areas.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Context and Setting

Kings Forest has been subject of extensive planning and study but is currently unimproved, other than access tracks and plantations established on-site in the past. The land itself has been approved for residential development including a town centre and golf course as well as wildlife corridors within the Concept Plan approval.

Land surrounding Kings Forest, to the north, west and southwest is currently zoned Rural and Agricultural Protection and characterised by farming and grazing land. Land to the east is zoned residential and characterised by coastal village development.

The existing and proposed extension to grazing areas is not out of character with surrounding rural uses and a satisfactory interim land use prior to establishment of the future residential community planned at Kings Forest.

Flora and Fauna

The applicant has confirmed that grazing within the extended paddock areas will involve pasture improvement, including mechanical slashing and broadcasting of pasture seed. Mechanical slashing will be over existing vegetation which comprises a mix of tea trees, pine trees saplings, exotic grasses and heath vegetation of varying quality. Conditions relevant to this were applied to the original application will remain applicable to the extension areas.

A site inspection was undertaken with Council's Ecologist and the applicant. The applicant confirmed that proposed extension areas to grazing was proposed within disturbed or previously cleared sites. Site inspection revealed that substantial pine-regrowth had occurred on the fringes of the pine forested areas.

On-site discussions with Council's Ecologist indicated that pasture improvement works should be limited to those areas which are currently cleared and that no intensification of cattle grazing should occur. Relevant conditions are proposed in this regard.

It is noted that the amelioration recommendations in section 6.2 of the Flora and Fauna Assessment report approved with the original consent will be applicable to the proposed extension areas (refer condition 6 below), along with additional requirements in condition 7 below.

**Condition 6**

*The amelioration measures contained in section 6.2 of the Flora and Fauna Assessment Report are to be undertaken, namely:*



- *Two rather than three grazing paddocks to be established - on the eastern and western halves of the site (refer Fig. 5).*
- *Reduced grazing to be undertaken in the western paddock. This area is known habitat for threatened frogs (southwest) and Grass Owls (northwest).*
- *A maximum of 45 cattle to be grazed on the site: 30 in the eastern paddock and 15 in the western paddock. This is based on effective grazing rates of 1 cow per 1 hectare on good pasture. Cudgen Paddock is considered marginal grazing land, therefore the ideal grazing rate has been halved. This figure is reduced in the western paddock to minimise impacts on threatened fauna.*
- *Fencing to be erected around the perimeter of the Paddock and between the eastern and western paddock areas. All drains and waterbodies are to be fenced. Internal and external (where applicable) fencing to be installed so as to prevent impacts on waterbodies during construction (ie. star pickets and electric fence) and allow movement of Koalas (ie. greater than 250mm clearance).*
- *The corridor proposed on existing constraints maps to be maintained down the centre of the Paddock (refer Fig. 5).*
- *Effective erosion controls to be employed during fencing operations, if required, to prevent sedimentation of drains.*
- *The fencelines are to be constructed at least 5m from drains or waterbodies.*
- *Watering points to be installed at regular intervals to discourage use of the drains by cattle. Water points should be located away from areas where frogs have been recorded.*
- *Water level in the dam, drains and wetlands should be monitored so as to determine the impacts of the use of water for cattle watering. If levels become low, water should be imported for cattle use.*
- *Pasture improvement to be limited to broadcast of pasture seed. No clearing or slashing of native vegetation.*

### **Condition 7**

*The measures contained in section 6.2 of the Flora and Fauna Assessment Report are amplified by the following:*

- *The restriction on slashing of native vegetation applies to areas of predominantly native vegetation.*
- *The alignment of the perimeter fencing of the two paddocks may be slashed prior to the construction of such fencing to a width not exceeding 5m, provided that the width within areas of predominantly native vegetation shall not exceed 3m.*

Given existing condition 6 and 7 above remain relevant, and additional conditions are proposed to ensure broadcasting of exotic pasture is not undertaken, it is considered that the extension to grazing areas will not result in intensification of ecological impact.

### Extension of Time

As above, the applicant also seeks to modify the condition 10 which limits the consent to 3 years. It is proposed to extend the life of the consent to five years as follows:

*The consent is valid for five years from the date of commencement of the development.*

With regard to this proposed modification, a search of the files indicates that deferred commencement conditions were satisfied on 22 February 2007. Following that, condition 9 of the consent required vegetation survey prior to commencement of the consent (in particular slashing). Condition 9 was modified on 4 June 2007 allowing for an alternate author of the vegetation survey. The applicant has indicated slashing has occurred on the site but actual grazing has not.

Notwithstanding, the wording in the condition places a time limitation on the "consent", Council can only lawfully limit the extent of time the development itself can occur. Given that cattle have not yet grazed on the site, it is considered reasonable to extend the time period of the development for a further five years from the date of commencement.

#### **(c) Suitability of the site for the development**

The proposed extension to the grazing area is compatible with the approved grazing land use.

#### **(d) Any submissions made in accordance with the Act or Regulations**

The proposed modification was notified between 13 October 2010 and 27 October 2010. During this time period, one submission was received from the Department of Environment, Climate Change and Water (DECCW).

DECCW has objected to the proposal as it extends over areas identified as environmental buffers and threatened species habitat. DECCW is also concerned that the extension to grazing areas will pre-empt any Project Application approval for earthworks associated with the golf course and should be limited to areas which are subject to future disturbance. That is, detailed design of the golf course may limit areas in which the earthworks may occur, thereby minimise impact on the environmental buffer and threatened species habitat.

The applicant has reviewed the DECCW submission (correspondence from Darryl Anderson Consulting Pty Ltd, dated 21 December 2010) and made the following points in response:

- The modification to the grazing application is intended to provide a logical interim use of the parts of the site which are to be subject to future disturbance, due to bulk earthworks required to construct the golf course and residential development approved by the Minister in the Kings Forest Concept Plan.

- The Concept Plan includes ecological assessments, ecological management plans and related statements of commitments which relate to future development of the land.
- The proposed modification to the grazing area is consistent with the ecological assessments and disturbance required under the Concept Plan and Project Application.
- The area to be grazed is to be contained to the areas dominated by a farm track, tea tree (required to be removed under a pending court order), exotic grasses and pine tree wildlings.
- The areas of heath to be retained and naturally revegetated under the Concept Plan and Project Application are located outside the extended grazing area.
- The proposed grazing area includes 'revegetated (replanted) heath areas' indicated on approved plans accompanying the Concept Plan approval. These areas are to be replanted after the earthworks are completed and will therefore not be affected by the interim grazing use. The regeneration of these areas is enforceable under the Concept Plan approval.

In addition to the above points, the applicant has indicated they are prepared to accept an amended operational condition that delays the use of the proposed expanded grazing area until such time as the Project Application currently before the Minister is approved.

**OPTIONS:**

1. Approve the section 96 modification with suitable conditions.
2. Refuse the section 96 modification.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant may appeal any decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Council has received an application to modify an existing consent for cattle grazing at Kings Forest.

The modification relates to extension of the grazing areas around the perimeter of approved paddocks and extension of the development time period from three to five years.

The modification has been assessed and is considered to be substantially the same as the original approval and it is considered that no additional environmental impacts will arise from the modification, subject to recommended conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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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21 [PR-CM] Development Application DA09/0006.01 for an Amendment to Development Consent DA09/0006 for a Four (4) Lot Industrial Subdivision, Construction of Part of Ozone Street and Associated Drainage at Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0006 Pt3**

**SUMMARY OF REPORT:**

Council at its meeting of 14 December 2010 resolved as follows:

***“RESOLVED that:***

1. *This item be deferred to schedule a workshop during February between Council, the applicants, adjoining landholders directly affected and key community members representing Royal Pacific Caravan Park (1), Heritage Caravan Park Residents' Association (1), Chinderah Lakes Caravan Park (1), Chinderah Residents' Association (1) and the Roads and Traffic Authority.*
2. *The applicant be encouraged to pursue alternative access options.”*

A Workshop was held on 3 February 2011 with Councillors and Senior Management to discuss the development application in more detail. There is no change to the officers' original recommendation resulting from the Workshop. A full copy of the original report to Council's meeting of 14 December 2010 is reproduced below.

DA09/0006 approved a 4 lot industrial subdivision, the construction of Ozone Street from Chinderah Bay Drive to the property frontage (approximately 630m) and associated drainage works.

This application seeks to modify this consent to change the approved access arrangement by way of construction of a new road through Lot 12 DP 830659. A concurrent development application (DA10/0552) has been submitted to Council for a subdivision to create a public road and an associated acoustic fence. The modification results in approximately 320m of road construction instead of 630m.

The reasoning behind the application (provided by the applicant) is that the new access arrangement under DA10/0552 provides for:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive); and

- An improved level of orderly and economic development.

The S96 application is being reported to Council at the request of the Director, Planning and Regulation, in response to the previous Council and community interest relating to the approved DA09/0006.

**RECOMMENDATION:**

**That Development Application DA09/0006.01 for an amendment to DA09/0006 for a four (4) lot industrial subdivision, construction of part of Ozone Street and associated drainage at Lot 1 DP 102255, No. 16-18 Ozone Street Chinderah be approved subject to the conditions be amended as follows:**

**Schedule A Conditions**

1. **Condition A (Habitat Restoration Plan) is to be DELETED and replaced with Condition AA which reads as follows:**

**AA. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:**

- a schedule and timing of works to be undertaken
- written agreement from the owner of the agreed site to planting and/or restoration works on the land
- a suitable protection mechanism on the land to ensure the trees are protected in perpetuity
- a legally binding commitment by the consent holder to funding and/or undertaking the proposed works
- a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.

2. **A NEW Condition AA.1 be ADDED which reads as follows:**

**AA.1 A legally binding commitment by the consent holder to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the *Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117* prepared by Planit Consulting dated March 2010.**

3. **Condition B be DELETED.**

4. **A NEW Condition C be ADDED which reads as follows:**

**C. The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified**

acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.

4. **A NEW Condition D be ADDED which reads as follows:**
  - D. **The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.**

**Schedule B Conditions**

5. **Condition No. 1 is to be DELETED and a NEW Condition 1A is to be added which reads as follows:**
  - 1A. **The development shall be completed in accordance with the Statement of Environmental Effects and plans as follows:**

**Lot Layout Plan (T.15.21/DWG 17/Issue A) prepared by Cozens Regan Williams Prove and dated 11/10 H**

**Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.**

**Cultural Heritage Assessment prepared by Everick Heritage Consultants and dated June 2010.**
6. **A NEW GEN Condition 1A.1 be ADDED which reads as follows:**
  - 1A.1 **All conditions of DA10/0552 must be satisfied prior to release of subdivision certificate.**
7. **Condition No. 4 is to be DELETED and a NEW Condition No. 4A is to be added which reads as follows:**
  - 4A. **The level of fill placed on the site shall not exceed RL 2.2m AHD.**
8. **Condition No. 7 is to be DELETED and a NEW Condition No. 7A is to be added as which reads follows:**
  - 7A. **All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.**
9. **Condition No. 9 is to be DELETED and a NEW Condition No. 9A is to be added which reads as follows:**
  - 9A. **The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.**

### Intersection Works

- The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.
- A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.

### Road Works

- Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.
- Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

### Stormwater

- The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.

### Sewer

- All common rising mains shall be located in road reserve. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
- The pump stations are to be designed within a small compound that includes the control box and concrete slab.
- A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.



- The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.
10. Condition No. 16 is to be DELETED.
  11. Condition No. 19 is to be DELETED.
  12. Condition No. 20 is to be DELETED.
  13. Condition No. 27 is to be DELETED and a NEW Condition No. 27A is to be added which reads as follows:
    - 27A. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.
  14. Condition No. 29 is to be DELETED and a NEW Condition No. 29A is to be added which reads as follows:
    - 29A. Commencement of works in accordance with the approved Habitat Restoration Plans and legally binding agreement as detailed in Schedule A must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation within Ozone Street road reserve or the Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) within Chinderah Road road reserve.
  15. Condition No. 30 is to be DELETED and a NEW Condition No. 30A is to be added which reads as follows:
    - 30A. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.
  16. Condition No. 31 is to be DELETED and a NEW Condition No. 31A is to be added which reads as follows:
    - 31A. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.
  17. Condition No. 32 is to be DELETED and a NEW Condition No. 32A is to be ADDED which reads as follows:
    - 32A. Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.
  18. Condition No. 33 is to be DELETED and a NEW Condition No. 33A is to be added which reads as follows:

**33A. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.**

**All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.**

**19. Condition No. 46 is to be DELETED.**

**20. Condition No. 58 is to be DELETED and a NEW Condition No. 58A is to be added which reads as follows:**

**58A. All works associated with the access road and associated infrastructure are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.**

**New Conditions**

**21. The following new GEN Condition No. 4.1 be ADDED which reads as follows:**

**4.1. Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.**

**22. NEW PSC Condition No. 85 is to be ADDED which reads as follows:**

**85. Prior to issue of the subdivision certificate the acoustic barrier approved by Schedule A of this consent shall be constructed to the satisfaction of Council's General Manager or delegate.**

**23. NEW PSC Condition No. 86 is to be ADDED which reads as follows:**

**86. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plans prior to issue of subdivision certificate.**

**24. NEW DUR Condition No. 62.1 is to be ADDED which reads as follows:**

**62.1 Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.**

**REPORT:**

**Applicant:** Planit Consulting Pty Ltd  
**Owner:** Wareemba Investments Pty Ltd  
**Location:** Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah  
**Zoning:** 4(a) Industrial  
**Cost:** Nil

**BACKGROUND:**

On 22 October 2009 deferred commencement consent was granted to DA09/0006. DA09/0006 involved the subdivision of Lot 1 DP 102255 into four (4) allotments of similar size (5000m<sup>2</sup>), each with a direct frontage of 38.5m to a proposed new road pavement to be constructed along the existing Ozone Street road reserve.

The approved plans show approximately 630m of new road, from Chinderah Bay Drive along the length of the Ozone Street road reserve, terminating in a cul-de-sac at the frontage of the subject site.

The proposal also incorporated concrete lining of the drainage channel and filling of the subject site. The subject site is zoned 4(a) Industrial. No buildings or first use development was proposed on any allotment, with this to be subject to future consent.

Two deferred commencement conditions were applied, being:

- A. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 2 for 1 basis of the Swamp Oak Floodplain Forest impacted by the proposed development. The Habitat Restoration Plan must include:
  - a schedule and timing of works to be undertaken
  - a statement of commitment by the consent holder to funding the proposed works
  - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- B. An Aboriginal archaeological heritage assessment shall be prepared by a suitably qualified and experienced consultant to the satisfaction of Council's General Manager or his delegate to determine the impact of the proposed subdivision and road works. The assessment shall include consultation with the Tweed Byron Local Aboriginal Land Council and any other related stakeholders. The assessment shall also include any mitigation and management measures where required.

