



**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 March 2011**

held at Murwillumbah Cultural & Civic Centre  
commencing at 3.30pm

## **COUNCIL'S CHARTER**

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

Tweed Shire Council has the following charter:

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

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## Items for Consideration of Council:

<b>ITEM</b>	<b>PRECIS</b>	<b>PAGE</b>
	<b>REPORTS FROM THE DIRECTOR PLANNING AND REGULATION</b>	<b>5</b>
<b>10</b>	<b>[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</b>	<b>7</b>
<b>11</b>	<b>[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</b>	<b>33</b>
<b>12</b>	<b>[PR-CM] Development Application DA10/0552 and Section 96 Application DA09/0006.01 – Lot 12, 830659, Chinderah Road, and DP Lot 1 DP102255, 16-18 Ozone Street, Chinderah - Notice of Class1 Appeals</b>	<b>87</b>
<b>13</b>	<b>[PR-CM] Development Application DA08/0984.09 for an amendment to Development Consent DA09/0984 for demolition of existing structures &amp; construction of multi dwelling housing comprising 28 units and carparking at Lot 1 DP 1151857, No. 204 Byangum Road Mur</b>	<b>89</b>
<b>14</b>	<b>[PR-CM] Cobaki Lakes Concept Plan – Residential Community Development –Repeal of Tweed Development Control Plan Section B7 – Cobaki Lakes</b>	<b>101</b>
<b>15</b>	<b>[PR-CM] Land and Environment Court Proceedings No. 10857 of 2010 – Tweed Shire Council ats Baclon Pty Ltd - Development Application DA09/0727 for additions to existing manufactured home estate (Noble Lakeside Park) including 45 new manufactured home site</b>	<b>109</b>
<b>16</b>	<b>[PR-CM] Pottsville Employment Lands - Rezoning Application</b>	<b>115</b>
<b>17</b>	<b>[PR-CM] Results of the Department of Planning Local Development Performance Monitoring Report 2009/10</b>	<b>127</b>
<b>18</b>	<b>[PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards</b>	<b>135</b>

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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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**10 [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:**

**Updated Information**

Council at its meeting of 15 February 2011 resolved as follows in respect of this application:

***"RESOLVED 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 deferred until after all parties are consulted."*

A Class 1 Appeal for a deemed refusal has been lodged by the applicant in the NSW Land and Environment Court for DA10/0552 (see separate Agenda Item). The first call over for the Appeal is 23 March 2011. Council has also been advised by the applicant that a similar Class 1 deemed refusal appeal is soon to be lodged for this application, DA09/0006.01.

In light of the receipt of this appeal advice, DA09/0006/01 is being reported back to Council for determination and endorsement of the original recommendation.

**Previous Information**

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 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.1A 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.

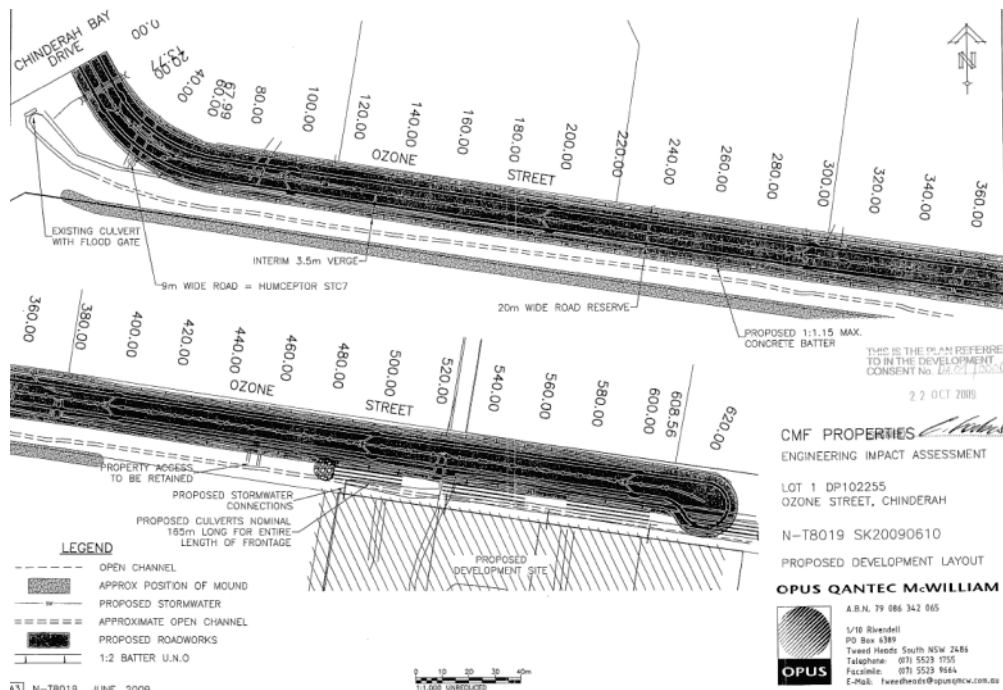
The applicant satisfied the deferred commencement conditions on 21 April 2010 and the consent has been fully operative from that date.

## **Proposal**

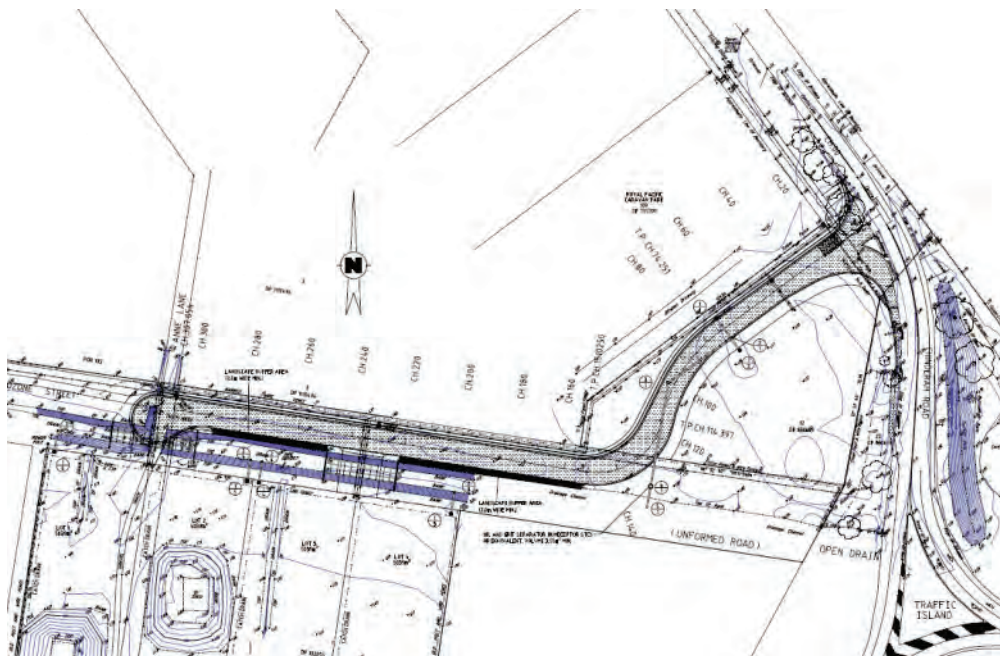
The applicant seeks permission via a S96 application to modify the approved access arrangement, to provide vehicular access through nearby Lot 12 DP 830659 and a short section of the Ozone Street road reserve, rather than the full length of the reserve from

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.**

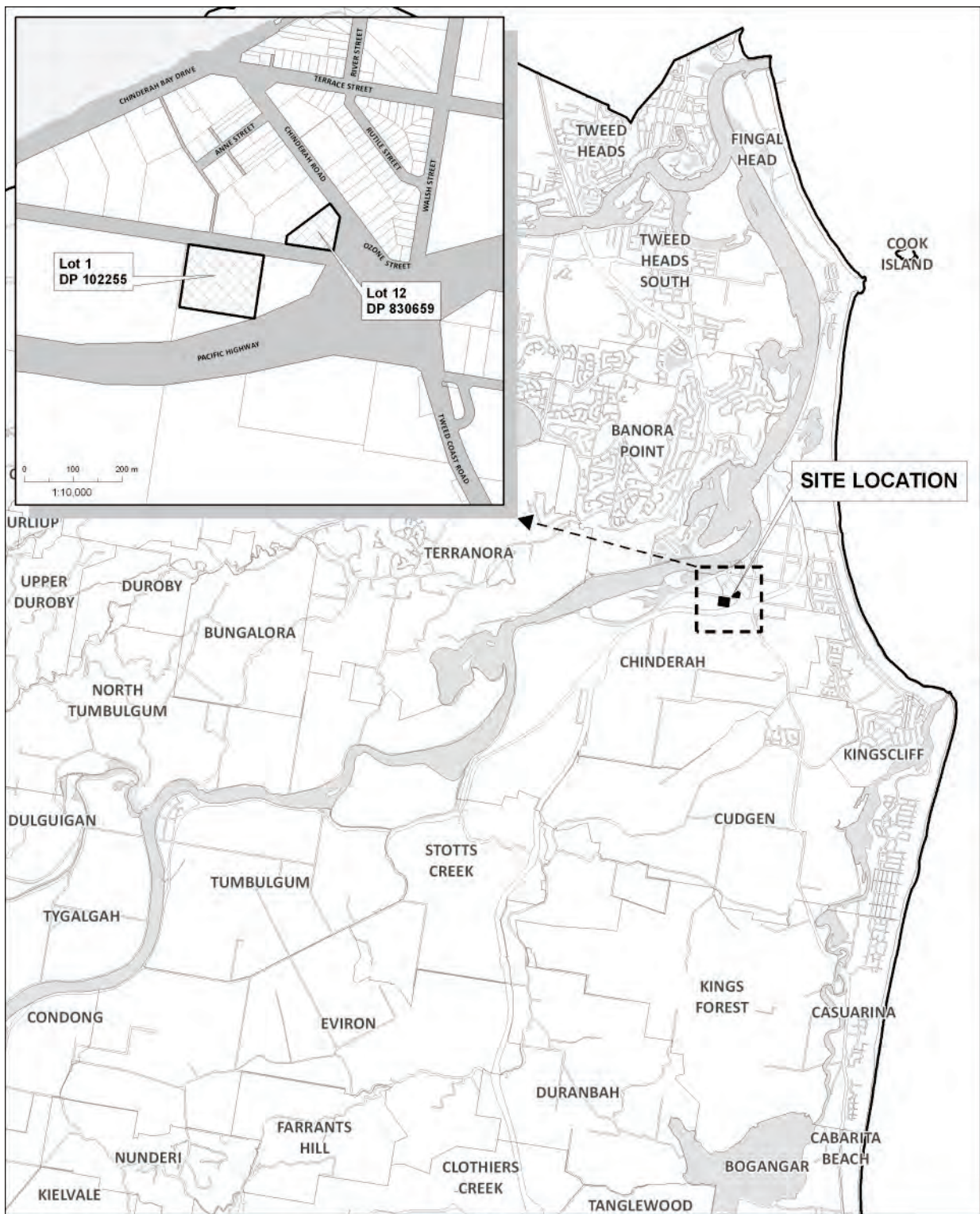
NEW PSC Condition 86 be ADDED as follows:

**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 make no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaim all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a "Call before You Dig" enquiry must be made by calling 2130. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 30 November, 2010                  © Land and Property Management Authority (LPMA) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km                  1:75,000 @ A4 Portrait                  DO NOT SCALE                  COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: UTM of Transverse Mercator                  Horizontal Datum: Geocentric Datum of Australia 1984                  Grid: Map Grid of Australia, Zone 56</p> <p><b>GDA</b></p>	<p>Civic and Cultural Centre                  3 Tumbulgum Road                  Murrumbidgee NSW 2484                  PO Box 816                  Murrumbidgee NSW 2484                  T   (02) 6670 2400   1300 292 872                  F   (02) 6670 2425                  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 PLAN:**





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

The 4 lot industrial subdivision was the subject of detailed assessment under DA09/0006 with regard to the heads of consideration prescribed by S79C of the Environmental Planning and Assessment Act 1979.