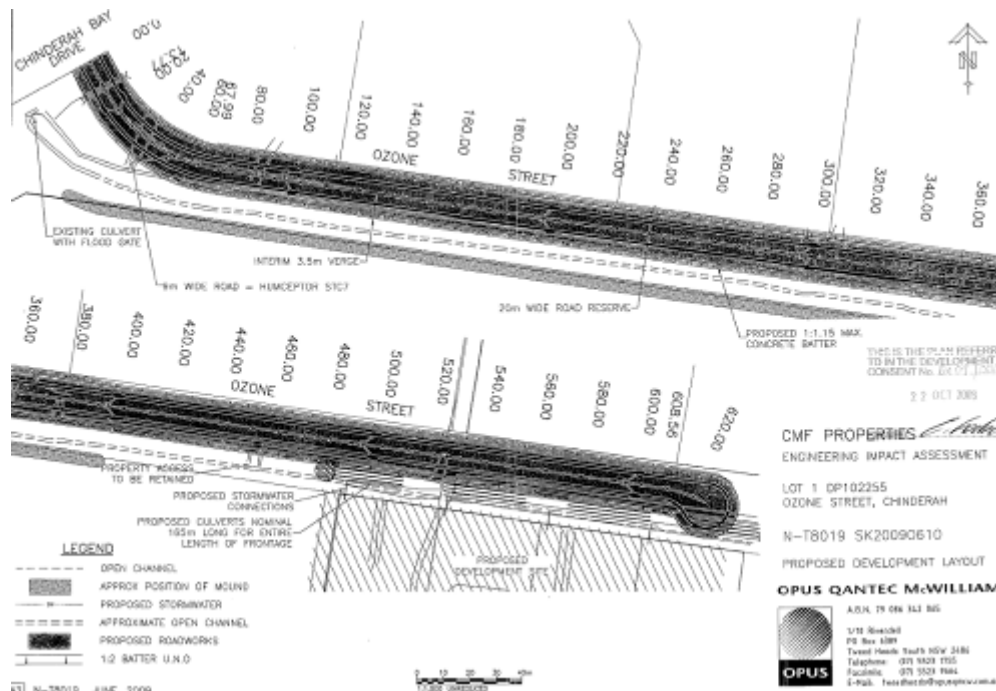
The applicant satisfied the deferred commencement conditions on 21 April 2010 and the consent has been fully operative from that date.

**Proposal**

The applicant seeks permission via a S96 application to modify the approved access arrangement, to provide vehicular access through nearby Lot 12 DP 830659 and a short section of the Ozone Street road reserve, rather than the full length of the reserve from

Chinderah Bay Drive (approximately 630m). Construction of the new road is proposed by DA10/0552, concurrently before Council.

**Existing approved Access Arrangement (from Chinderah Bay Drive)**



**Proposed Access Arrangement (under DA10/0552, via Chinderah Road and Lot 12 DP830659)**



The applicant has advised that the S96 application seeks to modify the following conditions to reflect access being obtained through Lot 12 DP 830659, instead of along the entire length of the Ozone Street road reserve:

- Deletion of Condition A 'Habitat Restoration Plan'. This condition will not be required as the modified proposal does not include the removal of any trees within the road reserve;

- Deletion of Condition B 'Aboriginal archaeological heritage assessment'. This condition has been satisfied as part of the amended development application'
- Modification of Condition No. 1 so as to reflect the proposed change of access to the four (4) lot industrial subdivision, as per the attached plans submitted with the S.96 application;
- Modification of Condition No. 9 (a) to reflect the road configuration as per amended plans, which would read 'Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 14m road reserve width;
- Deletion of Condition No. 29 as this condition will not be required as the modified proposal does not propose the removal of any trees within the road reserve;
- Modification of Condition No. 30 to include "where relevant" as follows: "A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be obtained, where relevant, prior to commencement of the works"
- Modification of Condition No. 31 to include "where relevant" as follows: "A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be obtained, where relevant, prior to commencement of the works;
- Deletion of Condition No. 46 as this is deemed to be no longer relevant in relation to the amended proposal; and
- Modification of Condition No. 58 to include reference to second letter from HMC dated 11 October 2010.

## **PLANNING ASSESSMENT**

The following comments are supplied with regard to the above requested amendments to conditions:

### Schedule A - Deferred Commencement Conditions

The applicant has requested that Condition A – Habitat Restoration Plan and Condition B – Cultural heritage assessment be deleted.

No objection is raised to the deletion of the condition relating to the Cultural Heritage Assessment as this has been satisfied. It is noted that Condition A has been modified slightly to reflect the loss of two habitat trees. Deferred commencement Conditions C and D have also been added.

### Schedule B

#### Condition 1 – Approved Plans

Condition 1 is required to be amended to reflect the revised access arrangement and presently reads:

1. *The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: SK20090604 (9m wide road) and SK20090610 (road layout) prepared by Opus Qantec McWilliam and dated June 2009, Figure 6.0 (9m wide road option 2) as amended in red, prepared by Opus Qantec McWilliam and dated November 2008, DWG 00926-01 (Proposed Subdivision Plan) prepared by Planit Consulting and dated October 2008, and the*

*Habitat Restoration Plan approved under Schedule A of this consent, except where varied by the conditions of this consent.*

Condition 1 will be DELETED a NEW Condition 1A added as follows:

**1A. The development shall be completed in accordance with the Statement of Environmental Effects and plans as follows:**

**Lot Layout Plan (T.15.21/DWG 17/Issue A) prepared by Cozens Regan Williams Prove and dated 11/10 H**

**Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.**

**Cultural Heritage Assessment prepared by Everick Heritage Consultants and dated June 2010.**

Condition 4 – Approved fill levels

Whilst not requested by the applicant, modification to Condition 4 is required to reflect the revised levels as a result of the proposed road under DA10/0552. Condition 4 presently reads:

4. *The level of fill placed on the site shall not exceed RL 2.0m AHD.*

This condition will be DELETED and REPLACED with the following Condition 4A as follows:

**4A. The level of fill placed on the site shall not exceed RL 2.2m AHD.**

Condition 7 – Fill

Condition 7 requires amendment and currently reads:

7. *All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.*

*All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.*

This condition will be DELETED and REPLACED with the following Condition 7A as follows:

**7A. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.**

Condition 9 – Civil Works

The applicant has requested Condition 9 be amended to reflect the new road arrangement proposed by DA10/0552. Condition 9 currently reads:

9. *The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils adopted Design and Construction specifications.*

*URBAN ROAD*

- (a) *Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.*

*INTERSECTION*

- (b) *Construction of an intersection layout for a basic left turn treatment in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.*

This condition will be DELETED and REPLACED with the following Condition 9A as follows:

- 9A. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.**

**Intersection Works**

- **The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.**
- **A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.**

**Road Works**

- **Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.**
- **Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.**

**Stormwater**

- **The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.**
- **The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.**

### Sewer

- All common rising mains shall be located in road reserve. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
- The pump stations are to be designed within a small compound that includes the control box and concrete slab.
- A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.
- The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.

### Condition 16 – Engineering Plans

The matters prescribed by Condition 16 have been incorporated into Condition 9A above.

**Condition 16 shall be DELETED.**

### Condition 19 – Transverse Drainage

The matters prescribed by Condition 19 have been incorporated into Condition 9A above.

**Condition 19 shall be DELETED.**

### Condition 20 – Earth Bund

Works are no longer proposed in proximity to the existing earth bund located on the southern side of the Ozone Street road reserve. The condition is no longer required.

Condition 20 currently reads:

20. Roadworks in Ozone Street shall maintain the integrity of the earth bund along the southern boundary of the road reserve.

**Condition 20 shall be DELETED.**

### Condition 27 – Acid Sulfate Soils

Existing Condition 27 requires amendment to reflect the revised ASS Management Plan and development description and currently reads as follows:

27. *Prior to the commencement of works on the access road and open drain an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009 is undertaken.*

**Existing Condition 27 is to be DELETED and REPLACED with the following Condition 27A:**

- 27A. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid**



**Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.**

Condition 29 – Habitat Restoration Plan

Condition 29 currently reads:

29. *Commencement of works in accordance with the approved Habitat Restoration Plan must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation.*

The applicant proposed to delete this condition stating that removal of trees in the road reserve was no longer required. This is incorrect and the revised access arrangement still results in the removal of approximately 600m<sup>2</sup> of Endangered Ecological Community (EEC) Swamp Oak vegetation.

Council's Environmental Health Officer has reinforced the requirement for compensation for the loss of the EEC via the approved Habitat Restoration Plan.

As such, Condition 29 will remain.

Condition 30 be DELETED and a NEW Condition 30A be added as follows:

- 30A. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.**

Condition 31 be DELETED and a NEW Condition 31A be added as follows:

- 31.A A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.**

Condition 32 be DELETED and a NEW Condition 32A be ADDED as follows:

- 32A. Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.**

Condition 33 be DELETED and NEW Condition 33A be added as follows:

- 33A. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.**

**All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.**

Condition 46 – Footpath

Condition 46 requires the provision of a concrete footpath along the length of Ozone Street. A revised footpath for the proposed new road alignment has been referenced within Condition 9A. Condition 46 is no longer required.

**Condition 46 will be DELETED.**

Condition 58 – Acid Sulfate Soils

Existing Condition 58 requires amendment to reflect the revised ASS Management Plan and currently reads as follows:

58. *All works associated with the access road and open drain are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009.*

**Condition 58 will be DELETED and REPLACED with the following Condition 58A:**

- 58A. All works associated with the access road and associated infrastructure are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.**

New Conditions

NEW GEN condition 4.1 be ADDED as follows:

- 4.1. Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.**

NEW PSC condition 85 be ADDED as follows:

- 85. Prior to issue of the subdivision certificate the acoustic barrier approved by Schedule A of this consent shall be constructed to the satisfaction of Council's General Manager or delegate.**

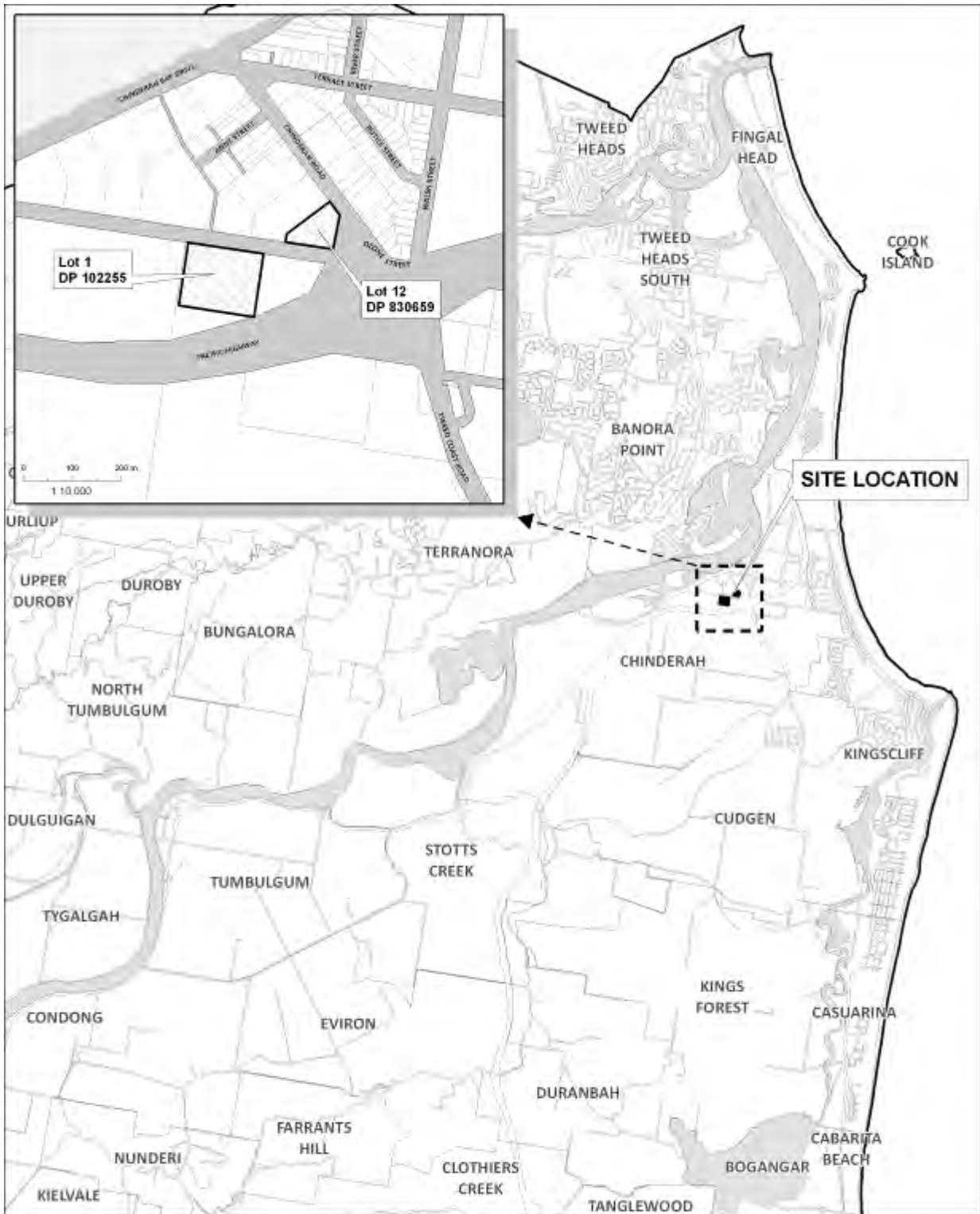
NEW PSC Condition 86 be ADDED as follows:

- 86. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plans prior to issue of subdivision certificate.**

NEW DUR Condition 62.1 shall be added as follows:

- 62.1 Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.**

**SITE DIAGRAM:**



**Locality Plan**

Lot 1 DP 102255, No.16-18 Ozone Street, Chinderah;  
 Lot 12 DP 830659, Chinderah Road, Chinderah

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council and its representatives or contractors engaged to collect, update or otherwise, do not in anyway, implicitly, constitute or warranty for any possible omission and include all responsibilities and all liability including, without limitation, liability in respect of all omissions, errors, delays (including, without limitation, consequential damage) and loss which may be incurred as a result of data being delivered in any way and for any reason. This information is supplied for the personal and non-commercial use of the user and is not intended as a "backbone" or "flag" copy and must be made by using 1:10,000. The information contained on this document remains valid for 14 days after the date of supply.</p>	<p>Dating: 30 November, 2010                  © Land and Property Management Authority (LPA) &amp; Tweed Shire Council                  Boundaries shown should be considered approximate only.</p>		<p>Civil and Cultural Centre                  3 Tumbulgan Road                  Murwillumbah NSW 2484                  PO Box 818                  Murwillumbah NSW 2484                  T   02 9579 2400   0800 292 972                  F   02 9578 2428                  W   www.tweed.nsw.gov.au                  E   planning@tweed.nsw.gov.au</p>
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**DEVELOPMENT PLAN:**



**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

The 4 lot industrial subdivision was the subject of detailed assessment under DA09/0006 with regard to the heads of consideration prescribed by S79C of the Environmental Planning and Assessment Act 1979.

The subject S96 application remains consistent with such matters as detailed below (only relevant matters have been addressed).

**(a) (i) The provisions of any environmental planning instrument**

Tweed Local Environmental Plan 2000

The proposed development remains consistent with the Clause 44 of the Tweed Local Environmental Plan. It is noted that a revised Cultural Heritage Assessment was submitted for DA10/0552 which confirmed that the occurrence of aboriginal cultural or heritage items within the new road location was unlikely (as per Clause 44). The Department of Environment, Climate Change and Water reviewed the heritage assessment and recommended general terms of approval to form conditions of consent in the event that any cultural items were uncovered during construction works for the proposed new road. Such conditions have been applied to DA10/0552 with a new condition added to the S96 to the effect that:

*Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.*

The deferred commencement consent condition (Schedule A) previously applied with regard to Clause 44 is proposed to be deleted as part of this S96 as it is no longer required.