The subject S96 application remains consistent with such matters as detailed below (only relevant matters have been addressed).

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

#### Tweed Local Environmental Plan 2000

The proposed development remains consistent with the Clause 44 of the Tweed Local Environmental Plan. It is noted that a revised Cultural Heritage Assessment was submitted for DA10/0552 which confirmed that the occurrence of aboriginal cultural or heritage items within the new road location was unlikely (as per Clause 44). The Department of Environment, Climate Change and Water reviewed the heritage assessment and recommended general terms of approval to form conditions of consent in the event that any cultural items were uncovered during construction works for the proposed new road. Such conditions have been applied to DA10/0552 with a new condition added to the S96 to the effect that:

*Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.*

The deferred commencement consent condition (Schedule A) previously applied with regard to Clause 44 is proposed to be deleted as part of this S96 as it is no longer required.

#### State Environmental Planning Policy 71 – Coastal Protection

The proposed development remains consistent with SEPP 71. It is noted that compensation for the loss of approximately 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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**11 [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:**

**Updated Information**

Council at its meeting of 15 February 2011 resolved as follows in respect of this application:

***RESOLVED*** 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 deferred."

A similar Council decision for deferral of the related Section 96 application, DA09/0006.01 for adjoining property, No. 16-18 Ozone Street, Chinderah was endorsed at the February meeting.

A Class 1 Appeal for a deemed refusal has been lodged by the applicant in the NSW Land and Environment Court for DA10/0552 (see separate Agenda Item), and advice has been received from the applicant that a similar appeal will be lodged in the Land and Environment Court for the related application DA09/0006.01. The first call over for the Appeal is 23 March 2011.

In light of the receipt of this appeal, DA10/0552 is being reported back to Council for determination and endorsement of the original recommendation.

**Previous Information**

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 an sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010'.*

Council's Environmental Health Officer, Traffic Engineer, Development Assessment Engineer and Ecologist have reviewed the application.

The application is being reported to Council at the request of the Director, Planning and Regulation in response to previous Council and community interest in the approved DA09/0006.

## **RECOMMENDATION:**

**That Development Application DA10/0552 for a proposed subdivision to create a public road, associated acoustic fencing and residual lot at Lot 12 DP 830659, Chinderah Road, Chinderah be approved subject to the following conditions:**

### **"DEFERRED COMMENCEMENT"**

**This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.**

**Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning**

and Assessment Regulations subject to the conditions set out in Schedule "B".

#### **SCHEDULE "A"**

##### **Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.**

- A. The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.
- B. The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.
- C. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:
- a schedule and timing of works to be undertaken
  - written agreement from the owner of the agreed site to planting and/or restoration works on the land
  - a suitable protection mechanism on the land to ensure the trees are protected in perpetuity
  - a legally binding commitment by the consent holder to funding and/or undertaking the proposed works
  - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- D. A legally binding commitment by the developer to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the *Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117* prepared by Planit Consulting dated March 2010.

#### **SCHEDULE B**

**NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects, plans approved by Schedule A of this consent and plans as detailed in the table below, except where varied by the conditions of this consent.

Title	Drawn	Dated
Proposed Subdivision Plan DWG Ozonest_sub_01/Rev 1	Planit Consulting	11/2010
Proposed industrial subdivision civil works plan – preliminary (SK5/Issue A)	Cozens Regan Williams Prove	07/2010
Proposed industrial subdivision intersection detail (SK7/Issue A)	Cozens Regan Williams Prove	07/2010

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

[GEN0125]

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

[GEN0135]

4. The level of fill placed on the site shall not exceed RL2.2m AHD.

[GENNS01]

5. Department of Environment, Climate Change and Water General Terms of Approval

- The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.
- In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives and the archaeologist to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.
- An application for a Care and Control Permit must be lodged along with any application for any Aboriginal objects that are located and moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified

in the consultation process and is to provide evidence of the support with any application for a care and control permit.

- If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are to be contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.
- The applicant must continue to consult with and involve all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.
- The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.

[GENNS02]

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

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

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

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

[PCC0275]

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

[PCC0285]

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

[PCC0485]

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

[PCC0865]

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

#### Intersection Works

- (a) The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.
- (b) A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.

#### Road Works

- (c) Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.
- (d) Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

#### Stormwater

- (e) The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- (f) The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.

#### Sewer

- (g) All common rising mains shall be located in road reserve. The developer shall provide a connection for each lot to be serviced by

pressure sewer within the lot to be served in accordance with Council's standard specifications and drawings. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.

- (h) All lots within the development shall be provided with a connection to Council's Sewerage System.

**General**

- (i) Any works associated with the Ozone Street road construction that encroach on private land require the written consent of the affected landholder(s). A copy of the consent(s) shall be submitted to the PCA prior to the works being undertaken.

[PCC0875]

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

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

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

[PCC0985]

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



- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 – Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

13. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - “Code of Practice for Soil and Water Management on Construction Works”.

[PCC1155]

14. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan shall be compiled in collaboration with the owners of adjoining Lot 109 DP 755701 and submitted plan shall include landscaping along both sides of the acoustic fence (i.e.: within Lot 12 DP 830659 and adjoining Lot 109 DP 755701) for the entire length of the road reserve.

Prior to installation of such landscaping, written owners consent from the owners of Lot 109 DP 755701 shall be obtained.

[PCCNS01]

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

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

[PCW0005]

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

[PCW0375]

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

[PCW0815]

- 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 Councils 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

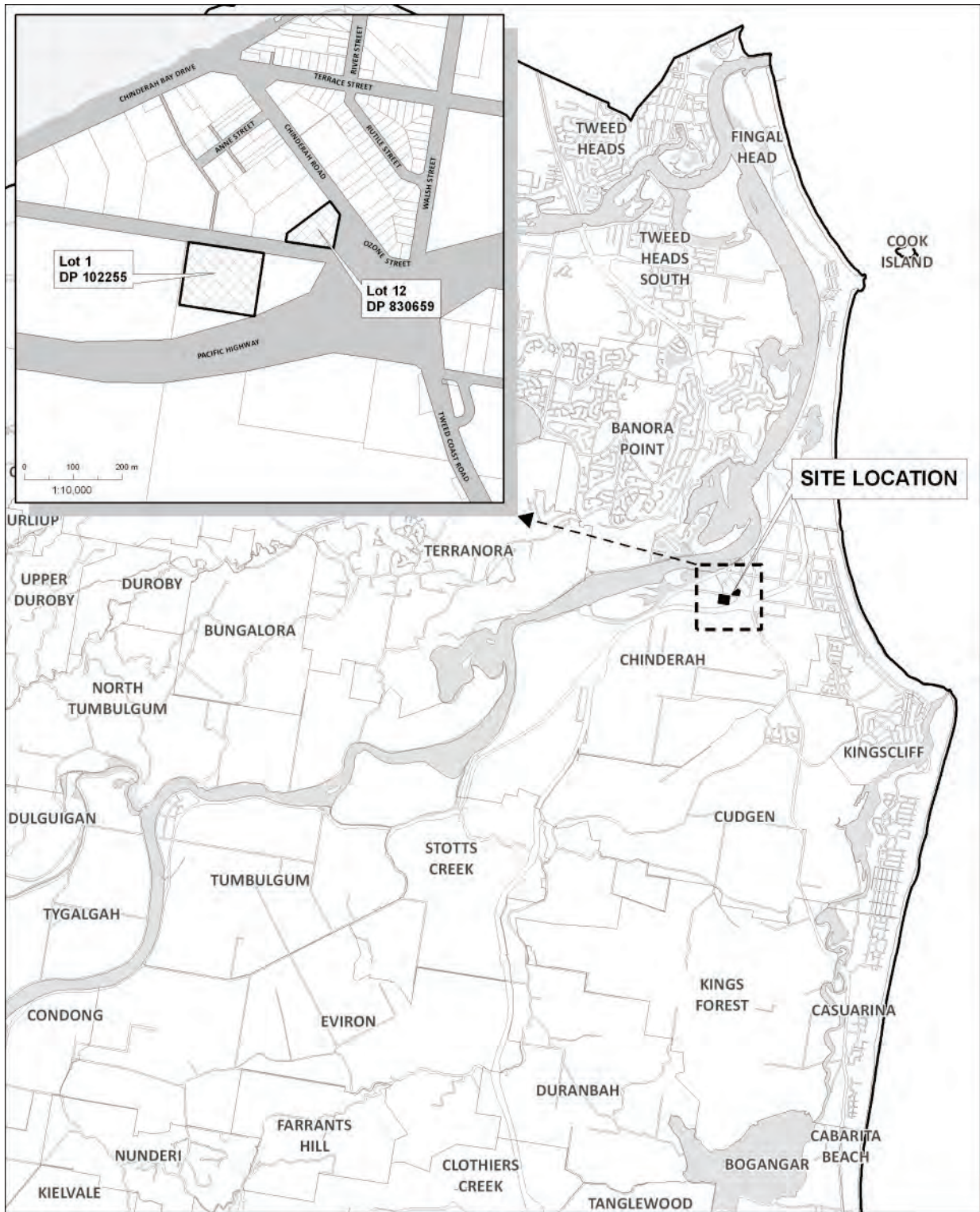
**BACKGROUND:**

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**

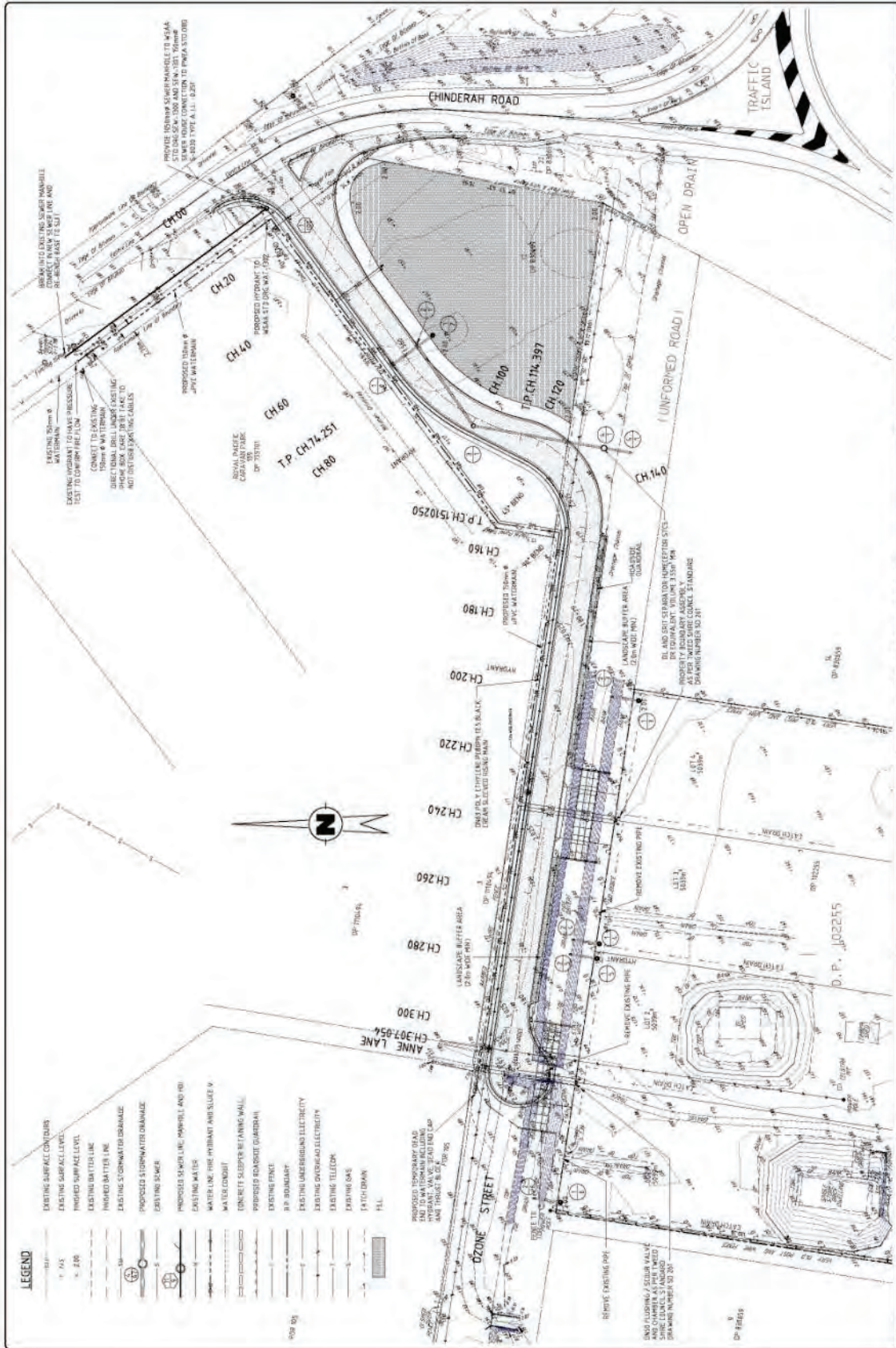
Lot 1 DP 102255, No.16-18 Ozone Street, Chinderah;  
 Lot 12 DP 830659, Chinderah Road, Chinderah