State Environmental Planning Policy 71 – Coastal Protection

The proposed development remains consistent with SEPP 71. It is noted that compensation for the loss of approximately 600m<sup>2</sup> of the Endangered Ecological Community (EEC) vegetation will be enforced via the approved Habitat Restoration Plan for Lot 1 DP 285117, Elsie Street, Banora Point which formed part of the deferred commencement conditions for the original development application. An additional condition has also been applied by Council's Ecologist to the effect that provision of a legal agreement requiring compensatory restoration work to be undertaken (in accordance with the approved plan for the Elsie Street site under DA09/0006) and/or funded by the owner of the industrial subdivision lot for a five year period is required. This has been inserted as a new condition.

Conditions relating to implementation of the plan remain.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

The draft TLEP 2010 maintains the industrial zoning of the subject site.

**(a) (iii) Development Control Plan (DCP)**

Development Control Plan Section A3 - Development of Flood Liable Land

The parent site is flood prone to a design level of RL 3.3m AHD. Ground levels on the site range from RL1.42m to RL1.82m. Approximately 0.5m of fill was approved to be imported onto the site under the parent application.

Condition 4 will be amended to reflect fill to 2.2m over the parent site (approximately 0.7m fill) instead of 2.0m as originally approved to ensure uniformity with the proposed road under DA10/0552.

The proposal remains consistent with DCP A3.

Development Control Plan Section A11 – Public Notification of Development Proposals

Amendments were made to the above policy as a result of DA09/0006 in order to notify permanent occupiers of caravan parks and manufactured home estates in the same way as landowners.

The S96 application was advertised for a period of fourteen (14) days from 2 October to 20 October 2010. During this period, nil submissions were received with respect to the S96. It is noted that numerous submissions were received for the concurrent DA10/0552 which have been addressed in detail in that report.

**(a) (iv) Any Matters Prescribed by the Regulations**

The proposal remains consistent with all matters prescribed by the Regulations.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Access, Transport and Traffic

Proposed access to the 4 lot subdivision is via a new road 320m in length constructed to an urban wider access standard. The proposed road will be accessed via Chinderah Drive, following the Ozone Street road reserve alignment and terminating in a cul-de-sac. Part of the proposed road is constructed over Lot 12 DP 830659 (the subject lot associated with this development application) and the Ozone Street reserve.

Development application DA09/0006 currently has an approved 9m wide road pavement within the Ozone Street reserve. The actual width of the Ozone Street road reserve is 30.18m. Industrial road standards generally require a 13m wide pavement. The rationale for the 9m wide pavement is that a reduced width requires less construction works to create a level platform for the road and associated drainage. A 9m wide pavement is considered adequate to service the 4 lot subdivision.

An existing drain is located on the southern side of the road reserve. A series of 3 x 1500 x 750 box culverts from Ozone Street to Lot 1 DP 102255 has been proposed over the open drainage channel. Two x 30m access points are provided to the 4 allotments, each individual access being 15m in width, being suitable for an industrial subdivision.

Council's road design specifications for a cul-de-sac specify that the maximum length is 120m. Due to site constraints and the distance required to access Lot 1 DP 102255, it is considered that the 320m length road is acceptable.

Appropriate amendments have been made to the consent to accommodate the above.

**Swamp Oak EEC**

The overall impact on the Swamp Oak is stated within the Flora and Fauna Assessment as removal of some 300m<sup>2</sup> of the community, although this has

recently been verbally updated by the consultant planner to 600m<sup>2</sup>. Although this aspect requires a more accurate calculation (by GIS measure it may be over 1000m<sup>2</sup>), on balance there will be a lesser impact on the EEC than the previous proposal, which was estimated to require removal of some 4500m<sup>2</sup> of EEC.

The other important benefit from an ecological perspective is that impacts within the drainage channel itself (a tidal channel providing habitat for aquatic species) will be limited to two large culverts to enable the two drain crossing points to be established into the industrial lot, rather than halving the channel width and concrete lining the bed and one bank as was previously proposed/approved. Thus water quality within the channel and subsequently flowing to the adjacent Tweed River is at significantly lower risk from export of sediment and acidic runoff (arising from disturbance of potential acid sulfate soils) and in-stream habitat values, including mangroves, are unlikely to be lost.

Thus the formation of a smaller portion of the Ozone Street road reserve in a section further from the Tweed River with significantly reduced impacts on the channel alignment is seen as an ecological benefit. It does not however, obviate the need to compensate for loss of EEC. Verbal agreement to implement the approved compensatory project has been given by the consultant planner but caution is required because:

- consent in writing from the owner of the industrial lot to the financial implication arising from the compensatory project has not yet been received;
- it is not a straightforward matter to tie the off-site works to the consent amendment in a way which will ensure the compensatory works (which span a five year time frame) will be undertaken and maintained to form a suitable offset, particularly once permission to clear the existing EEC has been given, and
- the quantity of compensation has not yet been agreed.

Deferred commencement conditions have been applied to address the above matters.

### **Forest Red Gum and Pink Bloodwood**

Whilst a reduced impact is seen along and adjacent the drainage channel in comparison to the previous access road alignment from Chinderah Bay Drive, additional impact occurs with the loss of two semi-mature trees from the road reserve area of Chinderah Road. The trees are a Forest Red Gum (*Eucalyptus tereticornis*) and a Pink Bloodwood (*Corymbia intermedia*) (Plate 1). These two species of tree are known to be two of four main species associated with another floodplain Endangered Ecological Community known as *Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion*. The NSW Scientific Committee determination for the community states:

*Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion is the name given to the ecological community associated with clay-loams and sandy loams, on periodically inundated alluvial flats, drainage lines and river terraces associated with coastal floodplains.*

*The structure of the community may vary from tall open forests to woodlands, although partial clearing may have reduced the canopy to scattered trees. Typically these forests and woodlands form mosaics with other floodplain forest communities and treeless wetlands, and often they*

*fringe treeless floodplain lagoons or wetlands with semi-permanent standing water (e.g. Pressey 1989a).*

*Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion has a tall open tree layer of eucalypts, which may exceed 40 m in height, but can be considerably shorter in regrowth stands or under conditions of lower site quality. While the composition of the tree stratum varies considerably, the most widespread and abundant dominant trees include Eucalyptus tereticornis (forest red gum), E. siderophloia (grey ironbark), Corymbia intermedia (pink bloodwood) and, north of the Macleay floodplain, Lophostemon suaveolens (swamp turpentine).*

Both trees provide known forage habitat for nectar-reliant species including the Grey-headed Flying Fox (a threatened species), Rainbow Lorikeets and Eastern Rosellas. Forest Red Gums are a favoured food tree for Koalas and Chinderah is an area known to support a Koala population, at least until recently. Thus the trees are significant despite their position and all efforts to retain them were requested during assessment. It appears that the access road is unlikely to meet minimum engineering standards in terms of distance from the roundabout if the trees are to be retained. In the absence of clear evidence of present reliance on the trees for roosting or as part of a home range by Koalas or other threatened species, it is unlikely that the loss of the two trees could successfully be argued as causing a significant impact on threatened species, populations or ecological communities whereby the development could be refused. However, the significance of the trees requires compensation at the least. A ratio of 10:1 (gained:lost) is considered appropriate due to the size and age of the trees and the known habitat value they provide, where planting and re-establishment of trees of such size will take time and care.

A suitable site for establishment of replacement trees is the residue lot created after the access road through Lot 12 DP 830659 is severed. The planning consultant has indicated reluctance to impose restriction on this site and no alternative site has been nominated. Whilst Council's preference is the residue lot because it is adjacent and of suitable soil type and elevation, a suitable alternative may be considered. The uncertainty over this aspect requires deferring commencement until this issue is satisfactorily agreed and a condition has been applied accordingly.

The following deferred commencement conditions have been applied to address all matters raised above. It is noted that such conditions apply also to DA10/0552. The previous deferred commencement condition relating to the Habitat Restoration Plan for the Swamp Oak EEC has been satisfied and has been replaced by the similar need for a plan for the loss of the Forest Red Gum and Pink Bloodwood.

1. *A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (Eucalyptus tereticornis) and Pink Bloodwood (Corymbia intermedia) impacted by the proposed development. The Habitat Restoration Plan must include:*
  - *a schedule and timing of works to be undertaken*
  - *written agreement from the owner of the agreed site to planting and/or restoration works on the land*



- *a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
  - *a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
  - *a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*
2. *A legally binding commitment by the consent holder to funding and/or undertaking an sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.*

### Traffic Noise

Traffic noise from the proposed access road under DA10/0552 has the potential to impact upon adjacent land zoned 2(a) Low Density Residential used for the purposes of residential living and a caravan park. The proposal is supported by a Noise Level Impact Assessment (NLIA) prepared by Craig Hill Acoustics and dated 6 July 2010. Council's Environmental Health Officer has reviewed this report and advised that it has been prepared in general accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999.

Several submissions have been received from property owners relating to the generation of traffic noise from the proposed access road. The NLIA indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the NLIA indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 are anticipated.

The existing caravan park is located immediately adjacent to the proposed access road. Modelling undertaken by the NLIA indicates that potential daytime (7:00am to 10:00pm) noise impacts will exceed the noise criteria detailed in the NSW EPA Environmental Criteria for Road Traffic Noise 1999. It is proposed to mitigate potential noise impacts below the relevant noise criteria by constructing a 2.5m acoustic barrier along the entire length of the access road.

Modelling undertaken in the NLIA also indicates that there will be significant noise impacts during night time periods (10:00pm – 7:00am) without a further increase in the height of the acoustic barrier to 4-6.5m. Council's planning officers have concerns with regard to the visual amenity of a 4-6m high fence and as such, night time traffic noise will be further addressed and controlled via conditions during the assessment of any development applications for future industrial land uses on the site.

Council's Environmental Health Officer has advised that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. As above, night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses.

With regard to the timing of the proposed acoustic wall, the following condition has been applied:

*Prior to issue of the subdivision certificate the acoustic barrier referenced within Schedule A of DA10/0552 and detailed in the Noise Level Impact Assessment prepared by Craig Hill Acoustics (REV 3 - 25/11/10) shall be constructed to the satisfaction of Council's General Manager or delegate.*

The proposed modified access arrangement is therefore considered to be acceptable with regard to traffic noise.

#### Acid Sulfate Soils (ASS)

Council's ASS Planning Map indicates that the site is class 3 land. The submitted plans indicate that excavations to approximately 2m below ground level are proposed for the construction of culverts and therefore ASS are anticipated to be encountered. The proposal is anticipated to have a lesser impact on ASS than the previously approved access road approved by DA09/0006. An amended Acid Sulfate Soil Management Plan has been prepared by HMC Environmental Consulting dated 26 November 2010. The management plan has been prepared in general accordance with the Acid Sulfate Soil Manual 1998 and is considered adequate. Amended conditions have been applied as follows:

Existing Condition 27 be replaced with the following Condition 27A:

*27A. Prior to the commencement of works on the access road and associate infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.*

Existing Condition 58 be replaced with the following Condition 58A:

*58A. All works associated with the access road and associated infrastructure is to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.*

#### **(c) Suitability of the site for the development**

The site is considered to remain suitable for the development.

#### **(d) Any submissions made in accordance with the Act or Regulations**

No submissions were received during the exhibition period.

#### **(e) Public interest**

The proposed development remains largely as approved, with the proposed road reconfiguration being the only amendment. The proposed amended road design results in less clearing, less road construction and less loss of Endangered Ecological Community (EEC) vegetation along the road reserve. The applicant has indicated that rehabilitation of the Elsie Street site will still be undertaken in accordance with the approved Habitat Restoration Plan and that the two trees (Forest Red Gum and Pink Bloodwood) to be removed from the road reserve at the intersection of the proposed new road and Chinderah Road will be compensated for via a deferred commencement condition (applied to DA10/0552 and the subject S96) to negotiate a suitable site (ideally on the residual allotment). Based on such outcomes and the detailed assessment presented above, the proposal is considered to be in the public interest.

**CONSIDERATIONS UNDER SECTION 96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

S96(1A) of the Act specifies that a consent authority can modify the development consent only if it is satisfied that the proposed modified development is of minimal environmental impact, is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

**Minimal Environmental Impact**

The proposed modification has been reviewed by Council's Development Assessment Engineer, Environmental Health Officer and Ecologist. Comments received by each officer confirm that the revised access arrangement under DA10/0552 generally results in lesser environmental impacts than the previously approved DA09/0006. The modified access arrangement results in lesser impact on the Endangered Ecological Community and offsetting of the (reduced) EEC loss is still proposed to be compensated for via the approved Habitat Restoration Plan approved as part of the deferred commencement conditions for DA09/0006. A reduced amount of road construction (320m instead of 630m) is now proposed. As such, the footprint of the development can be seen to have decreased.

The proposal is therefore considered to have minimal environmental impact.

**Substantially the Same Development**

The proposed development remains a four lot industrial subdivision which requires construction of an access road within a dedicated road reserve (though part of the road is now proposed to be constructed through adjoining private property). Loss of EEC vegetation is still proposed though on a lesser scale, to be compensated for as per the approved Habitat Restoration Plan.

The proposal is therefore considered to be substantially the same development.

**OPTIONS:**

1. Approve the application in accordance with the recommended modified conditions, subject to the approval of DA10/0552.
2. Refuse the application for specified reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the ability to appeal the decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed modified access arrangement is considered to be substantially the same development as that originally approved under DA09/0006 however with reduced environmental impacts. The application is considered to be worthy of approval, subject to satisfaction of the recommended deferred commencement conditions which will result in a net environmental gain in time, secure funding for Council's ongoing maintenance of the proposed acoustic fence and enable comprehensive assessment to be undertaken of the

proposed fence design. As such, the subject S96 application is considered to be worthy of approval as per the recommended modified conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Council report relating to DA09/0006 (ECM 28176395)
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**22 [PR-CM] Development Application DA10/0552 for a Proposed Subdivision to Create a Public Road, Associated Acoustic Fencing and Residual Lot at Lot 12 DP 830659, Chinderah Road, Chinderah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0552 Pt3**

**SUMMARY OF REPORT:**

Council at its meeting of 14 December 2010 resolved as follows:

***“RESOLVED that:***

- 1. This item be deferred to schedule a workshop during February between Council, the applicants, adjoining landholders directly affected and key community members representing Royal Pacific Caravan Park (1), Heritage Caravan Park Residents' Association (1), Chinderah Lakes Caravan Park (1), Chinderah Residents' Association (1) and the Roads and Traffic Authority.*
- 2. The applicant be encouraged to pursue alternative access options.”*

A Workshop was held on 3 February 2011 with Councillors and Senior Management to discuss the development application in more detail. There is no change to the officers' original recommendation resulting from the Workshop. A full copy of the original report to Council's meeting of 14 December 2010 is reproduced below.

Consent is sought for a subdivision to create a public road, road construction, associated acoustic fencing and a residual lot at Lot 12 DP 830659, Chinderah Road Chinderah.

The public road is proposed to facilitate access to an industrial zoned allotment (Lot 1 DP 102255) which was the subject of DA09/0006. DA09/0006 approved the subdivision of Lot 1 DP 102255 into four (4) lots of approximately 5000m<sup>2</sup> each, as well as the construction of Ozone Street from Chinderah Bay Drive to the frontage of the subject site (approximately 630m<sup>2</sup>).

The proposed road constitutes a two lane public road, 320m in length constructed to an urban wider access standard. The proposed road will be accessed via Chinderah Road and terminate in a cul-de-sac at the frontage of Lot 1 DP 102255. The proposed road **replaces** the road approved as part of DA09/0006. A concurrent S96 modification to DA09/0006 has been submitted to delete the previously approved road and is also before Council.

A 2.5m high acoustic fence is proposed along the boundary of Lot 12, the road reserve and adjoining Lot 109 DP 755701, the Royal Pacific Tourist retreat. Two (2) deferred commencement conditions have been applied with regard to the proposed fence as follows:

*‘The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on*

*adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.*

*The developer shall submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets'.*

The first condition is to ensure that the proposed fence can comply with the provisions of Council's DCP A3 with regard to permitting the free flow of flood water. The second condition relates to the dedication of the new road reserve and acoustic fence to Council. To date, no detail on asset ownership/maintenance has been supplied by the applicant.

The residual lot has an area of 3525m<sup>2</sup>. No end use of this lot has been proposed though it is noted that the draft LEP reinforces the low density residential zoning the site currently exhibits.

Approximately 3000m<sup>2</sup> of fill material is to be exported to the site for allotment filling to achieve the required levels for road and drainage purposes. This equates to approximately 0.5m of fill across Lot 12 (to RL 2.2m AHD). Finished levels of the road range from 1.56m AHD (near proposed intersection with Chinderah Road) to 2.025m AHD along the northern side of the proposed road within the Ozone Street road reserve.

Approximately 600m<sup>2</sup> of the existing Endangered Ecological Community (EEC) along the drain requires removal and the road construction also requires the removal of two large habitat trees at the proposed intersection with Chinderah Road, being Forest Red Gum and Pink Bloodwood. The following deferred commencement conditions have also been applied with regard to ecological matters:

*'A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:*

- a schedule and timing of works to be undertaken*
- written agreement from the owner of the agreed site to planting and/or restoration works on the land*
- a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
- a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
- a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*

*A legally binding commitment by the consent holder to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010'.*

Council's Environmental Health Officer, Traffic Engineer, Development Assessment Engineer and Ecologist have reviewed the application.

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The application is being reported to Council at the request of the Director, Planning and Regulation in response to previous Council and community interest in the approved DA09/0006.

**RECOMMENDATION:**

**That Development Application DA10/0552 for a proposed subdivision to create a public road, associated acoustic fencing and residual lot at Lot 12 DP 830659, Chinderah Road, Chinderah be approved subject to the following conditions:**

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.**

**Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".**

**SCHEDULE "A"**

**Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.**

- A. The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.**
- B. The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.**
- C. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:
  - a schedule and timing of works to be undertaken**
  - written agreement from the owner of the agreed site to planting and/or restoration works on the land**
  - a suitable protection mechanism on the land to ensure the trees are protected in perpetuity**
  - a legally binding commitment by the consent holder to funding and/or undertaking the proposed works****

- a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- D. A legally binding commitment by the developer to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the *Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117* prepared by Planit Consulting dated March 2010.

**SCHEDULE B**

**NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects, plans approved by Schedule A of this consent and plans as detailed in the table below, except where varied by the conditions of this consent.

Title	Drawn	Dated
Proposed Subdivision Plan DWG Ozonest_sub_01/Rev 1	Planit Consulting	11/2010
Proposed industrial subdivision civil works plan – preliminary (SK5/Issue A)	Cozens Regan Williams Prove	07/2010
Proposed industrial subdivision intersection detail (SK7/Issue A)	Cozens Regan Williams Prove	07/2010

2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.
- [GEN0125]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.
- [GEN0135]
4. The level of fill placed on the site shall not exceed RL2.2m AHD.
- [GENNS01]
5. Department of Environment, Climate Change and Water General Terms of Approval
- The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.
  - In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further



impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives and the archaeologist to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.

- An application for a Care and Control Permit must be lodged along with any application for any Aboriginal objects that are located and moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified in the consultation process and is to provide evidence of the support with any application for a care and control permit.
- If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are to be contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.
- The applicant must continue to consult with and involve all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.
- The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.

[GENNS02]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision/Occupation Certificate is issued.

[PCC0275]

7. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been

paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

8. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

[PCC0485]

9. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

10. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

#### Intersection Works

- (a) The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.
- (b) A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.

#### Road Works

- (c) Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.
- (d) Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

#### Stormwater

- (e) The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- (f) The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles.

**Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.**

**Sewer**

- (g) All common rising mains shall be located in road reserve. The developer shall provide a connection for each lot to be serviced by pressure sewer within the lot to be served in accordance with Council's standard specifications and drawings. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.**
- (h) All lots within the development shall be provided with a connection to Council's Sewerage System.**

**General**

- (i) Any works associated with the Ozone Street road construction that encroach on private land require the written consent of the affected landholder(s). A copy of the consent(s) shall be submitted to the PCA prior to the works being undertaken.**

[PCC0875]

- 11. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.**

- (a) copies of compliance certificates relied upon**
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:**
  - earthworks**
  - roadworks/furnishings**
  - stormwater drainage**
  - water supply works**
  - sewerage works**
  - landscaping works**
  - sedimentation and erosion management plans**
  - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)**

**The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.**

[PCC0985]

- 12. Permanent stormwater quality treatment shall be provided in accordance with the following:**

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 – Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 – Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

13. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

14. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan shall be compiled in collaboration with the owners of adjoining Lot 109 DP 755701 and submitted plan shall include landscaping along both sides of the acoustic fence (i.e.: within Lot 12 DP 830659 and adjoining Lot 109 DP 755701) for the entire length of the road reserve.

Prior to installation of such landscaping, written owners consent from the owners of Lot 109 DP 755701 shall be obtained.

[PCCNS01]

#### **PRIOR TO COMMENCEMENT OF WORK**

15. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

16. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further

blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

[PCW0375]

17. Civil work in accordance with a development consent must not be commenced until:-
- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
    - (i) the consent authority, or
    - (ii) an accredited certifier, and
  - (b) the person having the benefit of the development consent:
    - (i) has appointed a principal certifying authority,
    - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
      - C4: Accredited Certifier – Stormwater management facilities construction compliance
      - C6: Accredited Certifier – Subdivision road and drainage construction complianceThe SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and
    - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
    - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
  - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

18. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

19. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision

of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

20. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.

[PCWNS01]

21. Commencement of works in accordance with the approved Habitat Restoration Plans and legally binding agreement as detailed in Schedule A must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation within Ozone Street road reserve or the Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) within Chinderah Road road reserve.

[PCWNS02]

#### **DURING CONSTRUCTION**

22. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

23. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

24. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

- A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

**B. Long term period - the duration.**

**$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.**

[DUR0215]

- 25. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

**The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.**

[DUR0795]

- 26. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.**

[DUR0815]

- 27. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**

[DUR0985]

- 28. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.**

[DUR0995]

- 29. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -**

- Noise, water or air pollution**
- dust during filling operations and also from construction vehicles**
- material removed from the site by wind**

[DUR1005]

- 30. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.**

[DUR1045]

- 31. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**

[DUR1795]

32. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
  - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
  - (c) That site fill areas have been compacted to the specified standard.
  - (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

33. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
  - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

34. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

35. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:-

**Roadworks**

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections - on maintenance



(i) Off Maintenance inspection

**Water Reticulation, Sewer Reticulation, Drainage**

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

36. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

37. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

38. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

39. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

40. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures,

make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

41. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.

[DUR2425]

42. All works associated with the access road and associated infrastructure is to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

43. Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.

[DURNS01]

#### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

44. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

45. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Council's contributions sheet and Certificate of Compliance signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

**Sewer Kingscliff: 1 ET @ \$5295 per ET \$5295**

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT**

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

[PSC0165]

46. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

47. A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

48. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

49. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

50. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

51. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow."

- (c) A Positive Covenant for each allotment sewered by a pressure sewer system, enabling Tweed Shire Council with rights to construct, install and maintain the pressure sewerage infrastructure in accordance with the following terms:

**TERMS OF PUBLIC POSITIVE COVENANT**

1. *Pressure sewerage reticulation infrastructure is to be constructed within the land referred to herein and such infrastructure will comprise a pump station, valve pit, control panel and associated pipelines excluding gravity house connections and plumbing,*
2. *Such infrastructure is to be supplied by Tweed Shire Council at commencement of construction of a dwelling on the land referred to herein.*
3. *All costs in relation to the installation of the pressure sewer reticulation infrastructure within the land referred to herein will be borne by Tweed Shire Council.*
4. *The control panel for the pumping station is to be wired into the household switchboard by a registered electrician and all electricity to operate the control panel and pump station shall be supplied from the household switchboard. All costs in relation to the running of the pressure sewerage reticulation are to be borne by the registered proprietor.*
5. *The pressure sewer infrastructure will at all times remain the property of Tweed Shire Council to be inspected, serviced, repaired and maintained in good working order only by Tweed Shire Council*
6. *Tweed Shire Council shall have the right to enter upon the land referred to herein with or without equipment, at all reasonable times to inspect, construct, repair, service and maintain in good working order all pressure sewerage reticulation infrastructure in or upon the said land pursuant to "Power of Entry" provisions under sections 191 and 191A of the NSW Local Government Act, 1993. This right to enter is restricted to the land in which the pressure sewerage infrastructure is placed for the time being and includes any points of egress or ingress to or from the said land.*
7. *The registered proprietor of the land referred to herein shall not construct any type of development, including external buildings, swimming pools or permanent structures which may interfere with the sewerage reticulation infrastructure, or impede access to any part of the sewerage reticulation infrastructure for the purposes of repair, maintenance and service.*
8. *If at any time it becomes necessary to relocate any part of the sewerage reticulation infrastructure for the purposes of construction of external buildings, swimming pools or building extensions and/or modifications Tweed Shire Council will not object to the relocation of the existing sewer pump station or associated pipeline providing that the registered proprietor makes the necessary application to Tweed Shire Council as the consent authority to modify the existing sewerage reticulation*

*infrastructure and upon the registered proprietor obtaining development consent to do so. The registered proprietor will bear all costs in relation to the application and the re-location which is to be carried out by Tweed Shire Council.*

9. *The registered proprietor shall be responsible for notifying Tweed Shire Council when maintenance, repair, relocation or service is necessary on the sewerage reticulation infrastructure.*
10. *Should any part of the sewerage reticulation infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.*
11. *The registered proprietor shall indemnify Tweed Shire Council and any adjoining landowners against any damage and injury to their land, property or person arising from the failure of any component of the sewerage reticulation infrastructure due to the negligent use or misuse of the sewerage reticulation system by the registered proprietor or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor.*
12. *Tweed Shire Council shall indemnify the registered proprietor against all damage and injury to property and person (including any damage to the land referred to herein and any land adjacent to the land referred to herein) arising from the failure of any component of the sewerage reticulation infrastructure and its construction, inspection, repair, service and maintenance and or in entering upon and occupying the subject property for such purposes.*
13. *Any reference to Tweed Shire Council, excepting as consent authority, means its employees, agents, contractors, servants."*

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

52. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

53. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

54. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Sewerage Pump Station
- (e) Compliance Certificate - Drainage

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

55. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

56. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and sewerage system installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

57. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.

[PSC1115]

58. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

59. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

60. For each lot serviced by a pressure sewer system, a capital contribution of \$14,800 shall be provided for the installation of each individual pressure sewer pump station prior to the issue of the subdivision certificate. Tweed Shire Council will then install the pump station at a suitable location within each lot at the building stage.

[PSCNS01]

61. Primary weeding and/or planting and establishment must be completed in accordance within approved Habitat Restoration Plans prior to issue of subdivision certificate.

[PSCNS02]

62. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.

- 63. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.**
- 64. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water.**



**REPORT:**

**Applicant:** Planit Consulting Pty Ltd  
**Owner:** Redback Enterprises Pty Ltd  
**Location:** Lot 12 DP 830659, Chinderah Road Chinderah  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$350,000

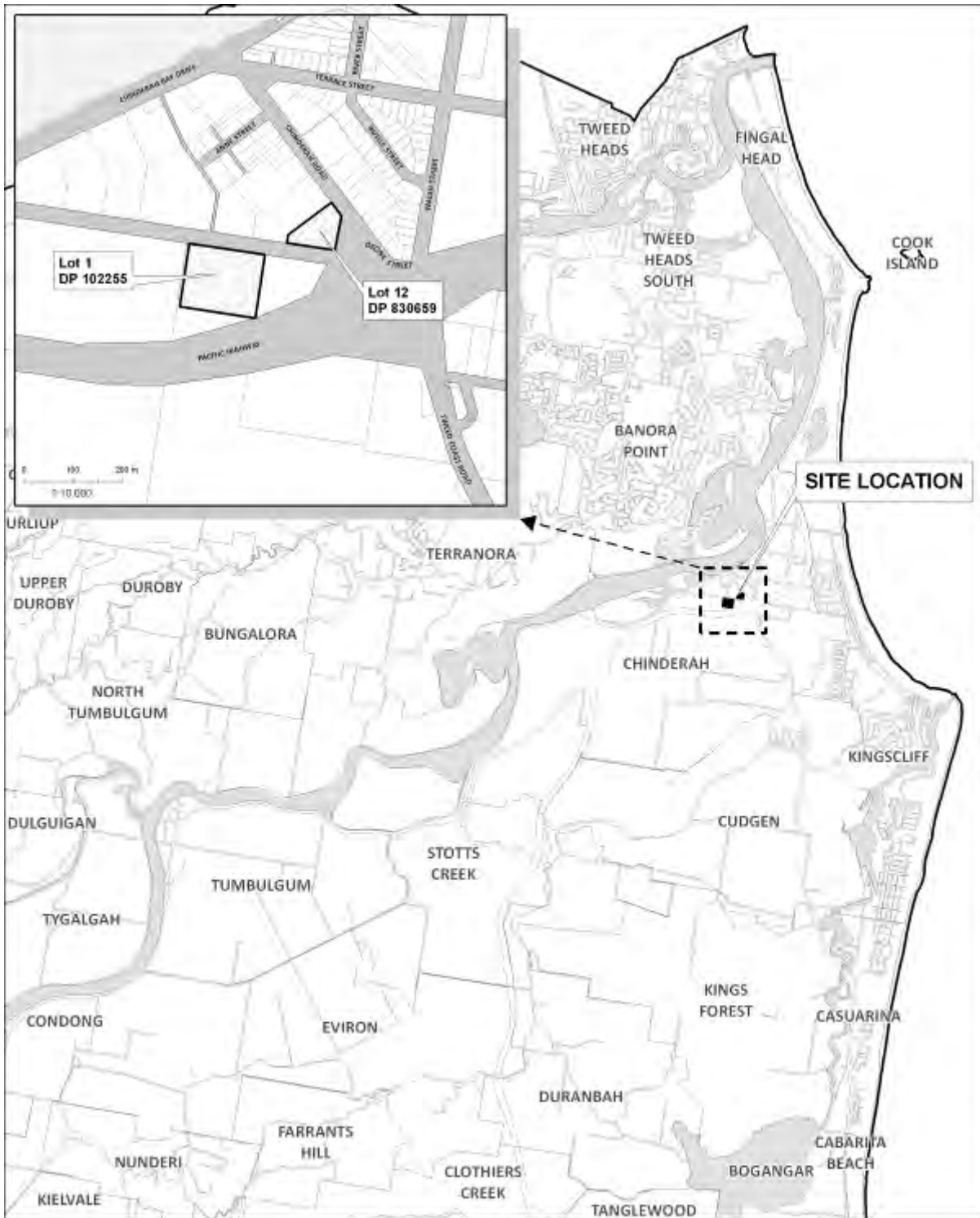
**BACKGROUND:**

This application relates to DA09/0006 which approved a 4 lot industrial subdivision, the construction of Ozone Street from Chinderah Bay Drive to the property frontage (approximately 630m<sup>2</sup>) and associated drainage works. A S96 application to modify this consent has been submitted to change the approved access (obtained via new road through Lot 12 DP 830659, involving construction of only a small component of Ozone Street) instead of along the previously approved length of Ozone Street.