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council make no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaim all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before You Dig' enquiry must be made by calling 2130. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastré: 30 November, 2010                  © Land and Property Management Authority (LPMA) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km                  1:75,000 @ A4 Portrait                  DO NOT SCALE                  COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: UTM of Transverse Mercator                  Horizontal Datum: Geocentric Datum of Australia 2000                  Grid: Map Grid of Australia, Zone 56</p> <p><b>GDA</b></p> <p>Author: B&amp;B Architects - Planning Services Unit</p>	<p>Civic and Cultural Centre                  3 Tumbulgum Road                  Murrumbidgee NSW 2484                  PO Box 816                  Murrumbidgee NSW 2484                  T   (02) 6670 2400   1300 292 872                  F   (02) 9670 2425                  W   www.tweed.nsw.gov.au                  E   planning@tweed.nsw.gov.au</p>	 <p><b>TWEED</b> SHIRE COUNCIL</p>
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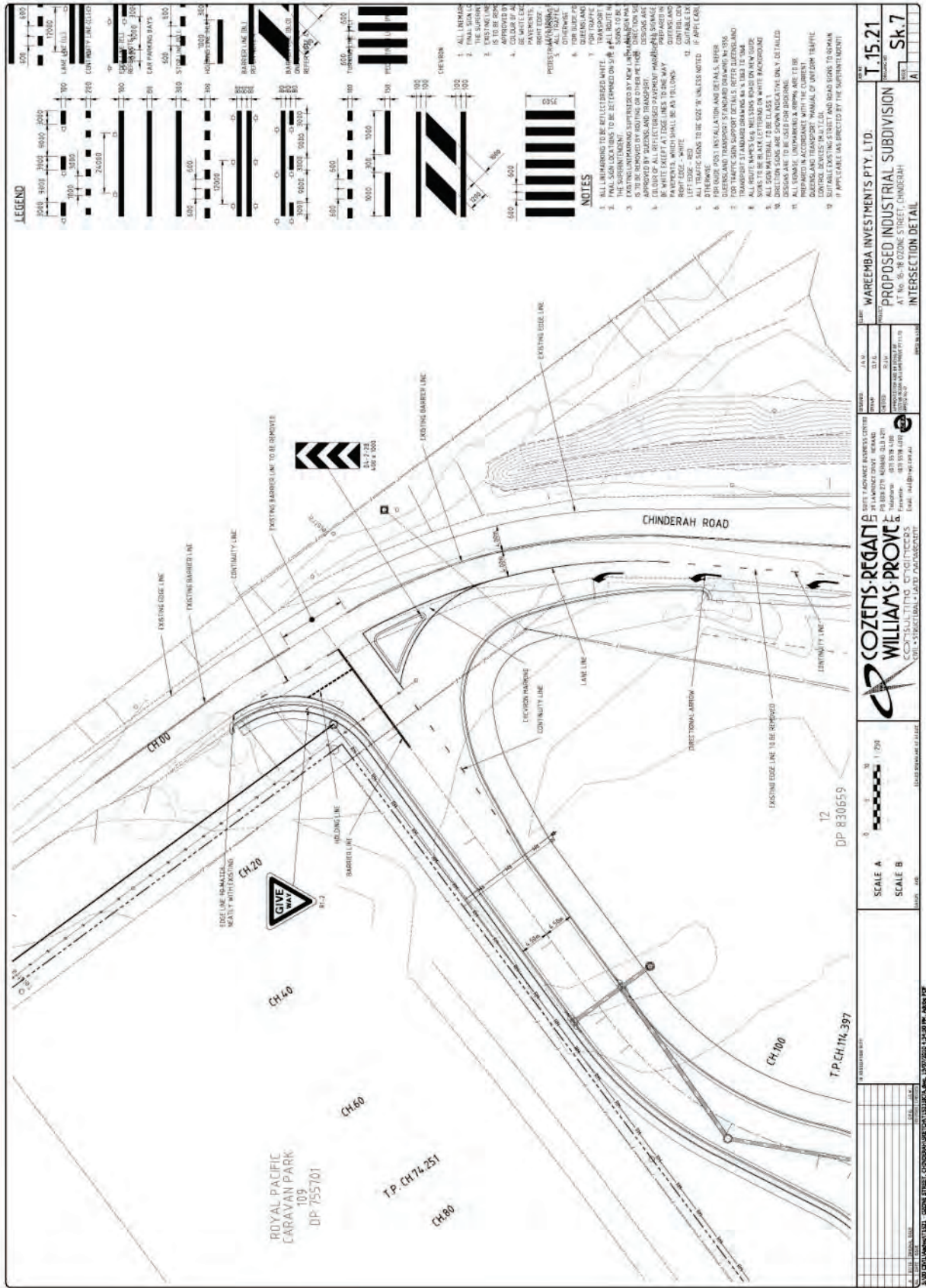
**DEVELOPMENT PLANS:**







<p><b>WAREEMBA INVESTMENTS PTY. LTD.</b>  <b>PROPOSED INDUSTRIAL SUBDIVISION</b>          AT NO. 98 OZONE STREET, CHINDERAH</p>		<p>T.15.21          Sk.5</p>
<p>DATE: 15/03/11          DRAWN BY: J. WILSON          CHECKED BY: J. WILSON          ENGINEER: J. WILSON</p>	<p>PROJECT NO: 1502255          DRAWING NO: T.15.21          SCALE: 1:150</p>	<p>SCALE A          SCALE B</p>
<p><b>COZENS-REGAN &amp; WILLIAMS PROVE &amp; CONSULTANTS</b>          20/111 STREET, CHINDERAH QLD 4275          PHONE: (07) 5598 9999          FAX: (07) 5598 9998          EMAIL: info@crw.com.au          WWW: www.crw.com.au</p>		



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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

The proposed development is permissible in the zone and is not considered to significantly detract from the unique natural and developed character of the Tweed Shire as a whole. Detailed conditions have been applied to regulate impacts of the proposed development which are generally considered to be minor. The proposed development represents a relatively minor intensification of both Lot 12 DP 830659 and Lot 1 DP 102255 which is zoned 4(a) Industrial. Subject to the imposition of conditions, the proposed development is considered to have the potential to create positive economic development with negligible impacts on Tweed's environmental and residential amenity qualities.

The proposed development is considered to be consistent with Clause 4.

**Clause 5 - Ecologically Sustainable Development**

A detailed assessment has been undertaken of the application with respect to ecological and environmental health matters. Subject to conditions of consent, all matters are considered adequately addressed and the precautionary principle is considered to be satisfied. Subject to conditions to regulate impacts of the proposed development, construction of the road is not considered to impact significantly on intergenerational equity or the conservation of biological diversity. Detailed assessment has been undertaken on amenity and environmental considerations and the proposed development is considered to accord with Clause 5.

**Clause 8 – Consent Considerations**

The primary objective of the zone requires the provision and maintenance of a low density residential environment. The proposed road remains consistent with the primary objective in that it does not intensify use of the site above the existing low density context and does not prejudice the ability of existing Lot 12 DP 830659 to meet the zone objectives at a later date, were consent sought in the future for residential development.

The aims and objectives of the TLEP have been considered above. The proposal is considered to be consistent with the aims and objectives of the TLEP 2000.

Subject to conditions of consent, the proposed road construction is not considered to have unacceptable cumulative impacts. The characteristics of the site are unique in that the proposed development seeks a revised means of access to an approved industrial subdivision, separated from the main industrial area in Chinderah, in proximity to the Pacific Highway as well as a residential area. As such, approval of this application is unlikely to create a precedent for similar development and is not considered to generate significant impacts in terms of noise or amenity for nearby residents subject to conditions. It is noted that this will require further assessment when

applications for the use of each of the 4 industrial allotments are submitted and these uses are known.

The applicant has submitted that construction of the road proposed by this application will result in:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive; and
- An improved level of orderly and economic development.

Council planning officers generally concur with the above and conclude that the proposed development is unlikely to have significant adverse cumulative impacts.

The proposed development is considered to be consistent with Clause 8.

#### Clause 11 – Zone Objectives

The subject site (Lot 12) is zoned 2(a) Low Density Residential. Subdivision and road construction are permissible in this zone. The application also covers a portion of the unzoned Ozone Street road reserve, addressed under Clause 13 below.

The objectives of the 2(a) zone are set out below:

Primary Objective:

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

Secondary Objectives:

*To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*

*To allow for non residential development that is domestically based, or services the local needs of the community and does not detract from the primary objective of the zone.*

The proposed development maintains the status quo in terms of residential development as no intensification of residential development is proposed. Subject to future assessment and consent, Lot 12 DP 830659 retains the ability to contain future residential development with access from the proposed new road. As such, the proposed development is considered to be consistent with the primary zone objective in that it maintains the existing low density residential environment.

The proposal is also consistent with the secondary objective in that the amenity of the 2(a) zone is not considered to be significantly affected by the proposed road (being non-residential development). This road will service future industrial development on Lot 1 DP 102255 which is permissible in the 4(a) zone.

### Clause 13 – Development of Uncoloured Land on the Zone Map

This clause requires the development of uncoloured land to be compatible with surrounding development and zones.

The section of uncoloured land is a portion (approximately 147m) of the Ozone Street road reserve located between Lot 12 DP 830659 and Lot 1 DP 102255. The uncoloured land is bounded by both 2(a) Low Density Residential and 4(a) Industrial zoning. In this instance, development of the uncoloured land as a 'road' is considered to be consistent with the objectives of both adjoining zones as a low density residential character is maintained by the proposed road and a road is an appropriate component of an industrial development which is required to enable future industrial development on the site.

### Clause 14 – Development Near Zone Boundaries

Lot 12 DP 830659 and Lot 1 DP 102255 are separated by approximately 30m of road reserve and as such this clause is not applicable. In any case, the proposed development is permissible within each zone.

### Clause 15 - Essential Services

Council's piped water and sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards for the residual lot. It is noted that the proponent proposes to service the lot by a single property sewer pump station connected to the proposed sewer rising main from the pressure sewer system to be provided in the industrial subdivision (DA09/0006). A contribution of \$14, 800 is payable to Council for installation of the sewer pump station. In addition, the standard S64 sewer charge for 1 additional lot has been applied, to be paid prior to the issue of a subdivision certificate.

Electricity and telecommunication services are currently provided to the area via Country Energy and Telstra infrastructure. Conditions regarding the provision of all services have been applied.

### Clause 16 - Height of Building

The proposed development does not require a consideration of building heights.

### Clause 17 - Social Impact Assessment

The proposed development for a subdivision, road and acoustic fencing is not considered to create significant social impacts by way of employment generation or positive economic impacts. It is noted that a number of matters (including social concerns) were raised during the submission process. These matters are addressed further later in this report.

### Clause 19 – Subdivision Generally

This clause permits the subdivision of 2(a) zoned land with consent.