The reasoning behind the application (provided by the applicant) is that DA10/0552 provides for:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive; and
- An improved level of orderly and economic development.

**SITE DIAGRAM:**



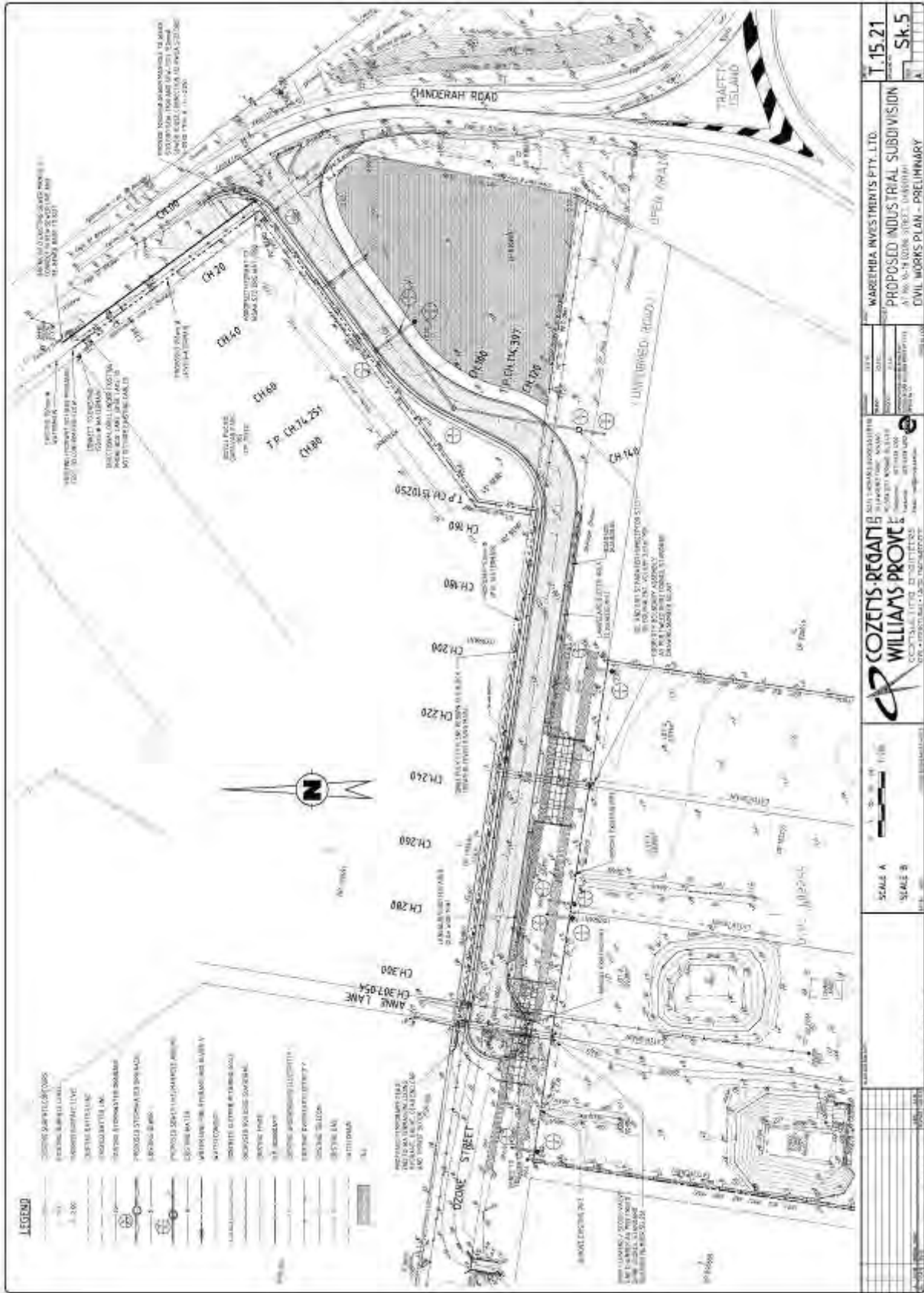
**Locality Plan**

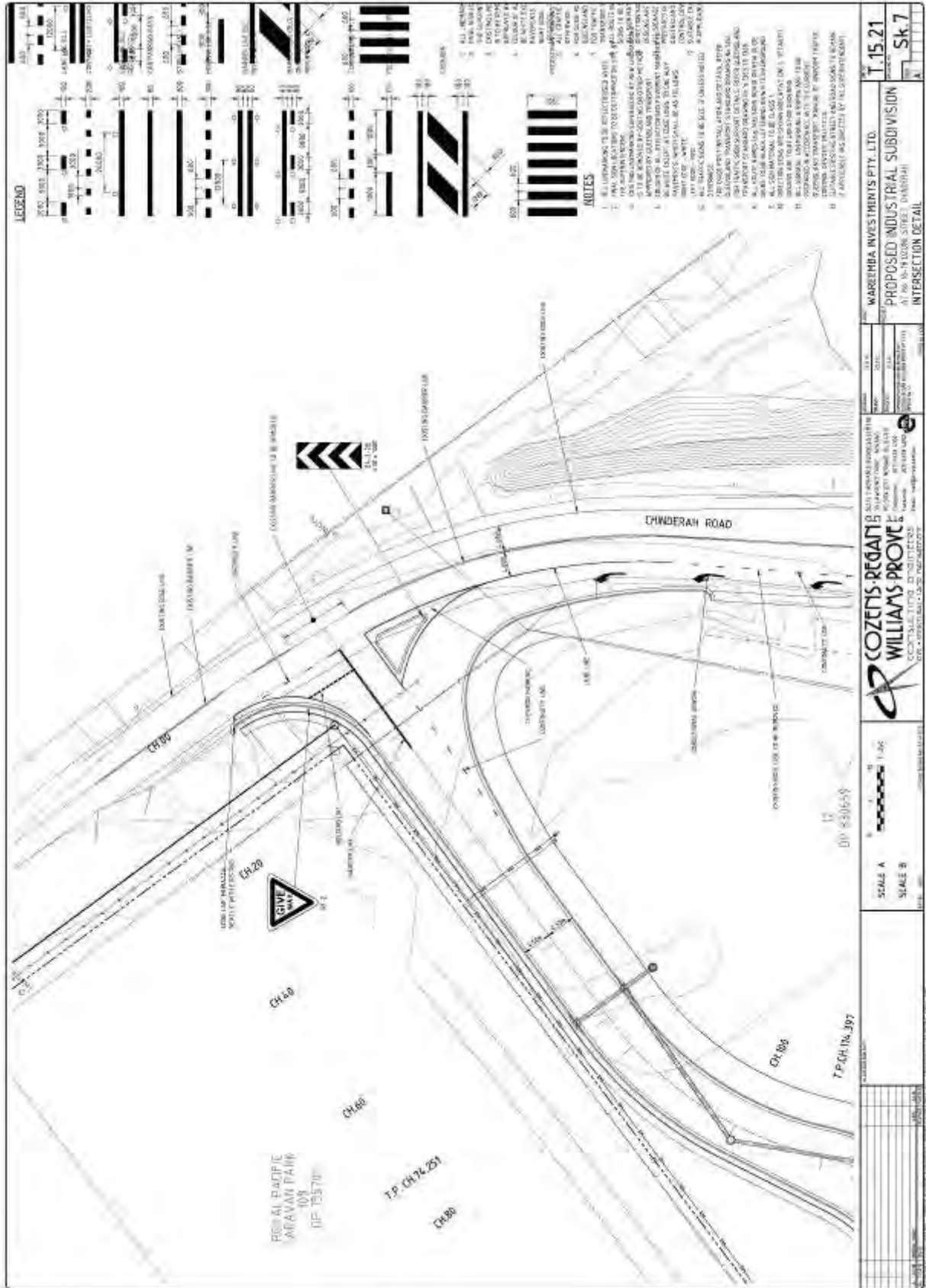
Lot 1 DP 102255, No.16-18 Ozon Street, Chinderah;  
 Lot 12 DP 830659, Chinderah Road, Chinderah

<p>Disclaimer: While every care has been taken to ensure the accuracy of this data, Tweed Shire Council does not accept any responsibility or liability for the use of this data for any purpose other than that for which it was prepared. The information is supplied for the general public and is to be used for information only. It should not be used for any other purpose and is not intended to be used as a substitute for professional advice. The information is provided as a service to the community and is not intended to be used as a substitute for professional advice. The information is provided as a service to the community and is not intended to be used as a substitute for professional advice.</p>	<p>Cadastral: 30 November 2010                  © Land and Property Management Authority (LPM) &amp; Tweed Shire Council.                  All rights reserved. This document is considered confidential only.</p>		<p><b>City and Cultural Centre</b>                  2 Tumbulgum Place                  Murumbidgee NSW 2485                  PO Box 816                  Murumbidgee NSW 2404                  T (02) 4430 2400 / 1300 292 872                  F (02) 4470 2425                  W www.tweedshire.nsw.gov.au                  E plans@tweedshire.nsw.gov.au</p>
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DEVELOPMENT PLANS:







**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed development is permissible in the zone and is not considered to significantly detract from the unique natural and developed character of the Tweed Shire as a whole. Detailed conditions have been applied to regulate impacts of the proposed development which are generally considered to be minor. The proposed development represents a relatively minor intensification of both Lot 12 DP 830659 and Lot 1 DP 102255 which is zoned 4(a) Industrial. Subject to the imposition of conditions, the proposed development is considered to have the potential to create positive economic development with negligible impacts on Tweed's environmental and residential amenity qualities.

The proposed development is considered to be consistent with Clause 4.

Clause 5 - Ecologically Sustainable Development

A detailed assessment has been undertaken of the application with respect to ecological and environmental health matters. Subject to conditions of consent, all matters are considered adequately addressed and the precautionary principle is considered to be satisfied. Subject to conditions to regulate impacts of the proposed development, construction of the road is not considered to impact significantly on intergenerational equity or the conservation of biological diversity. Detailed assessment has been undertaken on amenity and environmental considerations and the proposed development is considered to accord with Clause 5.

Clause 8 – Consent Considerations

The primary objective of the zone requires the provision and maintenance of a low density residential environment. The proposed road remains consistent with the primary objective in that it does not intensify use of the site above the existing low density context and does not prejudice the ability of existing Lot 12 DP 830659 to meet the zone objectives at a later date, were consent sought in the future for residential development.

The aims and objectives of the TLEP have been considered above. The proposal is considered to be consistent with the aims and objectives of the TLEP 2000.

Subject to conditions of consent, the proposed road construction is not considered to have unacceptable cumulative impacts. The characteristics of the site are unique in that the proposed development seeks a revised means of access to an approved industrial subdivision, separated from the main industrial area in Chinderah, in proximity to the Pacific Highway as well as a residential area. As such, approval of this application is unlikely to create a precedent for similar development and is not considered to generate significant impacts in terms of noise or amenity for nearby residents subject to conditions. It is noted that this will require further assessment when applications for the use of each of the 4 industrial allotments are submitted and these uses are known.

The applicant has submitted that construction of the road proposed by this application will result in:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive; and
- An improved level of orderly and economic development.

Council planning officers generally concur with the above and conclude that the proposed development is unlikely to have significant adverse cumulative impacts.

The proposed development is considered to be consistent with Clause 8.

#### Clause 11 – Zone Objectives

The subject site (Lot 12) is zoned 2(a) Low Density Residential. Subdivision and road construction are permissible in this zone. The application also covers a portion of the unzoned Ozone Street road reserve, addressed under Clause 13 below.

The objectives of the 2(a) zone are set out below:

Primary Objective:

*To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.*

Secondary Objectives:

*To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*

*To allow for non residential development that is domestically based, or services the local needs of the community and does not detract from the primary objective of the zone.*

The proposed development maintains the status quo in terms of residential development as no intensification of residential development is proposed. Subject to future assessment and consent, Lot 12 DP 830659 retains the ability to contain future residential development with access from the proposed new road. As such, the proposed development is considered to be consistent with the primary zone objective in that it maintains the existing low density residential environment.

The proposal is also consistent with the secondary objective in that the amenity of the 2(a) zone is not considered to be significantly affected by the proposed road (being non-residential development). This road will service future industrial development on Lot 1 DP 102255 which is permissible in the 4(a) zone.

#### Clause 13 – Development of Uncoloured Land on the Zone Map

This clause requires the development of uncoloured land to be compatible with surrounding development and zones.



The section of uncoloured land is a portion (approximately 147m) of the Ozone Street road reserve located between Lot 12 DP 830659 and Lot 1 DP 102255. The uncoloured land is bounded by both 2(a) Low Density Residential and 4(a) Industrial zoning. In this instance, development of the uncoloured land as a 'road' is considered to be consistent with the objectives of both adjoining zones as a low density residential character is maintained by the proposed road and a road is an appropriate component of an industrial development which is required to enable future industrial development on the site.

#### Clause 14 – Development Near Zone Boundaries

Lot 12 DP 830659 and Lot 1 DP 102255 are separated by approximately 30m of road reserve and as such this clause is not applicable. In any case, the proposed development is permissible within each zone.

#### Clause 15 - Essential Services

Council's piped water and sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards for the residual lot. It is noted that the proponent proposes to service the lot by a single property sewer pump station connected to the proposed sewer rising main from the pressure sewer system to be provided in the industrial subdivision (DA09/0006). A contribution of \$14, 800 is payable to Council for installation of the sewer pump station. In addition, the standard S64 sewer charge for 1 additional lot has been applied, to be paid prior to the issue of a subdivision certificate.

Electricity and telecommunication services are currently provided to the area via Country Energy and Telstra infrastructure. Conditions regarding the provision of all services have been applied.

#### Clause 16 - Height of Building

The proposed development does not require a consideration of building heights.

#### Clause 17 - Social Impact Assessment

The proposed development for a subdivision, road and acoustic fencing is not considered to create significant social impacts by way of employment generation or positive economic impacts. It is noted that a number of matters (including social concerns) were raised during the submission process. These matters are addressed further later in this report.

#### Clause 19 – Subdivision Generally

This clause permits the subdivision of 2(a) zoned land with consent.

#### Clause 22 – Development Near Designated Roads

Chinderah Road is a Council Designated Road and provides the sole means for vehicular access to Lot 12. As such, consideration of Clause 22 is required (it is noted that the subject site is also bound by the Pacific Highway, a proposed classified road). In this regard, a detailed traffic assessment has been undertaken by Council's Traffic Engineer and Development Assessment Engineer. This assessment concludes that the proposal is consistent with Clause 22 and that no road capacity, safety or operational performance implications are raised by the proposed road and its intersection with Chinderah Road.



Clause 23 – Control of Access

Clause 23 permits the opening of a road with an intersection to a designated road with development consent. This is what is sought by the subject application.