### Clause 22 – Development Near Designated Roads

Chinderah Road is a Council Designated Road and provides the sole means for vehicular access to Lot 12. As such, consideration of Clause 22 is required (it is noted that the subject site is also bound by the Pacific Highway, a proposed classified road). In this regard, a detailed traffic assessment has

been undertaken by Council's Traffic Engineer and Development Assessment Engineer. This assessment concludes that the proposal is consistent with Clause 22 and that no road capacity, safety or operational performance implications are raised by the proposed road and its intersection with Chinderah Road.

#### Clause 23 – Control of Access

Clause 23 permits the opening of a road with an intersection to a designated road with development consent. This is what is sought by the subject application.

#### Clause 24 – Setbacks to Designated Roads

This clause does not apply as no buildings are proposed within the subject application. It is noted that this clause will require future consideration should residential development be proposed on the residual lot.

#### Clause 34 – Flooding

The subject site (inclusive of the Ozone Street road reserve) is affected by flooding, with a 1 in 100 year flood level of 3.2m AHD. The site (and road reserve) is also covered by the Probable Maximum Flood (PMF) as well as a 'Low' flood velocity.

The proposal has been reviewed by Council's Flooding Engineer and Development Assessment Engineer. Due to the nature of the development (i.e.: road and fence only), the proposal is not considered to increase the extent or nature of the existing flood hazard or increase the risk or severity of flooding of other land in the vicinity. It is noted however that DCP A3 (as discussed later in this report) requires fencing on land in Chinderah to be designed so as to permit the free flow of flood water or be collapsible under water/debris loads. Considerable negotiation has been undertaken with respect to this with the applicant and a deferred commencement condition has been applied to ensure the fence is designed appropriately.

The proposed development is not considered to impact adversely on emergency services as it is small scale in nature and does not propose any type of habitable development.

The provisions of DCP A3 (Version 1.3) with regard to site filling and drainage have been addressed with the following comments made by Council's Development Assessment Engineer:

*"It is noted that levels on the site do not exceed the required maximum RL2.2m AHD. A condition of consent will be applied to the development similar to condition 4 of DA09/0006.01 which states; "The level of fill placed on the site shall not exceed RL2.2m AHD."*

*The following condition of consent is included within the consent conditions;*

*A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow".*

Finished levels of the road range from 1.56m AHD (near proposed intersection with Chinderah Road) to 2.025m AHD along the northern side of the proposed road within the Ozone Street road reserve.

Such conditions ensure compliance with the site filling and drainage provisions of DCP A3. The flooding related matters prescribed by Clause 34 are therefore considered satisfied.

#### Clause 35 - Acid Sulfate Soils

Both Lot 12 and the Ozone Street road reserve contain class 3 acid sulfate soils. The proposal involves the installation of three (3) box culverts which will require minor excavation (approximately 0.5m below ground level). Detailed assessment has been undertaken by Council's Environmental Health Officer and conditions applied with respect to compliance with an acid sulfate soils management plan and inspections by Council's Environmental Health Officer prior to the commencement of works.

#### Clause 44 – Development of Land within Likely or Known Archaeological Sites

The applicant submitted an Aboriginal Cultural Heritage Assessment prepared by Everick Heritage Consultants, concluding that no items of indigenous cultural heritage or potential historic cultural significance were identified on the portion of Lot 12 encompassing the proposed road or the subject section of the Ozone Street road reserve (the report also considers Lot 1 DP 102255 – as required under DA09/0006).

This assessment was forwarded to the Department of Environment, Climate Change and Water (DECCW) for review of its adequacy. DECCW advised that the assessment has been undertaken in accordance with the Department's guidelines for aboriginal cultural heritage.

Advice was also supplied noting that no known aboriginal cultural heritage values will be impacted by the proposed road development. However, it was noted that there may be a likelihood of evidence of Aboriginal occupation being uncovered during construction works. Should this occur, DECCW have recommended six (6) conditions of consent as follows:

- 1. The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.*
- 2. In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives the archaeologist and to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.*
- 3. An application for a Care & Control Permit must be lodged along with any application for any Aboriginal objects that are located and*

*moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified in the consultation process, and is to provide evidence of the support with any application for a care and control agreement.*

- 4. If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.*
- 5. The applicant must continue to consult with, and involve, all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.*
- 6. The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.*

These conditions have been applied.

The proposal is considered to be consistent with Clause 44 and Council is satisfied that the site does not contain any known items of Aboriginal or archaeological significance.

### **State Environmental Planning Policies**

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

##### **Clause 15: Rivers, streams and wetlands**

Inclusive of compensatory habitat works to the satisfaction of Council (as per the approved Habitat Restoration Plan approved under DA09/0006), the proposal is considered to be consistent with Clause 15.

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

The NSW Coastal Policy applies to the subject site and Council must therefore take into consideration the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines.

Broadly, the proposal does not contravene the provisions of the above documents, and will not impede public access to, or overshadow the foreshore.

The proposal is consistent with Clause 32B.

##### **Clause 47: Principles for Commercial and Industrial Development**

Whilst not specifically relevant to the subject application, Clause 47 (2) specifies that before granting consent for industrial development, Council must consider that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. This application is not for industrial development, however the proposed



road is to serve the industrial subdivision approved under DA09/0006. Clause 47 was addressed in the assessment for DA09/0006 and subject to the access arrangement under the existing consent (DA09/0006) or the proposed road under DA10/0552, appropriate access to the transport system (i.e.: the Pacific Highway and local road network) will be provided.

The proposal is consistent with Clause 47.

#### Clause 81: Development adjacent to the ocean or a waterway

This clause specifies that Council must not consent to an application for development on land within 100m of the ocean or any substantial waterway unless satisfied the development does not limit access to available open space, does not detract from the amenity of the waterway and is consistent with any foreshore management plan applying to the area.

In this instance, the proposed road construction and subdivision does not limit access to open space (whilst it does propose to create a road in a road reserve area presently utilised by locals as open space). There is no foreshore management plan applying to the area and only minor clearing (which will be offset elsewhere) is necessary to facilitate road construction (including the installation of box culverts over the existing drain).

The proposal is consistent with Clause 81.

#### SEPP No. 14 - Coastal Wetlands

The existing drain along the Ozone Street road terminates into an area of the Tweed River identified under SEPP 14 (and also classified as a sensitive coastal location under SEPP 71).

Consideration of SEPP 14 only occurs if the subject site is covered by the policy, which in this case it is not. Subject to conditions to prevent sediment/runoff impacts into the Tweed River, the proposed development is considered to generally accord with SEPP 14.

#### SEPP No 71 – Coastal Protection

The subject site is covered by SEPP 71, although the site is not identified as a sensitive coastal location under the Policy.

A detailed SEPP 71 assessment was requested of the applicant, which concluded that the proposed development is consistent with the prescribed matters for consideration.

Specifically, the proposed development will not affect access to any coastal foreshore areas and is considered to be suitable for the subject locality due to the site's proximity to the Pacific Highway and other industrial development. The proposal is not considered to impact adversely on the coastal foreshore, will not create overshadowing and is not considered to detract from the scenic qualities of the New South Wales coast, being relatively minor in nature.

The applicant has indicated their intention to engage in compensatory works to offset the loss of part of the Endangered Ecological Community (EEC) via the approved Habitat Restoration Plan (approved under DA09/0006) as well as the loss of one Forest Red Gum and one Pink Bloodwood tree in the road reserve (a deferred commencement condition has been applied with regard to finding a suitable site for compensation for these two trees).

No wildlife corridors are mapped on the subject site or along the Ozone Street road reserve. The subject site is located outside of the coastal erosion zones under the NSW Coastal Policy and coastal processes will not impact on the proposed development. The proposal does not have the potential to create conflict between land based and water based activities.

With regard to Clause 8(l), the Cultural Heritage Assessment has noted that the site is not within proximity to any known archaeological sites. General Terms of Approval supplied by the Department of Environment, Climate Change and Water have been applied in the unlikely event that cultural material is uncovered during the construction process, including the requirement to cease works if any item is disturbed and the need to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council.

In terms of cumulative impact, the development is not considered to pose a significant impact to the EEC community due to vegetation removal being compensated for via the approved Habitat Restoration Plan. It is noted that a deferred commencement condition has also been applied with regard to a suitable offset for the loss of two existing habitat trees within the road reserve at the proposed intersection of the new road with Chinderah Road. Conditions have been applied by Council's Ecologist in this regard.

Subject to conditions as detailed above, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

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

Draft Tweed Local Environmental Plan 2010

The draft Tweed Local Environmental Plan 2010 (DLEP) zones the subject site R2 – Low Density Residential (the equivalent zone). The DLEP also zones the Road Reserve as RE1 – Public Recreation.

A road is permitted without consent in the R2 zone and the RE2 zone. Subdivision remains permissible with consent in the R2 zone.

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

Tweed Development Control Plan

A2 - Site Access and Parking Code

At the subdivision stage, the provision of car parking is not required. The applicant will be required to demonstrate compliance with DCP A2 at the time of lodgement of an application for the future development of the residual allotment or each of the industrial allotments approved under DA09/0006.

A3-Development of Flood Liable Land

Council's records indicate the site (and road reserve) are flood liable, with a design flood level of 3.2m AHD, as well as being covered by the PMF.

DCP A3 specifies the following for fill for commercial and industrial development on flood liable land:

*“For drainage purposes only, land will only be required to 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**

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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 to 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

Submission	Response
	<p>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.</p>
<p>The development will create air pollution/fumes</p>	<p>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.</p>
<p>Increased traffic would reduce quality of life and amenity</p>	<p>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.</p>
<p>Tourists would bypass the area because of increased traffic</p>	<p>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.</p>
<p>The acoustic assessment makes no reference to existing residential houses across Chinderah Road</p>	<p>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.</p>
<p>Traffic noise will create sleep</p>	<p>Council's Environmental Health Officer has completed</p>

Submission	Response
awakenings	<p>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 shut and the provision of alternative ventilation which will require electricity to run and be an ongoing cost to the resident	Such 'sound shell' treatment measures were recommended by the applicant's acoustic consultant for utilisation where the 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

Submission	Response
	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.
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.



<b>Submission</b>	<b>Response</b>
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 uses. Mixing residential with industrial is a poor mix	The Tweed Local Environmental Plan 2000 prescribes mixed zoning in the Chinderah locality. Detailed assessment of the 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	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

Submission	Response
this worse.	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.
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	<p>The following deferred commencement condition has been applied to ensure funds are available for the ongoing maintenance of the acoustic fence by Council:</p> <p><i>The developer shall to submit to Council an asset handover</i></p>

Submission	Response
	<i>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 should be a statement of the beauty visitors can expect along the north coast	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 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	The proposed development is to create a public road which

Submission	Response
Pacific Tourist Retreat have major health problems which will be worsened by the drift of diesel exhaust fumes and pollution from industrial traffic	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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**12 [PR-CM] Development Application DA10/0552 and Section 96 Application DA09/0006.01 – Lot 12, 830659, Chinderah Road, and DP Lot 1 DP102255, 16-18 Ozone Street, Chinderah - Notice of Class1 Appeals**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0552 Pt3 and DA09/0006 Pt3**

**SUMMARY OF REPORT:**

Council has received notification of two, “deemed refusal” Class 1 appeals lodged by the applicant in the NSW Land and Environment Court for the following, undetermined, related applications:

DA10/0552 – Proposed subdivision to create a public road, associated acoustic fencing and residual lot at Lot 12 DP830659, Chinderah Road, Chinderah (Appeal documents received 2 March 2011); and

DA09/0006.01 – Section 96 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 DP102255, No. 16-18 Ozone Street, Chinderah (Applicant advised Council on 3 March 2011 that a separate appeal is soon to be lodged for this application).

Council considered reports for these applications at the December 2010 and February 2011 meetings, which were subsequently deferred by Council.

The first call over hearing for these Appeals is scheduled for 23 March 2011.