Clause 24 – Setbacks to Designated Roads

This clause does not apply as no buildings are proposed within the subject application. It is noted that this clause will require future consideration should residential development be proposed on the residual lot.

Clause 34 – Flooding

The subject site (inclusive of the Ozone Street road reserve) is affected by flooding, with a 1 in 100 year flood level of 3.2m AHD. The site (and road reserve) is also covered by the Probable Maximum Flood (PMF) as well as a 'Low' flood velocity.

The proposal has been reviewed by Council's Flooding Engineer and Development Assessment Engineer. Due to the nature of the development (i.e.: road and fence only), the proposal is not considered to increase the extent or nature of the existing flood hazard or increase the risk or severity of flooding of other land in the vicinity. It is noted however that DCP A3 (as discussed later in this report) requires fencing on land in Chinderah to be designed so as to permit the free flow of flood water or be collapsible under water/debris loads. Considerable negotiation has been undertaken with respect to this with the applicant and a deferred commencement condition has been applied to ensure the fence is designed appropriately.

The proposed development is not considered to impact adversely on emergency services as it is small scale in nature and does not propose any type of habitable development.

The provisions of DCP A3 (Version 1.3) with regard to site filling and drainage have been addressed with the following comments made by Council's Development Assessment Engineer:

*"It is noted that levels on the site do not exceed the required maximum RL2.2m AHD. A condition of consent will be applied to the development similar to condition 4 of DA09/0006.01 which states; "The level of fill placed on the site shall not exceed RL2.2m AHD."*

*The following condition of consent is included within the consent conditions;  
A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow".*

Finished levels of the road range from 1.56m AHD (near proposed intersection with Chinderah Road) to 2.025m AHD along the northern side of the proposed road within the Ozone Street road reserve.

Such conditions ensure compliance with the site filling and drainage provisions of DCP A3. The flooding related matters prescribed by Clause 34 are therefore considered satisfied.

Clause 35 - Acid Sulfate Soils

Both Lot 12 and the Ozone Street road reserve contain class 3 acid sulfate soils. The proposal involves the installation of three (3) box culverts which will require minor excavation (approximately 0.5m below ground level). Detailed assessment has been undertaken by Council's Environmental Health Officer and conditions applied with respect to compliance with an acid sulfate soils management plan and inspections by Council's Environmental Health Officer prior to the commencement of works.

Clause 44 – Development of Land within Likely or Known Archaeological Sites

The applicant submitted an Aboriginal Cultural Heritage Assessment prepared by Everick Heritage Consultants, concluding that no items of indigenous cultural heritage or potential historic cultural significance were identified on the portion of Lot 12 encompassing the proposed road or the subject section of the Ozone Street road reserve (the report also considers Lot 1 DP 102255 – as required under DA09/0006).

This assessment was forwarded to the Department of Environment, Climate Change and Water (DECCW) for review of its adequacy. DECCW advised that the assessment has been undertaken in accordance with the Department's guidelines for aboriginal cultural heritage.

Advice was also supplied noting that no known aboriginal cultural heritage values will be impacted by the proposed road development. However, it was noted that there may be a likelihood of evidence of Aboriginal occupation being uncovered during construction works. Should this occur, DECCW have recommended six (6) conditions of consent as follows:

1. *The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.*
2. *In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives the archaeologist and to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.*
3. *An application for a Care & Control Permit must be lodged along with any application for any Aboriginal objects that are located and moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified in the consultation process, and is to provide evidence of the support with any application for a care and control agreement.*
4. *If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further*

*impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.*

5. *The applicant must continue to consult with, and involve, all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.*
6. *The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.*

These conditions have been applied.

The proposal is considered to be consistent with Clause 44 and Council is satisfied that the site does not contain any known items of Aboriginal or archaeological significance.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### **Clause 15: Rivers, streams and wetlands**

Inclusive of compensatory habitat works to the satisfaction of Council (as per the approved Habitat Restoration Plan approved under DA09/0006), the proposal is considered to be consistent with Clause 15.

##### **Clause 32B: Coastal Lands**

The NSW Coastal Policy applies to the subject site and Council must therefore take into consideration the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines.

Broadly, the proposal does not contravene the provisions of the above documents, and will not impede public access to, or overshadow the foreshore.

The proposal is consistent with Clause 32B.

##### **Clause 47: Principles for Commercial and Industrial Development**

Whilst not specifically relevant to the subject application, Clause 47 (2) specifies that before granting consent for industrial development, Council must consider that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. This application is not for industrial development, however the proposed road is to serve the industrial subdivision approved under DA09/0006. Clause 47 was addressed in the assessment for DA09/0006 and subject to the access arrangement under the existing consent (DA09/0006) or the proposed road under DA10/0552, appropriate access to the transport system (i.e.: the Pacific Highway and local road network) will be provided.

The proposal is consistent with Clause 47.

Clause 81: Development adjacent to the ocean or a waterway

This clause specifies that Council must not consent to an application for development on land within 100m of the ocean or any substantial waterway unless satisfied the development does not limit access to available open space, does not detract from the amenity of the waterway and is consistent with any foreshore management plan applying to the area.

In this instance, the proposed road construction and subdivision does not limit access to open space (whilst it does propose to create a road in a road reserve area presently utilised by locals as open space). There is no foreshore management plan applying to the area and only minor clearing (which will be offset elsewhere) is necessary to facilitate road construction (including the installation of box culverts over the existing drain).

The proposal is consistent with Clause 81.

**SEPP No. 14 - Coastal Wetlands**

The existing drain along the Ozone Street road terminates into an area of the Tweed River identified under SEPP 14 (and also classified as a sensitive coastal location under SEPP 71).

Consideration of SEPP 14 only occurs if the subject site is covered by the policy, which in this case it is not. Subject to conditions to prevent sediment/runoff impacts into the Tweed River, the proposed development is considered to generally accord with SEPP 14.

**SEPP No 71 – Coastal Protection**

The subject site is covered by SEPP 71, although the site is not identified as a sensitive coastal location under the Policy.

A detailed SEPP 71 assessment was requested of the applicant, which concluded that the proposed development is consistent with the prescribed matters for consideration.

Specifically, the proposed development will not affect access to any coastal foreshore areas and is considered to be suitable for the subject locality due to the site's proximity to the Pacific Highway and other industrial development. The proposal is not considered to impact adversely on the coastal foreshore, will not create overshadowing and is not considered to detract from the scenic qualities of the New South Wales coast, being relatively minor in nature.

The applicant has indicated their intention to engage in compensatory works to offset the loss of part of the Endangered Ecological Community (EEC) via the approved Habitat Restoration Plan (approved under DA09/0006) as well as the loss of one Forest Red Gum and one Pink Bloodwood tree in the road reserve (a deferred commencement condition has been applied with regard to finding a suitable site for compensation for these two trees).

No wildlife corridors are mapped on the subject site or along the Ozone Street road reserve. The subject site is located outside of the coastal erosion zones under the NSW Coastal Policy and coastal processes will not impact on the proposed development. The proposal does not have the potential to create conflict between land based and water based activities.

With regard to Clause 8(l), the Cultural Heritage Assessment has noted that the site is not within proximity to any known archaeological sites. General Terms of

Approval supplied by the Department of Environment, Climate Change and Water have been applied in the unlikely event that cultural material is uncovered during the construction process, including the requirement to cease works if any item is disturbed and the need to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council.

In terms of cumulative impact, the development is not considered to pose a significant impact to the EEC community due to vegetation removal being compensated for via the approved Habitat Restoration Plan. It is noted that a deferred commencement condition has also been applied with regard to a suitable offset for the loss of two existing habitat trees within the road reserve at the proposed intersection of the new road with Chinderah Road. Conditions have been applied by Council's Ecologist in this regard.

Subject to conditions as detailed above, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

Draft Tweed Local Environmental Plan 2010

The draft Tweed Local Environmental Plan 2010 (DLEP) zones the subject site R2 – Low Density Residential (the equivalent zone). The DLEP also zones the Road Reserve as RE1 – Public Recreation.

A road is permitted without consent in the R2 zone and the RE2 zone. Subdivision remains permissible with consent in the R2 zone.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

A2 - Site Access and Parking Code

At the subdivision stage, the provision of car parking is not required. The applicant will be required to demonstrate compliance with DCP A2 at the time of lodgement of an application for the future development of the residual allotment or each of the industrial allotments approved under DA09/0006.

A3-Development of Flood Liable Land

Council's records indicate the site (and road reserve) are flood liable, with a design flood level of 3.2m AHD, as well as being covered by the PMF.

DCP A3 specifies the following for fill for commercial and industrial development on flood liable land:

*“For drainage purposes only, land will only be required to filled to the approximate level of the centre line of the adjacent road (excluding the Pacific Highway) unless adequate alternative stormwater drainage is provided.*

*Lots with existing levels less than RL 2.2m AHD may be filled to a maximum height of RL 2.2m AHD.”*

*The following deemed to comply solution may be implemented on each allotment as an alternative to providing flood modelling;*

- i) On each allotment a maximum of 50% of the plan area of the lot may be occupied by structures, buildings, stockpiles and/or fill that exceeds RL2.2m AHD.*

- ii) *On each allotment, flow obstructions (defined as fill, structures, buildings, stockpiles and the like above RL 2.2m AHD) are to be located so that at least 50% of any cross section of the lot, transverse to the direction of flood flow, is clear of flow obstructions. This is to provide a local flood path on each allotment.*

*Commercial and industrial development will be required to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage.”*

It is noted that levels on the site do not exceed the required maximum RL2.2m, with the existing ground level being approximately 1.3 – 1.5m AHD. The finished level of the site is 2.0m AHD and as such approximately 500mm to 700mm fill will be required.

A condition has been applied to the effect that:

*The level of fill placed on the site shall not exceed RL2.2m AHD.*

The following condition of consent has been applied with regard to the above (for future development):

*A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow.*

DCP A3 also specifies that in the Chinderah locality (which generally has a low flood velocity) all fencing must be of a form that will either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of debris or floodwater.

A deferred commencement condition has been applied with respect to the above as follows:

*‘The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate’.*

This has been applied to ensure compliance with DCP A3 and to enable comprehensive assessment of the proposed fence design to be undertaken by Council’s planning, engineering and environmental health staff.

Subject to satisfaction of the deferred commencement condition, compliance with DCP A3 is considered to be achieved.

#### A5-Subdivision Manual

This policy contains guidelines for subdivision development. Relevant to this application (which creates a residual lot of 3525m<sup>2</sup>), the policy specifies that subdivided land in the 2(a) Low Density Residential zone must meet the following criteria:

- Have a minimum lot size of 450m<sup>2</sup> (dwelling house)
- Have a minimum lot size of 900m<sup>2</sup> (dual occupancy)

- Have a minimum lot size of 1350m<sup>2</sup> (integrated housing)
- Be capable of containing a 10m x 15m building platform.

The proposal is consistent with the above criteria and it is noted that the subdivision to create the road does not preclude the residual lot from being used for future residential purposes (i.e.: the minimum lot sizes for different types of residential development are exceeded as shown above), subject to future traffic noise considerations.

In addition to the above, consideration is required of the physical and environmental constraints of the site, the degree of landforming, stormwater and drainage and buffers as follows:

#### *Physical constraints*

Lot 12 is relatively unconstrained in physical terms, being relatively flat and with vehicular access off Chinderah Road. The Ozone Street road reserve does not contain any waterways (besides the adjacent open drain), is not bushfire prone and the proposal does not necessitate significant changes to the natural landform other than site filling. The site is flood prone (3.2m AHD and covered by the PMF).

#### *Environmental constraints*

Lot 12 contains limited established vegetation, being mostly grassed. Two habitat trees (Forest Red Gum and Pink Bloodwood) are located within the existing road reserve at the proposed intersection and are required to be cleared. Ozone Street road reserve contains established native vegetation including an Endangered Ecological Community (EEC) along the drainage channel. The site is not bushfire prone. The site does exhibit class 3 ASS and appropriate conditions have been applied in this regard by Council's Environmental Health Officer with regard to road construction, including the installation of box culverts.

The applicant has acknowledged the presence of EEC vegetation on the site and appropriate compensation will be undertaken in line with the approved Habitat Restoration Plan under DA09/0006.

The proposal is considered to be consistent with the NSW Coastal Policy.

#### *Significant Vegetation*

As mentioned, the road reserve supports significant vegetation including an Endangered Ecological Community of Swamp Oak. The applicant has agreed to persevere with the implementation of the approved Habitat Restoration Plan under DA09/0006 as an offset for loss of approximately 600m<sup>2</sup> of the EEC.

Conditions have been applied in this regard, including a deferred commencement condition with regard to negotiation of a suitable site (or agreement as to compensatory planting on the residual lot) for compensation for the loss of the Forest Red Gum and the Pink Bloodwood.

#### *Aboriginal Heritage or Cultural Items*

A Cultural Heritage Assessment has been submitted which concludes that Lot 12 (and the Ozone Street road reserve) are unlikely to contain any items of known aboriginal or cultural heritage. Conditions have been applied (recommended by the Department of Environment, Climate Change and Water) in the event that any items are uncovered during construction works.

### Landforming

The application proposes minor earthworks to fill the site to RL 2.2m AHD. The site at present is relatively flat with no structures. Apart from the removal of the existing vegetation within the road reserve and the two mature trees within the road reserve at the proposed intersection, the proposed filling works will not significantly alter the natural landform and is not considered to impact upon any nearby properties in this regard.

Issues relating to access, stormwater, drainage, waterways and flooding are detailed further elsewhere in this report.

The proposed development is considered to be generally consistent with DCP A5. Ongoing compliance with DCP A5 has been applied as a condition of consent.

### A11-Public Notification of Development Proposals

Amendments were made to the above policy as a result of DA09/0006 in order to notify permanent occupiers of caravan parks and manufactured home estates in the same way as landowners. The proposed development was placed on public exhibition for a period of fourteen (14) days from 6 October 2010 to 20 October 2010.

During this period, 41 submissions were received, with two (2) late submissions, two (2) anonymous submissions and one (1) petition being received.

The matters raised in the submissions are addressed further in this report.

### A13-Socio-Economic Impact Assessment

The proposal is not considered to create significant social or economic impacts.

## **(a) (iv) Any Matters Prescribed by the Regulations**

### Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. However, the site is not located within the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes and the proposal will not overshadow any foreshore reserves or restrict public access to the coast. Therefore, the proposed development is not considered to be in conflict with the policies and strategies contained in the coastal policy.

## **(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

### Context and Setting

The proposed development is consistent with the 'mixed use' character of Chinderah. No significant adverse impacts are envisaged for the locality.

### Traffic Noise

If not properly managed, traffic noise from the proposed access road has the potential to impact upon adjacent land zoned 2(a) Low Density Residential used for the purposes of residential living and a caravan park. The proposal is supported by a Noise Level Impact Assessment (NLIA) prepared by Craig Hill Acoustics dated 6 July 2010. Council's Environmental Health Officer has advised that the report has been prepared in general accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999.



Potential noise impacts upon adjacent land uses have been summarised by Council's Environmental Health Officer as follows:

Chinderah Road Dwellings/Vacant Lots

*Several submissions have been received from property owners relating to the generation of traffic noise from the proposed access road. The NLIA indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the NLIA indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.*

Royal Pacific Tourist Retreat

*The existing caravan park is located immediately adjacent to the proposed access road. Modelling undertaken by the NLIA indicates that potential daytime (7:00am to 10:00pm) noise impacts will exceed the noise criteria detailed in the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1). It is proposed to mitigate potential noise impacts below the relevant noise criteria by constructing a 2.5m acoustic barrier along the entire length of the access road (approximately 320m).*

*Modelling undertaken in the NLIA also indicates that there will be significant noise impacts during night time periods (10:00pm – 7:00am) without a further increase in the height of the acoustic barrier to 4-6.5m. Council's planning officers have raised concerns with the height of such a fence for amenity reasons. As such, night time traffic noise will be further addressed and controlled during the assessment of any development applications for future industrial land uses on the site.*

*It is considered that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. Night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses, which may include conditions restricting operating hours.*

It is noted that the achievement of the daytime noise criteria is also dependent upon enforcement of a 50kph speed limit along the proposed new road, to be set by the RTA.

Traffic noise is therefore considered to be adequately addressed for the proposed road construction with further consideration with regard to night time noise impacts to occur during assessment of development applications for future development on the lots approved by DA09/0006.

**Swamp Oak EEC**

The overall impact on the Swamp Oak is stated within the Flora and Fauna Assessment as removal of some 300m<sup>2</sup> of the community, although this has recently been verbally updated by the consultant planner to 600m<sup>2</sup>. Although this aspect requires a more accurate calculation (by GIS measure it may be over 1000m<sup>2</sup>), on balance there will be a lesser impact on the EEC than the previous proposal, which was estimated to require removal of some 4500m<sup>2</sup> of EEC.

The other important benefit from an ecological perspective is that impacts within the drainage channel itself (a tidal channel providing habitat for aquatic species) will be limited to two large culverts to enable the two drain crossing points to be established into the industrial lot, rather than halving the channel width and concrete lining the bed and one bank as was previously proposed. Thus water quality within the channel and subsequently flowing to the adjacent Tweed River is at significantly lower risk from export of sediment and acidic runoff (arising from disturbance of potential acid sulfate soils) and in-stream habitat values, including mangroves, are unlikely to be lost.

Thus the formation of a smaller proportion of the Ozone Street road reserve in a section further from the Tweed River with significantly reduced impacts on the channel alignment is seen as an ecological benefit. It does not however, obviate the need to compensate for loss of EEC. Verbal agreement to implement the approved compensatory project has been given by the consultant planner but caution is required because:

- consent in writing from the owner of the industrial lot to the financial implication arising from the compensatory project has not yet been received;
- it is not a straightforward matter to tie the off-site works to the consent amendment in a way which will ensure the compensatory works (which span a five year time frame) will be undertaken and maintained to form a suitable offset, particularly once permission to clear the existing EEC has been given, and
- the quantity of compensation has not yet been agreed.

The above matters have been addressed via the proposed deferred commencement conditions.

### **Forest Red Gum and Pink Bloodwood**

Whilst a reduced impact is seen along and adjacent the drainage channel in comparison to the previous access road alignment from Chinderah Bay Drive, additional impact occurs with the loss of two semi-mature trees from the road reserve area of Chinderah Road. The trees are a Forest Red Gum (*Eucalyptus tereticornis*) and a Pink Bloodwood (*Corymbia intermedia*) (Plate 1). These two species of tree are known to be two of four main species associated with another floodplain Endangered Ecological Community known as *Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion*. The NSW Scientific Committee determination for the community states:

*“Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion is the name given to the ecological community associated with clay-loams and sandy loams, on periodically inundated alluvial flats, drainage lines and river terraces associated with coastal floodplains.*

*The structure of the community may vary from tall open forests to woodlands, although partial clearing may have reduced the canopy to scattered trees. Typically these forests and woodlands form mosaics with other floodplain forest communities and treeless wetlands, and often they fringe treeless floodplain lagoons or wetlands with semi-permanent standing water (e.g. Pressey 1989a).*

*Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion has a tall open tree layer of eucalypts, which may exceed 40 m in height,*

*but can be considerably shorter in regrowth stands or under conditions of lower site quality. While the composition of the tree stratum varies considerably, the most widespread and abundant dominant trees include Eucalyptus tereticornis (forest red gum), E. siderophloia (grey ironbark), Corymbia intermedia (pink bloodwood) and, north of the Macleay floodplain, Lophostemon suaveolens (swamp turpentine)."*

Both trees provide known forage habitat for nectar-reliant species including the Grey-headed Flying Fox (a threatened species), Rainbow Lorikeets and Eastern Rosellas. Forest Red Gums are a favoured food tree for Koalas and Chinderah is an area known to support a Koala population, at least until recently. Thus the trees are significant despite their position and all efforts to retain them were requested during assessment. It appears that the access road is unlikely to meet minimum engineering standards in terms of distance from the roundabout if the trees are to be retained. In the absence of clear evidence of present reliance on the trees for roosting or as part of a home range by Koalas or other threatened species, it is unlikely that the loss of the two trees could successfully be argued as causing a significant impact on threatened species, populations or ecological communities whereby the development could be refused. However, the significance of the trees requires compensation at the least. A ratio of 10:1 (gained:lost) is considered appropriate due to the size and age of the trees and the known habitat value they provide, where planting and reestablishment of trees of such size will take time and care.

A suitable site for establishment of replacement trees is the residue lot created after the access road through Lot 12 DP 830659 is severed. The planning consultant has indicated reluctance to impose restriction on this site and no alternative site has been nominated. Whilst Council's preference is the residue lot because it is adjacent and of suitable soil type and elevation, a suitable alternative may be considered. The uncertainty over this aspect requires deferring commencement until this issue is satisfactorily agreed and a condition has been applied accordingly.

The following deferred commencement conditions have been applied to address all matters raised above:

1. *A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (Eucalyptus tereticornis) and Pink Bloodwood (Corymbia intermedia) impacted by the proposed development. The Habitat Restoration Plan must include:*
  - *a schedule and timing of works to be undertaken*
  - *written agreement from the owner of the agreed site to planting and/or restoration works on the land*
  - *a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
  - *a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
  - *a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*

2. *A legally binding commitment by the consent holder to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.*

#### Amenity

The scenic values of Chinderah are considered to stem from its proximity to the Tweed River and low density residential character. However, Chinderah is also located in close proximity to the Pacific Highway and contains some large scale commercial and industrial developments on both sides of the highway. With this in mind, the proposed development is not considered to detract from the scenic values of the area which relate more to the Tweed River (further north-west of the subject site) than to the location of the subject site.

With regard to amenity, Council planning officers commenced considerable negotiation with the applicant to reduce the height of the proposed acoustic fence to 2.5m. In addition, the applicant will be required to submit a detailed landscaping plan which demonstrates landscaping on both sides of the proposed fence (i.e.: including within the Royal Pacific Tourist Retreat), with appropriate owners consent.

Subject to the plan being satisfactory to Council, the landscaping is considered to appropriately ameliorate amenity impacts of the proposed fence.

#### Stormwater Drainage

Engineering plans prepared by Cozens Regan dated July 2010 show access provided to the industrial subdivision over the open channel via 3 x 1500 x 750 box culverts from Ozone Street. The system will be required to be designed to cater for an ARI storm event of 100 years. Detailed conditions of consent have been applied by Council's Flooding Engineer/Development Assessment Engineer to ensure an acceptable drainage design at construction certificate stage.

#### Asset Management

The applicant proposed to dedicate the road and acoustic fence to Council, however no details with regard to asset management/handover of the road/fence were supplied during the assessment process.

As future asset owner, the Director Engineering and Operations has indicated that the handover of the acoustic fence would not be accepted, as there is no current budget for maintaining such an asset.

To rectify this issue, the following deferred commencement condition has been recommended by Council's Infrastructure Engineer (in consultation with the Director Engineering and Operations) and applied:

The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.

### Fence Design

The applicant neglected to properly consider the provisions of DCP A3 – Development of Flood Liable Land in the design of the proposed acoustic fence. Subsequent discussions with Council's Infrastructure Engineer have indicated that a further deferred commencement condition with regard to the proposed fence design is warranted to enable comprehensive assessment of the design (in light of meeting DCP A3 and acoustic requirements), but also to ensure that an appropriate funding proposal with regard to Council's management of the fence is obtained.

The following deferred commencement condition has been applied:

*'The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.'*

This has been applied.

It is noted that the acoustic fence was originally proposed to be 4.5-6m high (as a result of being designed to cater for 24 hour traffic movements). Negotiation with the applicant has enabled the fence height to be reduced to 2.5m, based on a speed limit of 50kph and further consideration of night time traffic noise at the time consent is sought for development on the industrial allotments (a 2.5m high fence meets the daytime noise criteria). This is considered to be much more appropriate in terms of visual amenity and submission of a detailed landscaping plan has been applied as a condition of consent.

Subject to satisfaction of the deferred commencement conditions the proposed development is considered to be appropriate with regard to flooding matters.

## **(c) Suitability of the site for the development**

### Flooding

The subject site is flood prone, is covered by the Probable Maximum Flood (PMF) and exhibits a low flood velocity.

The residual lot will be filled to no more than 2.2m AHD.

A detailed assessment of flooding impacts has been undertaken under DCP A3 above. Subject to the imposition of conditions (including the above deferred commencement conditions), the proposed development is considered to be acceptable with regard to flooding matters.

### Access, Transport and Traffic

The entry point to the road is approximately 150m from the existing Chinderah interchange. This has been reviewed by Council's Traffic Engineer who has advised that such a distance is appropriate. Sight distance is approximately 132m to the east and 300m to the west. It is noted that the existing edgeline on the southern side of Chinderah Road is proposed to be removed and this section of the road widened to create a new turning lane to cater for B double movements. A traffic island is also proposed to be installed to separate this lane from the existing alignment of Chinderah Road.

A SIDRA analysis was prepared by a traffic consultant which demonstrates that Chinderah Road has significant spare capacity. The consultants report concluded that the proposed road and its intersection with Chinderah Road will not have any adverse road safety, capacity or operational performance implications. As such, the proposed road is not considered to have the potential to unreasonably impede through traffic movement on Chinderah Road.

Chinderah Road is approximately 8m wide, within a 30m wide road reserve (approximate). As such, the proposed road through Lot 12 is not considered to have the potential to jeopardise any future improvements or realignment of Chinderah Road as substantial width remains within the road reserve. It is noted that there is no other practicable method of access to the subject site other than from the designated road (or via the approved access arrangement under DA09/0006).

#### Acid Sulfate Soils (ASS)

Council's ASS Planning Map indicates that the site is class 3 land, which applies to works beyond 1 metre below the natural ground level. The submitted plans indicate that excavations to approximately 2m below ground level are proposed for the construction of culverts and therefore ASS are anticipated to be encountered. The proposal is however, anticipated to have a lesser impact on ASS than the previously approved access road (under DA09/0006) due to lesser interference with the existing drain.

An amended Acid Sulfate Soil Management Plan has been prepared by HMC Environmental Consulting dated 26<sup>th</sup> November 2010. The management plan has been prepared in general accordance with the Acid Sulfate Soil Manual 1998 and is considered adequate. Conditions with regard to compliance with this plan have been applied.

#### Water/Sewer

Council's reticulated potable water supply is available to the area. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

Council's piped sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards.

Council's Water & Sewer Engineer has advised that no objections are raised to the development and has provided the following comments:

*"I have no objections to the proposed development however I note that the proposed 150 water main is shown as connecting to an existing 150 in Chinderah Road. Council's GIS shows that this is a 100 water main and that the nearest 150 is at the corner of Walsh Street and Chinderah Road.*

*It is noted that from the plans included in the SEE, the proponent proposes to connect water and sewer services to the residual lot. The original lot has been charged water access rate for some period but has not been charged a sewer access charge. Accordingly, a s64 Development Charge for Sewer of 1 ET should apply.*

*The standard clause relating to provision of water to the lot should be applied.*

*It is noted however that the proponent proposes to service the lot by a single property sewer pump station connected to the proposed SRM from the pressure sewer system to be provided in the industrial subdivision.*

*In this case, as the proposed lot is zoned residential, it is recommended that the usual clause for pressure sewer systems be applied to this lot rather than the method conditioned in the industrial subdivision.*

*Council requires a positive covenant to be placed on the affected lot that will permit Council access for the installation, maintenance and replacement of the pump station equipment, the provision of electricity by the householder, and the placement of the control box and alarm system on an exterior wall of the dwelling”.*

In addition, Council's Water and Sewer Systems Engineer has advised that a capital contribution of \$14,800 shall be paid for the installation of the individual pressure sewer pump on Lot 12. The pump will then be constructed at the time of construction of the dwelling on that lot.

Detailed conditions with regard to the above, including the 1ET sewer charge have been applied. The sewer charge and the \$14800 capital contribution shall be required to be paid prior to issue of a subdivision certificate.

**(d) Any submissions made in accordance with the Act or Regulations**

41 public submissions were received, with two (2) late submissions, two (2) anonymous submissions and one (1) petition with 36 signatures being received. The matters raised in these submissions are detailed below.

Comments were also received from the Department of Environment, Climate Change and Water (DECCW) and the New South Roads and Traffic Authority (RTA):

DECCW: Were referred a copy of the revised Cultural Heritage Assessment. DECCW advised that the assessment has been undertaken in accordance with the Department's guidelines for aboriginal cultural heritage. Advice was also supplied noting that no known aboriginal cultural heritage values will be impacted by the proposed road development. However, it was noted that there may be a likelihood of evidence of Aboriginal occupation being found within the project area. Should this occur, DECCW have recommended six (6) conditions of consent which have been applied.

RTA: Were referred a copy of the proposed development and reviewed the proposed development at the Development Traffic Advisory Group (DTAG) meeting. No objections were raised at the DTAG meeting, however the RTA's property section supplied a further submission, summarised as follows:

*“The RTA owns adjacent land to Lot 1 DP 102255 (Lots 13 and 14 DP 830659). The location of these sites has been identified by the RTA and the NSW Department of Planning as being suitable for highway service centre usage. This was formalised by a S117 direction dated 29 November 2009, The site has inherent benefits for this proposed usage including strategic positioning on the Chinderah Road interchange and proximity to the existing BP highway service centre.*

*To make the site viable as a highway service centre, Lots 13 and 14 would require amalgamation with Lot 1. The RTA had held negotiations with the proprietor to this effect with no agreement reached.*

*The potential to establish a highway service centre on the site would be lost if the subject application is approved. Notwithstanding, the RTA intends to offer this land to the open market for long term lease as a highway service centre site early in the new year which will allow any other interested parties to express interest in this potential use.”*

The above is not a matter for Council’s concern under the Act and has no real bearing on the subject development application (or the associated S96 modification). Approval of the subject application does not preclude the RTA from entering into negotiations with any party with regard to the future development of the site.

It is noted that no objection on traffic grounds was received from the RTA.

Public Submissions

The applicant was referred a copy of all public submissions for consideration. A copy of the applicant’s response is available on file.