**RECOMMENDATION:**

**That following determination of separate business paper items relating to DA10/552 and DA09/0006.01 (in respect of parcels of land at Ozone Street and Chinderah Road, Chinderah), Council engage its solicitors to represent Council at the first call over hearing for the Class 1 Land and Environment Court appeals relating to these applications.**

## **REPORT:**

Council has received notification of two, "deemed refusal" Class 1 appeals lodged by the applicant in the NSW Land and Environment Court for the following, undetermined, related applications:

DA10/0552 – Proposed subdivision to create a public road, associated acoustic fencing and residual lot at Lot 12 DP830659, Chinderah Road, Chinderah (Appeal documents received 2 March 2011); and

DA09/0006.01 – Section 96 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 DP102255, No. 16-18 Ozone Street, Chinderah (Applicant advised Council on 3 March 2011 that a separate appeal is soon to be lodged for this application).

Council considered reports for these applications at the December 2010 and February 2011 meetings, which were subsequently deferred by Council.

The first call over hearing for the Appeals is scheduled for 23 March 2011.

## **OPTIONS**

1. Determine DA10/552 and DA09/0006.01 as per the recommendations contained in separate reports in this meeting agenda. Such action is still likely to require some form of legal representation at the first call over hearing on 23 March 2011.
2. Refuse DA10/552 and DA09/0006.01 and resolve to defend the Appeal.

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

If Council resolves to refuse the applications and defend the deemed refusal appeals, legal expenses will be incurred. Consultants would also be required to be engaged to act as Council's expert witnesses, as the Council officers have recommended approval of both of these applications.

## **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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- 13 [PR-CM] Development Application DA08/0984.09 for an amendment to Development Consent DA09/0984 for demolition of existing structures & construction of multi dwelling housing comprising 28 units and carparking at Lot 1 DP 1151857, No. 204 Byangum Road Mur**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/0984 Pt6**

**SUMMARY OF REPORT:**

Approval was granted in August 2009 for the construction of a single level multi dwelling housing development containing 28 townhouse units. The proposed townhouses are predominantly one bedroom plus utility room and all single level.

The applicant has lodged a S96 application in relation to the calculation of developer contributions for water and sewer. Council calculated the contributions on the basis of 2 bedrooms per unit (i.e. the utility rooms were assessed as a bedroom). The applicant claims that the calculations are incorrect and should be applied as 22 x 1 bedroom units and 6 x 2 bedroom units.

Council staff are satisfied that the original calculation of water and sewer contributions was undertaken correctly and in accordance with Council's adopted Fees and Charges document. The proposed modification is not supported as it may lead to future policy implications in terms of setting an undesirable and inappropriate precedent for the application of contribution fees. The loss of applicable S64 contribution fees would likely impact upon Council's ability to provide adequate services for the future growth of the Shire.

Upon advice that the application was being recommended for refusal, the applicant indicated that they would appeal the decision. As such, the matter is being reported to a full Council meeting for determination.

**RECOMMENDATION:**

**That:**

- A. Development Application DA08/0984.09 for an amendment to Development Consent DA09/0984 for demolition of existing structures & construction of multi dwelling housing comprising 28 units and carparking at Lot 1 DP 1151857, No. 204 Byangum Road Murwillumbah be refused for the following reasons: -**
- 1. The proposed modification is contrary to Council's adopted Fees and Charges document.**

- 2. The proposed modification is not considered to be in the public interest.**
- B. Council defends the matter, in the event that the applicant lodges an appeal in the NSW Land and Environment Court.**

## REPORT:

**Applicant:** Rossco Developments Pty Ltd  
**Owner:** Rossco Developments Pty Ltd  
**Location:** Lot 1 DP 1151857, No. 204 Byangum Road Murwillumbah  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$0.00

## BACKGROUND:

Development Consent for the construction of a single level multi dwelling housing development containing 28 townhouse units was approved 14 August 2009. The intent of the development was to provide affordable housing for the over 50's age group. As a result, the proposed townhouses are predominantly one bedroom plus utility room and all single level. Each dwelling incorporates a single garage accessed from an internal driveway.

As a result of a contract for sale of the completed development with Housing NSW, the applicant lodged a S96 application (DA08/0984.06) for some modifications to the approved development, as noted below. The main modification was the conversion of 50% of the dwellings into 'adaptable' dwellings. This was proposed by way of minor internal layout changes to allow the bathrooms and kitchens to increase slightly. The S96 was approved in March 2010.

Construction of the development has been completed, with a final Occupation certificate issued in June 2010. A Strata Subdivision Certificate was also issued in June 2010.

### Proposed Development

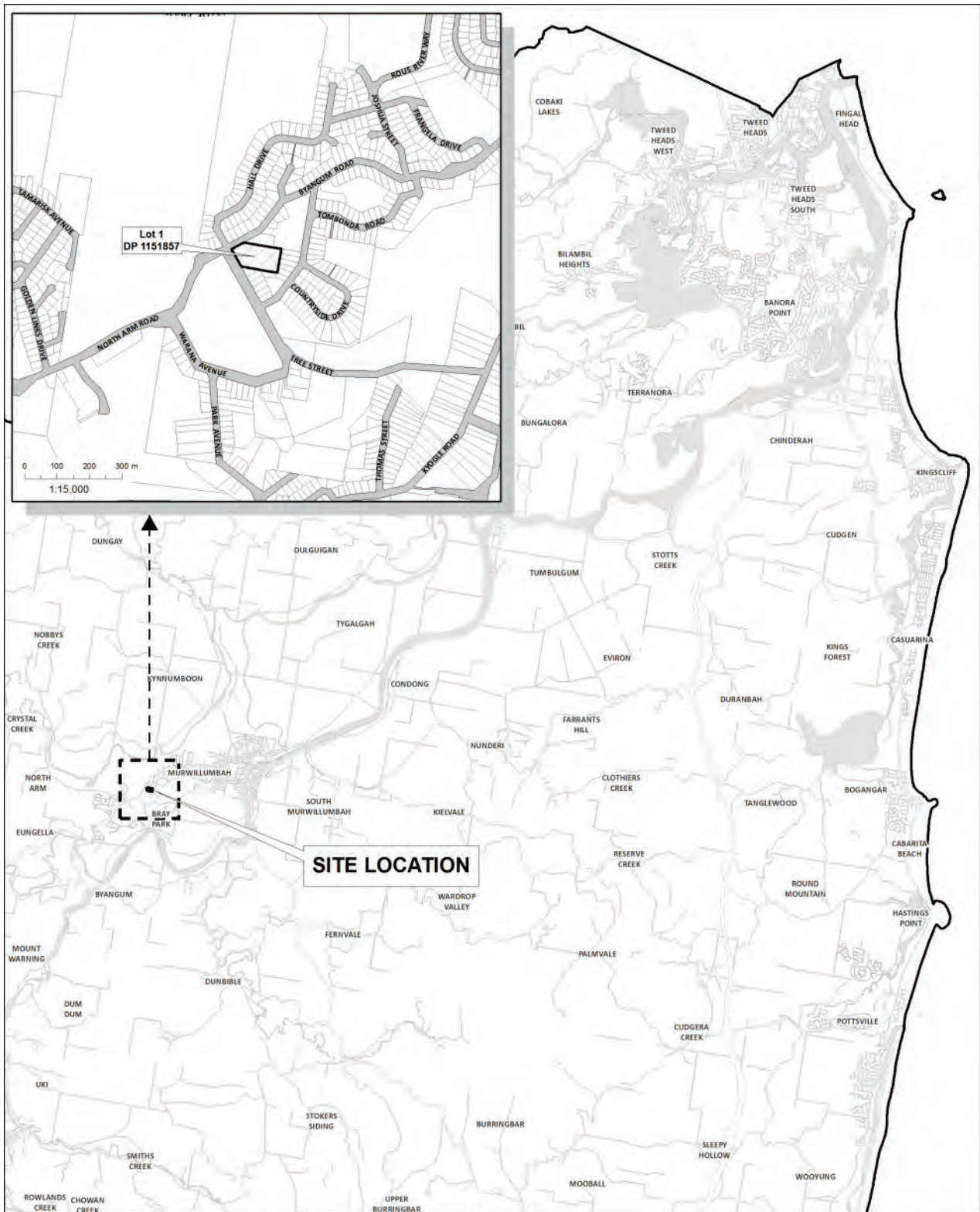
The applicant has advised of the following proposed modification to Development Consent DA08/0984:

Condition 17: Payment of S64 Contributions (\$169,202.20 Water and \$102,920 Sewer)

The applicant claims that the contributions were incorrectly applied. Council calculated the contributions on the basis of 2 bedrooms per unit (i.e. the utility rooms were assessed as a bedroom). The applicant claims that the calculations are incorrect and should be applied as 22 x 1 bedroom units and 6 x 2 bedroom units.

In order to enable the construction of the development, the applicant paid all applicable contributions in November 2009. If the proposed modification is supported, a refund of \$47,119.60 in Water Contributions and \$28,303 in Sewer Contributions would be required.

**SITE DIAGRAM:**



**Locality Plan**  
 DA08/0984.09 - Lot 1 DP 1151857;  
 No.204 Byangum Road, Murwillumbah

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Cadastre: 02 March, 2011.  
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 Boundaries shown should be considered approximate only.

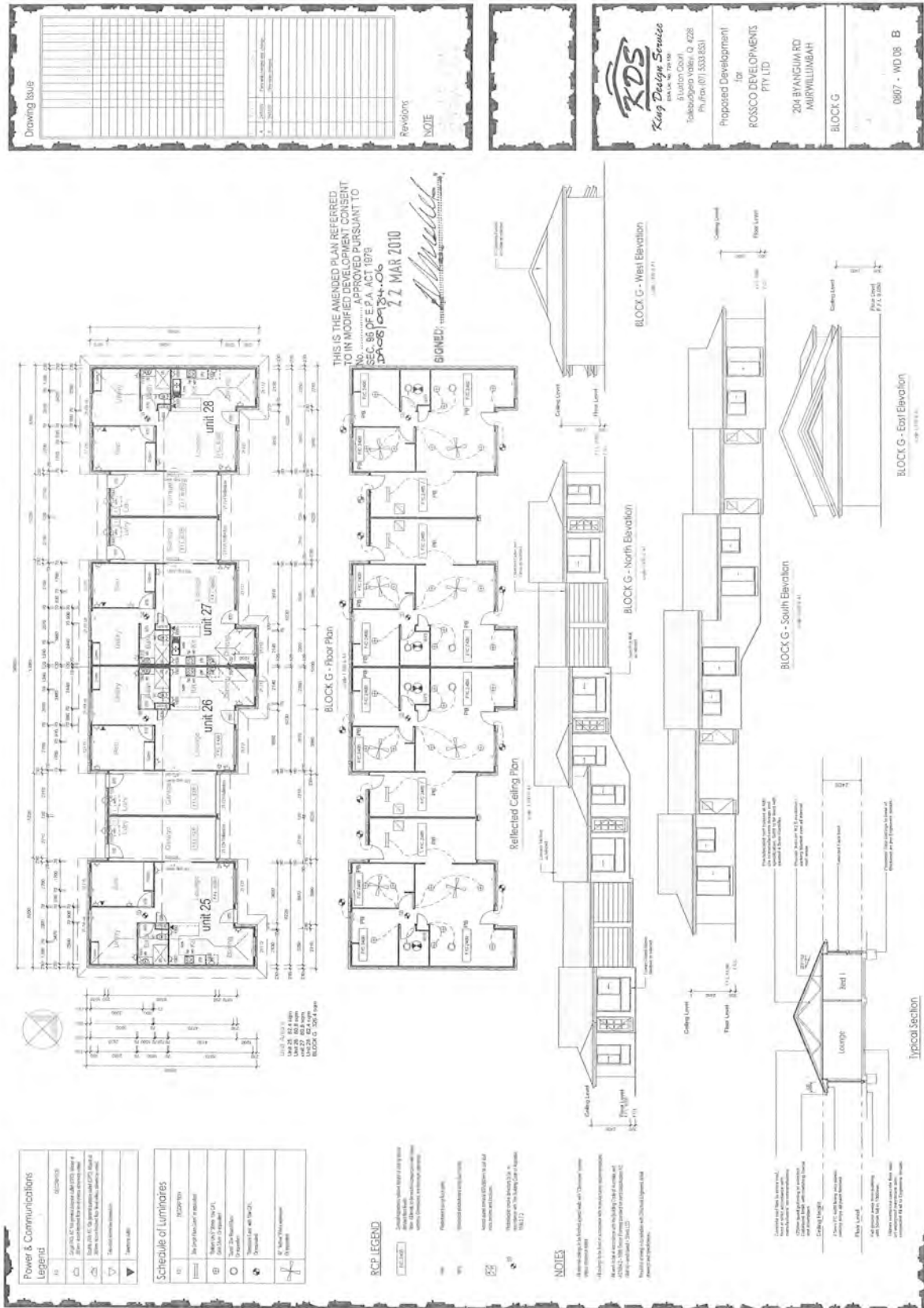
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 COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geocentric Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre  
 3 Tumbulgum Road  
 Murwillumbah NSW 2484  
 PO Box 816  
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 W | www.tweed.nsw.gov.au  
 E | planningreforms@tweed.nsw.gov.au



**DEVELOPMENT PLAN:**



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

### Use

The applicant has provided the following statement in terms of the intended use of the units:

The North Coast Community Housing Company (NCCHC) has contracted to purchase the property. NCCHC a not-for-profit company managing long-term social housing for people with special needs and residents with low and moderate incomes in the far North Coast region of New South Wales. The Company is the largest Community Housing provider in this region. NCCHC currently manages in excess of 700 properties across the far North Coast.

Colin Jones, Housing Services Manager - North Coast Community Housing Company Ltd, has provided correspondence confirming that the subject dwellings are being provided 'on the basis of them being single bedroom units'. Effectively, all of the 28 units in the Byangum Road complex will be occupied by single people.

In an email dated 18 June 2010 he clarifies that the subject dwellings will be utilised as one-bedroom dwellings when he states:

*They have all been allocated to clients who have been identified as requiring one-bedroom accommodation. The "utility room" is a design feature that we appreciate as we know our clients will be able to utilise that space for additional storage, desk space or perhaps as a space for temporary sleeping arrangements (e.g. overnight stays for grandchildren). However we would not regard this space as a bedroom and have not regarded it as such for housing allocation purposes.*

*We understand that 6 of the 28 have been identified as being 2 bedroom units because, unlike the other units, the "utility rooms" for these units have internal doors installed. However it should also be noted that these units, also, will be occupied by single people households. These particular units have been used to attract to the complex those small (single) households currently residing in larger social housing units.*

Please refer to Appendix B for a copy of the above mentioned correspondence.

It is significant to note that the proposed development will enable the NCCHC to relocate singles who are currently occupying units suited for families, to the development. It demonstrates a community need for this type of accommodation. It would be unreasonable to penalise the applicant when there is a clearly established intent to use the development for 1 bedroom units, particularly when their use will be managed by a Government social housing provider.

Comment:

Despite the intended use as described above, Council's Fees and Charges document is clear in that contributions are applied on the "potential" of a room being used as a bedroom, as highlighted below:

91. S64 Water and Sewerage Developer Contribution

**Water**

Based on single Equivalent Tenement ("ET") Charge. Each new Lot created = 1.0 ET excepting each new Residential lot created >2000m<sup>2</sup>=1.2 ET

DSP Areas

NOTE: All premises not specifically listed below shall be individually assessed by the Director Community and Natural Resources based on Water Directorate "Section 64 Determinations of Equivalent Tenements Guidelines" and any other relevant information available to Council.

Residential User Categories

- Single Residential Lots
- Dual Occupancy
- Multi-Dwelling Housing, includes Integrated Housing (Medium Density 1 - 3 Storey)
  - Potential of 1 bedroom each Dwelling = 0.4 ET
  - Potential of 2 bedroom each Dwelling = 0.6 ET
  - Potential of 3 bedroom (or more) each Dwelling = 0.8 ET
- Multi-Dwelling Housing (High Density greater 3 stories)

Commercial User Categories

Industrial General User Categories

**Sewer**

Based on single Equivalent Tenement ("ET") Charge. Each new Lot created = 1.0 ET excepting each new Residential lot created >2000m<sup>2</sup>=1.0 ET

DSP Areas

NOTE: All premises not specifically listed below shall be individually assessed by the Director Community and Natural Resources based on Water Directorate "Section 64 Determinations of Equivalent Tenements Guidelines" and any other relevant information available to Council.

Residential User Categories

- Single Residential Lots
- Dual Occupancy
- Multi-Dwelling Housing, includes Integrated Housing (Medium Density 1 - 3 Storey)
  - Potential of 1 bedroom each Dwelling = 0.5 ET
  - Potential of 2 bedroom each Dwelling = 0.75 ET
  - Potential of 3 bedroom (or more) each Dwelling = 1.0 ET
- Multi-Dwelling Housing (High Density greater 3 stories)

Commercial User Categories

Industrial General User Categories

Council's Water Unit provided the following comment in this regard:

*'Following consideration of the information supplied in support of the s96 application, the Water Unit is satisfied that its previous advice is correct.*

*The only substantial differences between the design of the single bedroom/utility room units and the two bedroom units are the presence of an internal door and the built in cupboard is described as a linen cupboard. The two bedroom design does not have a separate linen cupboard, nor a utility room.*

*Clearly, the utility room is of a size that could be used as an improvised bedroom. The argument that the door to the external courtyard is off the utility room is not valid as the same appears to be so of the two bedroom design as well'.*

The original assessment of the 28 units was assessed under the relevant multi dwelling housing provisions (DCP A1), which does not restrict the age or number of occupants in each dwelling. Council has issued a strata subdivision certificate for the development, which means that in the event that the subject site changes ownership, any future owner could potentially use the utility room as a second bedroom.

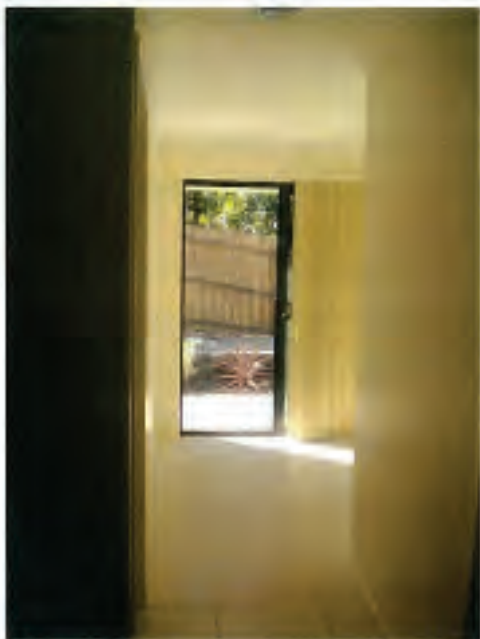
As a result, the applicant's argument is not supported and the original calculation of contributions as 28 x 2 bedroom units is considered to be accurate and in accordance with Council's adopted Fees and Charges document.

### Construction of Units

The applicant has provided the following statement with regard to the construction of the approved units:

The building certifier, Apex Building and Development Consultants, has provided correspondence (Appendix C) certifying that the 22 x 1 bedroom dwellings have been constructed in accordance with the approved plans.

More specifically, the documentation confirms that no door has been constructed on the utility room. The photos below are of the finished product and clearly illustrate that no door exists on the utility room. Furthermore, the utility room provides the sole access to the private courtyard of the dwelling.



View of the utility room which has been designed without a doorway.



Access to the private courtyard is via the utility room.

### Comment:

Whilst it is acknowledged that the units have been constructed in accordance with the approved plans (i.e. no door has been constructed), Council must apply the contribution rates on the potential of a room being utilised as a bedroom. A door could be put in



place at some future date as exempt development and therefore the utility room could be used as a second bedroom.

The application of this rule is consistent with how Council assesses development proposals with large studies that could be utilised as a bedroom. It should also be noted that the contribution calculations are consistent with the assessment of car parking provisions for this development. Additional car parking spaces were required to account for the 28 x 2 bedroom units.

Council's Development Engineer has also noted that the contributions have been calculated correctly, as the units could easily be utilised as two bedroom units.

#### Consistency with Previous Approvals

The applicant has provided the following statement with regard to previous approvals of similar nature:

Tweed Shire Council has previously recognised dwellings with similar configurations as one bedroom units and this is evidenced by approvals for the applicants developments at 98 Greenway Drive, Banora Point (Council ref: D98/0097), 213 Leisure Drive, Banora Point (Council ref: DA06/1416) and 21 Blue Jay Circuit, Kingscliff (Council ref: K99/0703).

The above mentioned developments all contain one bedroom dwellings (with a utility room) which Council acknowledged in the calculation of the applicable contributions.

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Comment:

Council's Water Unit has provided the following comments:

*The applicant's argument for consistency with previous applications is not considered valid as:*

- a) *The two developments with approval in 1998 and 1999 would have been assessed as "units" at 0.75 each for both water and sewer as these were prior to the adoption of the more detailed assessment of unit sizes, and*
- b) *The development in Leisure Drive were all single bedroom units and hence no comparison between single and two bedroom units would have been made, alerting the assessing officer to the possibility of a utility room being used as a bedroom.*

*The argument of consistency could also be made that the applicant complied with a condition to provide parking on the basis that all units had two bedrooms. The s64 development charge is consistent with this other development requirement and no application has been made to remove the additional parking space provided. The applicant apparently complied with the current condition at the time of completion of the project so as to obtain the certificate of occupancy and hence sell the development to its current owner.*

*This also raises the question if Council were to agree to reducing the s64 charge assessment, and as the property has now changed hands, who would be the*

*legitimate recipient of any refund, as the s64 charge is related to the property, not the owner.*

*The Water Unit does not support the s96 application. The Water Unit considers that the basis of the assessment of all units as two bedrooms for the purposes of s64 assessment is correct'.*

It is acknowledged that the approved development at Leisure Drive (DA06/1146) had a similar internal configuration to this proposal (i.e. one bedroom plus utility room). Council records indicate that the calculation of S64 contributions as one bedroom (rather than having a potential of two bedrooms) was an oversight on Council's behalf. Any current or future development of similar nature are and will be assessed on merit, in terms of utility rooms or studies being potentially utilised as an additional bedroom, as does car parking provisions.

### **CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- "(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

### **Likely Environmental Impact**

The proposed modifications, being an amendment to water / sewer contribution payments are not considered to have any direct environmental impact on the surrounding locality.

### **Substantially the Same Development**

The proposed amendments do not involve any modifications to the proposed development in terms of design layout, construction works or number of units. Rather, the proposed modifications relate to the water / sewer contribution fees applied to the original approval. In this regard, the amendment is considered to be substantially the same as that approved under Development Consent DA08/0984.

### **Notification/Submissions**

The proposed modification did not require notification. Therefore, no submissions were received.

### **Public interest:**

As noted above, the calculation of applicable water and sewer contributions was undertaken correctly during the original assessment of the approved development. That

is, each unit within the development has the potential of being utilised as a 2 bedroom unit. The loss of applicable contribution fees is likely to impact on Council's ability to provide the level of service that the general public demands. The likelihood of the proposed modifications setting an unreasonable precedent is not considered to be in the public interest.

**OPTIONS:**

1. Refuse the proposed modifications to Development Consent DA08/0984; and
2. Defend the matter, in the event that the applicant lodges an appeal in the NSW Land and Environment Court; or
3. Approve the application, which would require the refund of \$75,422.60.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Upon advice that the application was not being recommended for approval, the applicant indicated that they may appeal the determination (Class 1 Appeal) in the NSW Land and Environment Court.

Financial implications would result from legal proceedings involving Class 1 proceedings.

**POLICY IMPLICATIONS:**

The water and sewer (S64) contributions have been applied correctly, in that the proposed utility room has the potential to be used as a second bedroom. Support of the proposed modification would set an undesirable and inappropriate precedent for the application of contribution fees for any future multi dwelling housing development incorporating a utility room or study and may impact upon Council's ability to provide adequate services for the future growth of the Shire.