Submission	Response
The development will create noise pollution	Council’s Environmental Health Officer has given detailed consideration to noise impacts and applied strict conditions to regulate impacts. It is noted that an acoustic wall is proposed to ameliorate noise impacts for residents of the adjoining caravan park. It is considered that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. Night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses, which may include conditions restricting operating hours. With respect to dwellings on the northern side of Chinderah Road, the Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.
The development will create air pollution/fumes	The proposed development is to create a public road which is not considered to create any significant adverse levels of air pollution or fumes. Council is not the regulatory authority for such matters.
Increased traffic would reduce quality of life and amenity	The proposed development is relatively minor in that it facilitates access only to an approved industrial subdivision, the end uses of which are not known at this stage and would be subject to future assessment to regulate traffic and amenity impacts. With regard to the subject application, it is noted that an acoustic fence is proposed to mitigate traffic noise impacts on adjoining Lot 109 (Royal Pacific Tourist Retreat) and detailed conditions have been applied with regard to significant landscaping to screen the proposed acoustic fence from Chinderah Road. In addition, a condition has been recommended to the effect that landscaping at the developers cost be provided within Lot 109 to soften the impact of the proposed fence, if this is to the satisfaction of the park owners and residents.



Submission	Response
Tourists would bypass the area because of increased traffic	Council's Development Assessment Engineer has assessed the application and advised that the proposed traffic generation is within the capacity of the existing road. It is considered that Chinderah's amenity/tourism values are more centred on the riverfront environment along the north east running section of Chinderah Bay Drive (i.e.: past the Chinderah Hotel) than on development in the vicinity of the subject site. Tourism generation is not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.
The acoustic assessment makes no reference to existing residential houses across Chinderah Road	Further information was requested of the applicant to address this shortcoming. Council's Environmental Health Officer has advised that the Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.
Traffic noise will create sleep awakenings	<p>Council's Environmental Health Officer has completed detailed assessment of the development with respect to traffic noise. Subject to satisfaction of the deferred commencement conditions and subsequent installation of the acoustic barrier, road traffic noise is considered to be within acceptable criteria for residents of the Royal Pacific Tourist Retreat during the daytime. Houses on the northern side of Chinderah Road currently experience noise levels that exceed the relevant noise criteria from the Pacific Highway. Noise modelling undertaken proposed development indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.</p> <p>No end uses of any lots are known at this stage and as such, it is considered appropriate to give further consideration to night time traffic noise during the assessment of any development applications for future industrial land uses on the site. The possibility of sleep awakenings will be addressed further at this stage and conditions restricting operating hours are likely to be applied.</p>
The proposed acoustic fence will direct noise into an existing dwelling on Chinderah Road and headlights from exiting vehicles will shine in a master bedroom	<p>The Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal, inclusive of the proposed acoustic wall will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.</p> <p>Impacts from headlights and the like are considered more appropriately addressed once end uses of the industrial allotments are proposed as different business will have different operating hours. Conditions of consent with regard to limited operating hours can be applied at this stage.</p>
Alternatives to the acoustic barrier require windows to be	Such 'sound shell' treatment measures were recommended by the applicant's acoustic consultant for utilisation where the

Submission	Response
shut and the provision of alternative ventilation which will require electricity to run and be an ongoing cost to the resident	recommended 6m high acoustic wall was unable to be achieved. Further investigations into this wall have resulted in a reduction in height to 2.5m only and imposition of a 50kph speed limit. The 6m high wall and sound shell treatment are no longer required.
Approval of this DA will allow for future development of the adjoining land which will increase noise levels, traffic flow and accidents in this area	Consent is sought only for a subdivision to create a public road and the construction of an acoustic fence. The application has been considered on its merits and on the facts presented before Council. Future development of any land in the Chinderah locality would require separate development assessment and noise, traffic and safety impacts would be addressed at that time.
There is not adequate sight distance. The 'curved' road would lead to accidents and destruction of residents property	The submitted traffic report identifies that available sight distance to/from the east (roundabout) is approximately 132m and to/from the west (river) is approximately 300m. The report specifies that the design sight distances are 97m (50kph zone) and 123m (60kph zone). The design distances are exceeded for both speed zones (Chinderah Road has a 50kph speed limit and Chinderah Bay Drive has a 60kph limit). Council's Traffic Engineer and Development Assessment Engineer have reviewed this report and raised no objections to the proposed sight distances from the proposed new road.
Acoustic fences do not work	The proposed acoustic fence is supported by a report from an acoustic consultant and has been reviewed by Council's Environmental Health Officer who has raised no objections subject to conditions. Deferred commencement conditions have been applied to ensure the fence design is appropriate with regard to Council's flooding controls and to ensure funds are provided for the ongoing maintenance of the fence by Council.
Sealing of Ozone Street would stop the congestion of Chinderah Road	Sealing of Ozone Street (presumably from Chinderah Bay Drive to Lot 1 DP 102255) was approved via DA09/0006. The applicant is now seeking to change this via a S96 application to DA09/0006 and the subject DA. The submission is not clear how sealing Ozone Street would assist with traffic flows on Chinderah Road. No further consideration is required.
Lot 12 is zoned 2(a) Low Density Residential and should not be developed for non residential uses such as the proposed public road. Lot 12 should be used for residential purposes, consistent with surrounding properties.	A road is permissible in the 2(a) zone under the Tweed Local Environmental Plan 2000.
Noise barriers would have to be very high to have any effect (due to houses being high set to be out of the flood area) and this would be visually unappealing.	Detailed assessment of the proposed acoustic barrier has been undertaken and negotiations with the applicant has resulted in the fence height being reduced to 2.5m. Deferred commencement conditions have been applied with regard to further design considerations of the proposed fence and conditions have been applied with respect to landscaping to improve the visual amenity of the fence which is considered to be acceptable given the constraints of the site.

Submission	Response
The noise barrier would restrict flow of water and breezes	Deferred commencement conditions have been applied to ensure compliance with Council's DCP A3 with regard to the free flow of flood water. The proposed fence height has been reduced to 2.5m which is considered to have a negligible impact on the flow of breezes.
The access arrangement under DA09/0006 has the least impact on surrounding residents and businesses	The applicant has proposed a revised access arrangement, the impacts of which have been assessed by Council officers. Approval of the revised access arrangement is recommended by this report.
The proposed road is too close to the interchange and would create safety issues, especially with children crossing the road to and from home/the school bus	Traffic reports have demonstrated that the proposed road is an acceptable distance from the Chinderah interchange and that sufficient sight distance exists. There is presently no identified crossing for children to access a bus stop (presently informal) in front of the adjoining caravan park. Council's Development Assessment Engineer has advised that a crossing in this location would be extremely undesirable due to proximity to the existing interchange. Road safety matters (with regard to speed limits etc) are a matter for the NSW Police. It is noted that members of the community may seek advice from Council's Works Unit as to the installation of a formal pedestrian crossing though this is unlikely to be supported.
The purpose for which Lot 12 was approved was a childcare centre, the level of traffic created by the childcare centre would be light traffic only.	The childcare centre consent (DA06/0282) is due to lapse on 25 January 2012. The subject development application does not propose any use of the industrial allotments, however detailed traffic assessment has concluded that the proposed road is suitable for industrial traffic.
The traffic volume data used in the application was from 2004 and is thus out of date	Traffic modelling has indicated that significant spare capacity is available along Chinderah Road. The reference to 2004 in the traffic report refers to traffic data obtained from Council, which was not used as the sole data source for traffic assessment. The traffic assessment concludes that the proposed new road and its intersection with Chinderah Road will be compliant with the relevant road design criteria and will not have any adverse road safety, capacity or operational performance implications.
Property resale value would be affected	Property values are not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.
Traffic drawings do not show the relationship of turning trucks to the existing properties on the north side of Chinderah Road	Turning templates submitted as part of the Traffic Assessment show demonstrate that right hand truck movements from the proposed intersection are contained wholly within the existing road reserve. In addition, the traffic report has demonstrated that the proposed intersection will not affect the surrounding traffic network.
The recommended 'sound shell' treatment is unacceptable	The sound shell treatment was recommended originally where the 6m fence height could not be achieved along the boundary between Lot 12 and Lot 109. Further investigations have now been undertaken into the proposed fence with the sound shell treatment no longer being required or proposed.
Tree removal would harm wildlife	Compensation for vegetation loss has been enforced via conditions of consent and Council's Ecologist is satisfied with this outcome.
Land use conflict between industrial and residential	The Tweed Local Environmental Plan 2000 prescribes mixed zoning in the Chinderah locality. Detailed assessment of the

Submission	Response
uses. Mixing residential with industrial is a poor mix	application has been undertaken in light of the potential for land use conflict and conditions of consent have been applied to ameliorate traffic noise and amenity impacts.
There are hidden plans to build 24 units on the balance of Lot 12	The applicant has confirmed that the reference to 24 units within the application documentation was an oversight and that no development of any sort is proposed on the residual allotment at this stage. Any development on this site would be subject to future merit assessment.
The proposed road is for future access to a BP service station	Any proposal for a BP service station would be subject to detailed assessment procedures. No such application has been submitted to Council.
Trucks slowing down will have to use engine brakes	Enforcing speed limits is a responsibility of the NSW Police and is not within Council's jurisdiction. If trucks are obeying the speed limit when exiting the interchange it is not anticipated that the use of engine brakes will be necessary.
The existing road is unsafe and experiences high incidences of traffic accidents. Increasing traffic on this road will only make this worse.	The traffic report has concluded that there is spare capacity along Chinderah Road to accommodate additional traffic. Traffic safety issues such as speeding cars and illegal traffic manoeuvres are a matter of Police concern and are outside Council's jurisdiction. Council is of the opinion that adequate sight distance exists in this location.
Chinderah has an existing industrial area east of the highway, industry does not need to also be located on the west	The zoning permits industrial development on Lot 1 DP 102255.
Lot 1 DP 102255 (the industrial subdivision site) could and should be rezoned residential	The draft Tweed Local Environmental Plan 2010 was recently on public exhibition. Concerned residents had the ability to raise zoning related concerns during the exhibition period. The existing draft document 'rolls over' the current industrial zoning of Lot 1. The proposed development is presently permissible under both the existing LEP 2000 and the draft LEP 2010.
Local Chinderah residents were not notified	As per amendments to Council's DCP A11 – Public Exhibition of Development Proposals, advertising and notification was undertaken which included residents of every nearby caravan park and properties with direct frontage to the proposed development site.
Direct highway access in the far southwest corner of the subdivision (Lot 1 DP 102255) could be utilised as an alternative entry/exit without using Ozone Street or the interchange/Chinderah Road. This would have zero impact on the community as a whole	Such an arrangement has not been proposed by the applicant.

Submission	Response
The developer did not appropriately consult adjoining landowners. This is a denial of natural justice by the omission of due process	The applicant contends that appropriate consultation was undertaken with owners of Lot 12 DP 830659, Council and the owners of Lot 1 DP 102255 (the industrial subdivision site). Council is bound to assess all properly made applications under the Environmental Planning and Assessment Regulations 2000. The submitted application is consistent with Schedule 1 Part 1 of the Regulation and is thus considered to be properly made. A comprehensive assessment of all elements of the application has been undertaken.
The merits of the application cannot be judged on the information supplied by the developer and his consultants alone.	Council planning officers have undertaken a detailed and objective assessment of all relevant issues and determined that the application is worthy of approval.
Through local knowledge Council is aware of the safety hazards of the interchange and therefore should apply the precautionary principles	The precautionary principle has been assessed under Clause 5 of the Tweed Local Environmental Plan 2000 (as above) and is considered to be satisfied.
The acoustic wall will be targeted and vandalised	The following deferred commencement condition has been applied to ensure funds are available for the ongoing maintenance of the acoustic fence by Council:  <i>The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.</i>
Loss of quality of life for residents living in caravans due to being imprisoned and completely enclosed by a concrete barrier	The proposed acoustic wall has been significantly reduced in height from 4.5m-6m to 2.5m. Homes of residents of the caravan park in proximity to the proposed fence/road are setback approximately 11m from the boundary to Lot 12, however are located adjacent to the rear boundary (along the road reserve). The existing dwelling on Lot 109 is setback approximately 7m from the side boundary, separated by a garage. Conditions have been applied requiring landscaping to be provided on either side of the proposed fence – i.e.: within the caravan park also to reduce visual impacts of the proposed fence (provided this is to the satisfaction of the property owner).
Driveways will be unable to be safely accessed	No changes are made to the configuration of access to any driveways in proximity to the proposed new road.
The new road won't allow enough room for a 4WD vehicle and caravan in tow to stop safely.	There are no minimum standards with respect to property access for caravan parks. No change is made to the existing property access arrangements for the adjoining caravan park.
The development will look like a prison and has a major potential to close the Royal Pacific Tourist Retreat  Chinderah is the gateway to the northern rivers region, it	Considerable negotiation was undertaken with the applicant with regard to improving the visual amenity of the proposed acoustic fence. The negotiated outcome is a 2.5m high fence with landscaping and is considered to be a reasonable compromise given the site's constraints and the level of community opposition to the development on visual amenity grounds. Though not ideal, the proposed development is

Submission	Response
should be a statement of the beauty visitors can expect along the north coast	considered to be reasonable from a visual amenity perspective given the constraints of the subject area. Deferred commencement conditions require a detailed plan of the fence to be submitted to Council for approval. Consideration of financial matters is not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.
The DA should be rejected because the development is not required and the application shows contempt towards Council and adjoining owners.	Council is bound to assess all properly made applications under the Environmental Planning and Assessment Act 1979.
The ability to turn left and right when exiting 8-10 Chinderah Road will be curtailed	Inspection of the plans indicates that no change will be made to the existing alignment of Chinderah Road at the frontage of number 8-10.
Existing noise from the BP is unbearable, similar truck noise within the confines of Chinderah village cannot be tolerated	Detailed assessment of the proposed road in terms of noise impacts has been undertaken by Council's Environmental Health Officer with conditions applied including a 50kph speed limit along the proposed new road. Further assessment can be undertaken for any proposed development on the industrial lots should development applications be received in the future.
Many residents of the Royal Pacific Tourist Retreat have major health problems which will be worsened by the drift of diesel exhaust fumes and pollution from industrial traffic	The proposed development is to create a public road which is not considered to create any significant adverse levels of air pollution or fumes. Council is not the regulatory authority for such matters. Further assessment in this regard can be undertaken when consent is sought for the development of the industrial lots.
The Ozone Street drain provides the only means of drainage to a portion (around 20ha) of Gales land in Kingscliff. Council should ensure that any works around the drain do not limit its drainage function.	No changes aside from the installation of culverts are proposed to the existing drain with impacts on the drain for the revised access proposal being significantly less than that approved by DA09/0006. Culverts will maintain the existing drainage function.

None of the above matters are considered to represent reasons for refusal of the development application. Conditions of consent (including deferred commencement conditions) have been applied with respect to matters raised above where required.

**(e) Public interest**

A detailed assessment has been undertaken based on all matters raised above which concludes that the proposed development generally results in a lesser environmental impact than the access arrangement approved by DA09/0006. Deferred commencement conditions with regard to the proposed fence have been applied to ensure an appropriate design and to obtain funding for Council's future management of the asset. Detailed conditions have been applied to regulate the development and subject to the recommended conditions, the proposed development is considered to be in the public interest.

**OPTIONS:**

1. Approve the application in accordance with the recommended conditions for deferred commencement.
2. Refuse the application for specified reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the ability to appeal the decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

A comprehensive assessment has been undertaken of the merits of the application by Council's planning, engineering, ecological and environmental health staff and was also reviewed by the NSW RTA and NSW Police at the Development Traffic Advisory Group. The application is considered to be worthy of approval, subject to satisfaction of the recommended deferred commencement conditions which will result in a net environmental gain in time, secure funding for Council's ongoing maintenance of the proposed acoustic fence and enable comprehensive assessment to be undertaken of the proposed fence design.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Council report relating to DA09/0006 (ECM 28176395)
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