**CONCLUSION:**

The original assessment of the approved development was calculated correctly. Council Fees and Charges document is clear in that in this instance we must apply the contributions to development with a 'potential' of being utilised as 2 bedroom units. As such, the modification to Condition 17 as proposed by this S96 application is not supported and 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.

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**14 [PR-CM] Cobaki Lakes Concept Plan – Residential Community Development – Repeal of Tweed Development Control Plan Section B7 – Cobaki Lakes**

**ORIGIN:**

**Development Assessment**

**FILE NO: GT1/52**

**SUMMARY OF REPORT:**

The Department of Planning approved the Concept Plan for a residential estate at Cobaki (MP06\_0316) late last year. The Concept Plan includes land use precincts, a town centre, neighbourhood centre, schools, environmental protection, open space areas and major road locations.

The Concept Plan approval also includes a site specific “Development Code”, which provides the same planning framework as a development control plan; detailing the design requirements for the future subdivision and development of Cobaki Lakes.

The approved Concept Plan and associated documents supersede the existing Section B7 (Cobaki Lakes) of the Tweed Development Control Plan and the purpose of this report is to seek Council endorsement of the repeal of B7 (attached).

**RECOMMENDATION:**

**That:-**

- 1. Council endorses the repeal of Tweed Development Control Plan Section B7 (Cobaki Lakes).**
- 2. Pursuant to the *Environmental Planning and Assessment Regulation 2000*, sub reg 23(1) & (2), a public notice in the Tweed Link detailing Council’s intention and reason for the repeal of Tweed Development Control Plan Section B7 Cobaki Lakes is to be advertised for a period not less than 14 days.**
- 3. Pursuant to the *Environmental Planning and Assessment Regulation 2000*, sub reg 23(2) & (3) a public notice of repeal of Tweed Development Control Plan Section B7 Cobaki Lakes is to be advertised in the Tweed Link following a minimum 14 day period of the prior notice of intention to repeal.**

## **REPORT:**

**Applicant:** Leda Manorstead Pty Ltd  
**Owner:** Leda Manorstead Pty Ltd  
**Location:** Lot 1 DP570076, Lot 2 DP566529, Lot 1 DP562222, Lot 1 DP570077, Lot 1 DP823679, Lot 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 & 305 DP755740 at Cobaki lakes Estate, Tweed Heads  
**Zoning:** 2 (c) Urban Expansion, 2 (e) Residential Tourist, 6 (b) Recreation, 7 (d) Environmental Protection (Scenic Escarpments) and 7 (l) Environmental Protection (Habitat).

## **BACKGROUND:**

In late 2010, the Department of Planning approved the Concept Plan for Cobaki Estate. The approval includes reference to extensive documentation (relating to engineering matters, environmental management and a range of other issues). The Concept Plan approval also includes the Applicant's statement of commitments, a land use matrix, conditions and a Development Code. The instruments and documentation incorporated in the Concept Plan over-ride the need for section B7 of the Tweed Development Control Plan.

## **REPEAL OF B7 – DEVELOPMENT CONTROL PLAN – COBAKI LAKES**

Section B7 – Cobaki Lakes provides a range of management statements for road hierarchy, provision of sewer and water, open space, bushfire management, community facilities, staging, landfill, soil erosion and other matters. These matters have been re-assessed through the Concept Plan assessment process and in some cases, more contemporary management processes have been incorporated into the Concept Plan approval.

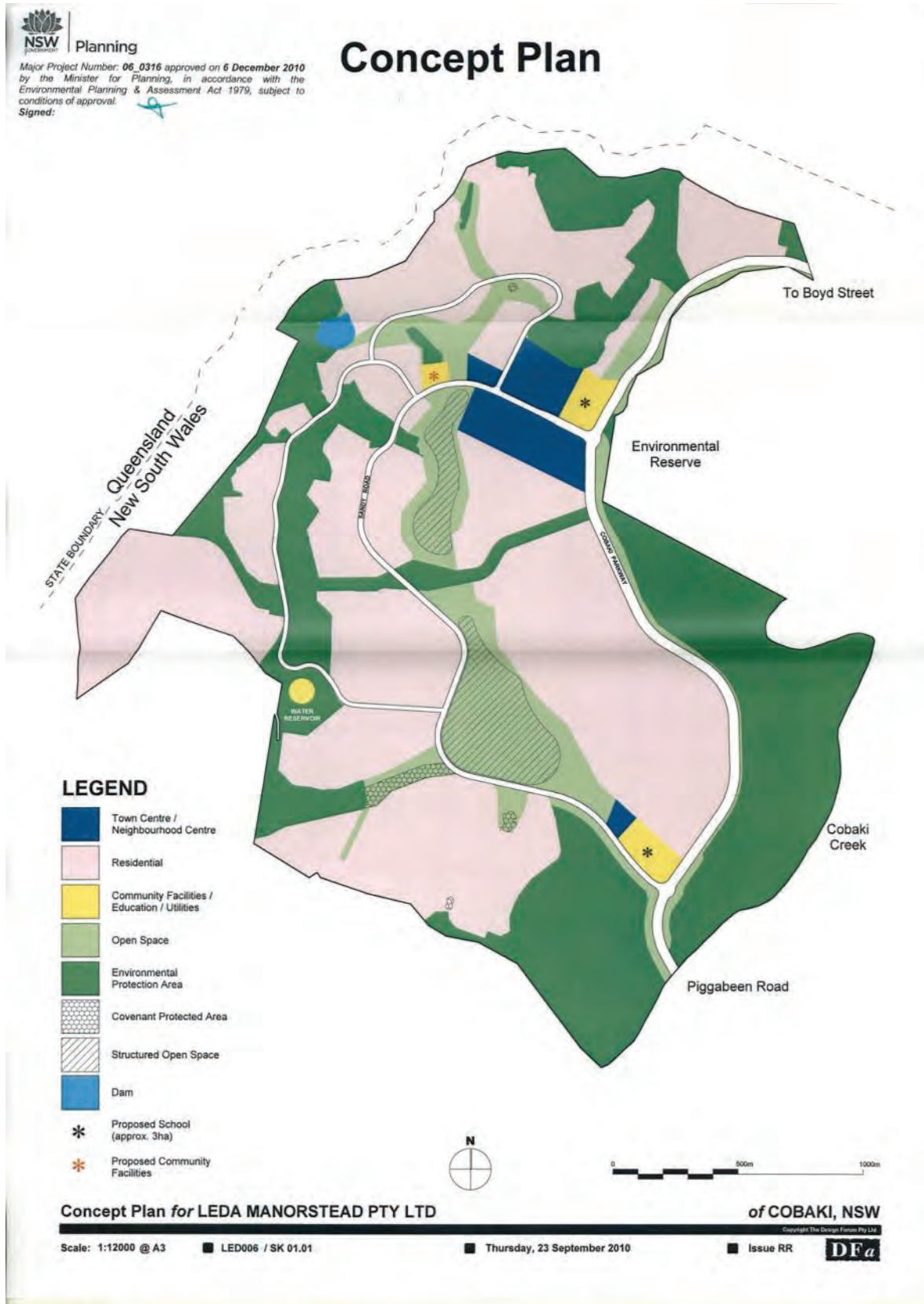
Section B7 allocates ten urban precincts and four open space precincts, including a golf course. The approved Concept Plan has allocated different precincts and open space areas resulting in conflicts between the two instruments.

Environmental design elements for matters including density, lot size and orientation, building siting and design, pedestrian and vehicular networks streetscape (etc.) are articulated in B7. The Concept Plan approval includes an adopted Development Code which provides more relevant and detailed design criteria for buildings and subdivision.

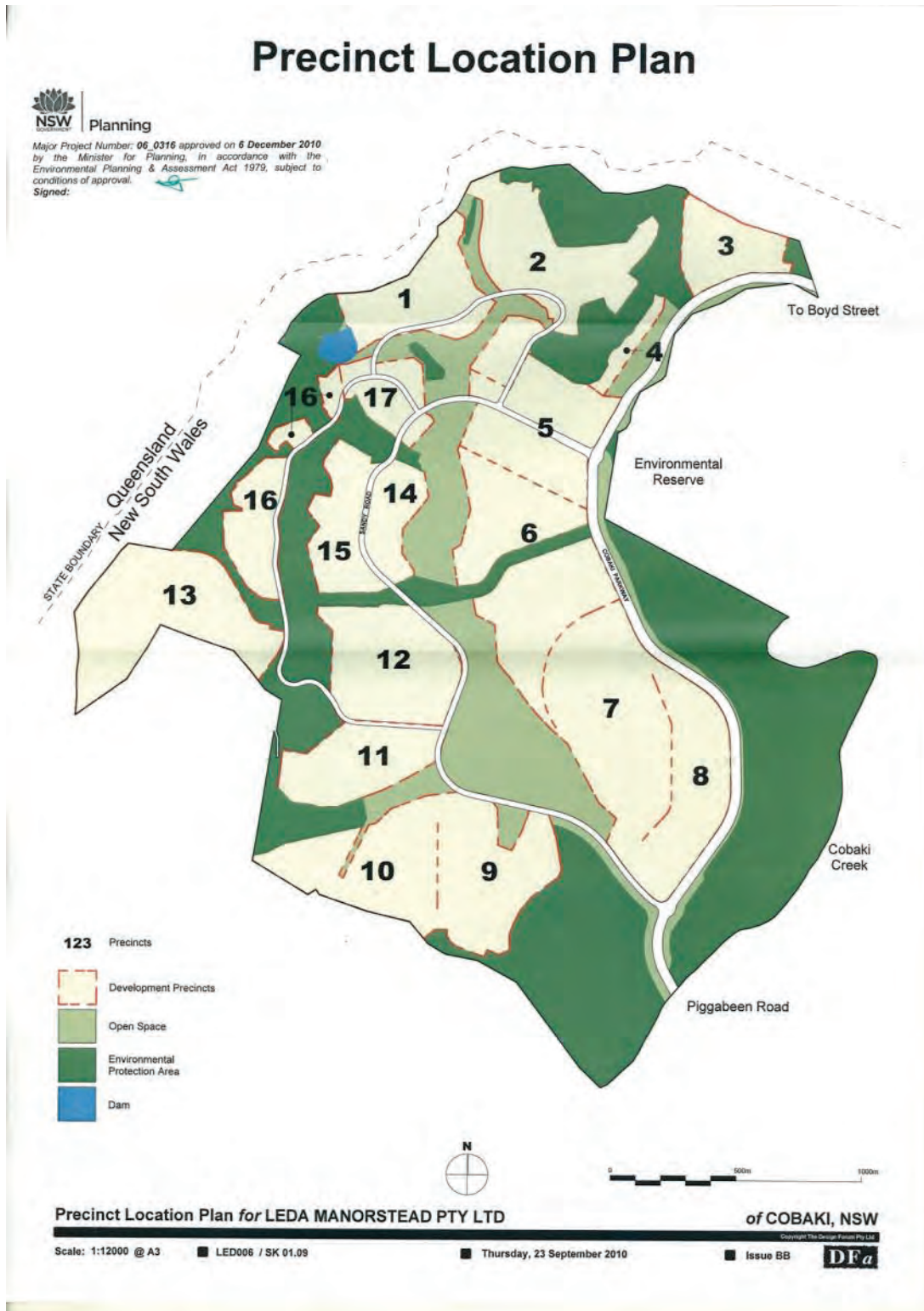
Finally, the Concept Plan has more statutory weight than Section B7 as it is a Ministerial approval.

For reasons outlined above, it is considered that Tweed Development Control Plan Section B7 Cobaki Lakes no longer serves its original purpose and should be repealed.

**APPROVED CONCEPT PLAN:**

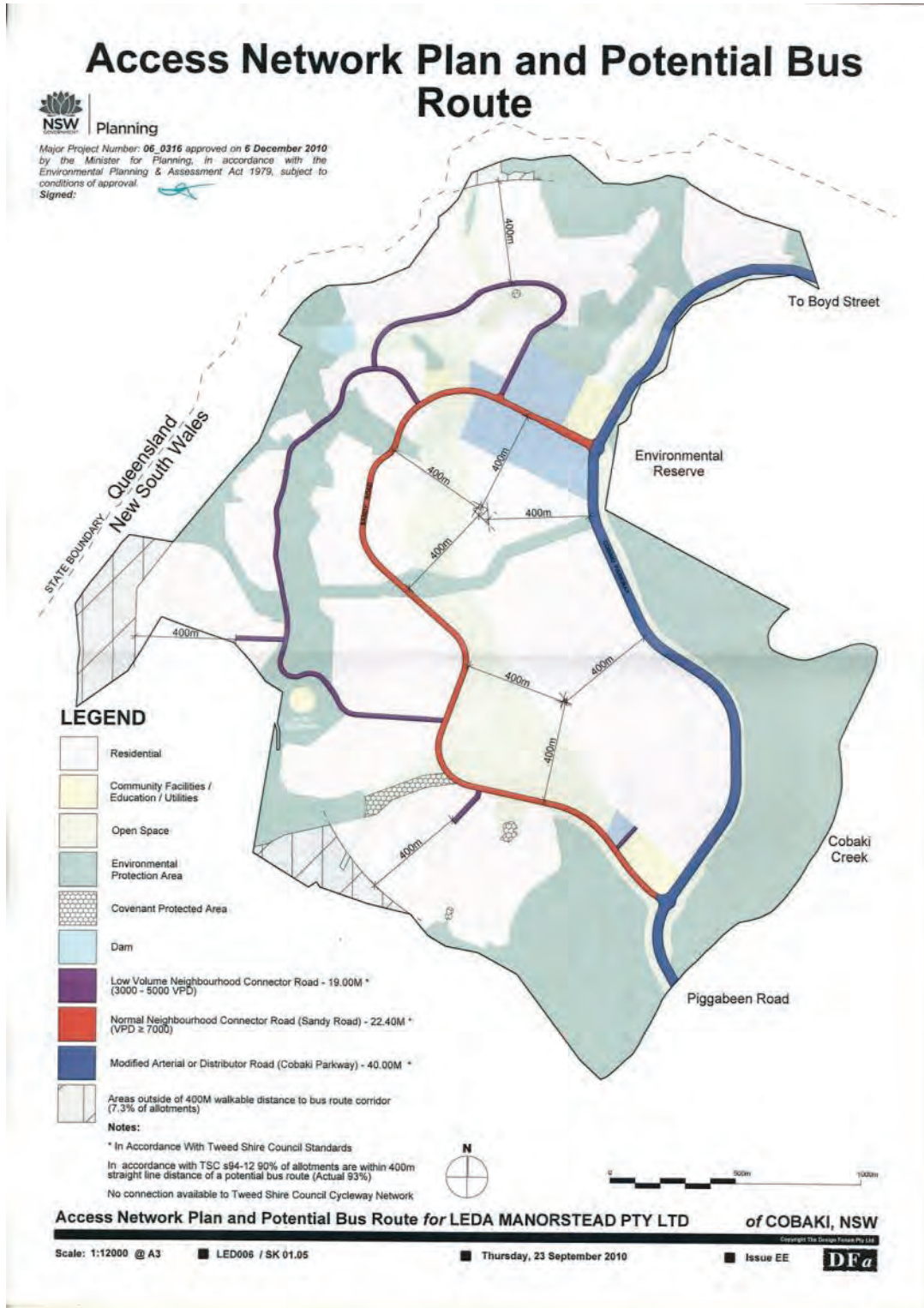


**PRECINCT PLAN:**





**ROAD HIERARCHY PLAN:**



**DEVELOPMENT MATRIX:**

# Development Matrix

Concept Plan Domain	Development Uses	Total Area		Urban Design Principles
		Leda Owned Land	Proposed Road Closures	
Town Central/Neighbourhood Centre	<ul style="list-style-type: none"> <li>• Business premises</li> <li>• Carpark</li> <li>• Child care centre</li> <li>• Community facility</li> <li>• Education establishment</li> <li>• Emergency services</li> <li>• Entertainment facility</li> <li>• Environmental facility</li> <li>• Food and drink premises</li> <li>• Funeral chapel</li> <li>• Health services facility</li> <li>• Home business</li> <li>• Hotel or motel accommodation</li> <li>• Information and education facility</li> <li>• Medical centre</li> <li>• Office premises</li> <li>• Place of worship</li> <li>• Pub</li> <li>• Recreation area</li> <li>• Recreation facility (indoor)</li> <li>• Residential care facility</li> <li>• Residential types in Development Code</li> <li>• Restaurant</li> <li>• Retail premises</li> <li>• Roads</li> <li>• Seniors housing</li> <li>• Service station</li> <li>• Shop</li> <li>• Telecommunication facility</li> </ul>	17.64 ha	0.65 ha	<ul style="list-style-type: none"> <li>• Urban form controlled by Plan of Development in Precinct approval</li> <li>• Building height controlled by Development Code</li> <li>• Mixed uses are encouraged</li> <li>• Provide legible off-street parking</li> <li>• Create town square focus</li> <li>• Sporting facilities may be shared between schools and community</li> <li>• Buildings facing main streets are encouraged to have active frontages</li> <li>• Pedestrian friendly streetscape with awnings</li> <li>• Create interesting buildings with articulated facades</li> <li>• Screen or conceal passive facades and service areas</li> <li>• Soften visual impact of carpark with landscaping</li> <li>• Incorporate urban art and public streetscaping</li> <li>• Must demonstrate sensitive interface with surrounding development</li> <li>• Ground floor facing main roads must be non residential use</li> <li>• Landscape concept to maintain visibility of retail uses</li> <li>• Incorporate passive surveillance and public safety principles</li> </ul>
Residential	<ul style="list-style-type: none"> <li>• Carpark</li> <li>• Child care centre</li> <li>• Community facility</li> <li>• Environmental facility</li> <li>• Exhibition village</li> <li>• Home based child care</li> <li>• Home business</li> <li>• Neighbourhood shop</li> <li>• Recreation area</li> <li>• Recreation facility (indoor)</li> <li>• Recreation facility (outdoor)</li> <li>• Residential care facility</li> <li>• Residential types in Development Code</li> <li>• Roads</li> <li>• Seniors housing</li> </ul>	290.47 ha	4.05 ha	<ul style="list-style-type: none"> <li>• Urban form controlled by Plan of Development in Precinct approval and the Development Code</li> <li>• Create diversity of housing choice</li> <li>• Designs must optimise residential amenity, privacy and solar access</li> <li>• Strong streetscape character with articulated setbacks</li> <li>• Incorporate on-site private recreation areas</li> <li>• Garage doors must not dominate streetscape</li> <li>• Incorporate passive surveillance and public safety principles</li> <li>• Incorporate public open space within walkable radius of each dwelling</li> </ul>
Community Facilities/Education/Utilities	<ul style="list-style-type: none"> <li>• Carpark</li> <li>• Child care centre</li> <li>• Community facility</li> <li>• Education establishment</li> <li>• Environmental facility</li> <li>• Information and education facility</li> <li>• Kiosk</li> <li>• Place of worship</li> <li>• Recreation area</li> <li>• Recreation facility (indoor)</li> <li>• Recreation facility (outdoor)</li> <li>• Roads</li> <li>• Telecommunication facility</li> <li>• Water storage facility</li> </ul>	8.04 ha	0.31 ha	<ul style="list-style-type: none"> <li>• Locate school buildings with integrated parking and shared facilities</li> <li>• Provide adequate safe setdown areas</li> <li>• Sporting facilities may be shared between schools and community</li> <li>• Must demonstrate sensitive interface with surrounding development</li> <li>• Enhance community education on surrounding environment</li> </ul>
Public Open Space	<ul style="list-style-type: none"> <li>• Carpark</li> <li>• Community facility</li> <li>• Environmental facility</li> <li>• Food and drink premises</li> <li>• Kiosk</li> <li>• Recreation area</li> <li>• Recreation facility (indoor)</li> <li>• Recreation facility (outdoor)</li> <li>• Roads</li> <li>• Sewage reticulation system</li> </ul>	86.84 ha	1.41 ha	<ul style="list-style-type: none"> <li>• Include range of active and passive uses</li> <li>• Incorporate community facilities appropriate to residents' needs such as ovals, amenities and carparking</li> <li>• Sporting facilities may be shared between schools and community</li> <li>• Incorporate stormwater path and treatment</li> </ul>
Environmental Protection Area	<ul style="list-style-type: none"> <li>• Environmental facilities</li> <li>• Roads</li> <li>• Water storage facility</li> </ul>	188.27 ha	5.77 ha	<ul style="list-style-type: none"> <li>• Incorporate low-impact community trails for public and service access</li> <li>• Provide linkages in accordance with the Pedestrian and Cycle Network Plan</li> </ul>
<b>Total Area</b>		<b>593.26 ha</b>	<b>12.19 ha</b>	

Note: Areas are subject to final design and survey

Development Matrix for LEDA MANORSTEAD PTY LTD

of COBAKI, NSW

Scale: NTS

LED006 / SK 01.02

Thursday, 23 September 2010

Issue CC

**DFa**

**OPTIONS:**

1. That Council endorse the repeal of section B7 of the Development Control Plan and Council's Planning Reform Unit undertake necessary actions for the repeal to occur.
2. That Council does not endorse the repeal of section B7 of the Development Control Plan for Cobaki Lakes.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

As the precincts and principles outlined in B7 (Cobaki Lakes) of the Development Control Plan, have been superseded by the Concept Plan approval, continuation of B7 will result in conflicting policy documentation, problematic for future assessment.

**CONCLUSION:**

The Department of Planning approved Concept Plan for Cobaki Lakes has superseded section B7 of the Development Control Plan and it is recommended that B7 be repealed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Section B7 - Cobaki Lakes (ECM 29445349)
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- 15 **[PR-CM] Land and Environment Court Proceedings No. 10857 of 2010 – Tweed Shire Council ats Baclon Pty Ltd - Development Application DA09/0727 for additions to existing manufactured home estate (Noble Lakeside Park) including 45 new manufactured home site**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0727 Pt3**

**SUMMARY OF REPORT:**

At its meeting on 20 August 2010, the Joint Regional Planning Panel (JRPP) refused Development Application DA09/0727 for extensions to an existing manufactured homes estate at Lot 193 DP 1014329, No. 34 Monarch Drive, Kingscliff. The application included 45 new manufactured home sites, construction of a community hall and facilities and extension of internal roads. Council officers assessed the application and recommended approval subject to deferred commencement conditions.

Council was served notice of a Class 1 Appeal against the Joint Regional Planning Panel determination.

The hearing for the matter commenced on-site on the 1 March 2011 and was discontinued on the same day.

The purpose of this report is to inform Council of the outcome.

**RECOMMENDATION:**

**That:**

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Council notes that the proceedings of No. 10857 of 2010 in the Land and Environment Court relating to Development Application DA09/0727 for additions to existing manufactured home estate (Noble Lakeside Park) has been discontinued.**

## REPORT:

**Applicant:** Baclon Pty Ltd  
**Owner:** Baclon Pty Ltd T/AS Noble Lakeside Australia  
**Location:** Lot 193 DP 1014329, No. 34 Monarch Drive, Kingscliff  
**Zoning:** 1(a) Rural and Uncoloured Land  
**Cost:** \$10,384,000

## BACKGROUND:

In November 2009, Council received an application for additions to an existing manufactured homes estate including 45 new manufactured home sites construction of a community hall and facilities and extension of internal roads (JRPP) at Lot 193 DP 1014329, No. 34 Monarch Drive, Kingscliff.

The application was assessed by Council officers but determined by the Joint Regional Planning Panel.

The main issues raised during the assessment of the application include the following:

- Legal uncertainties in terms of existing use rights, canal estate development and applicable provisions;
- Flooding and drainage impacts;
- Geotechnical and landforming issues, particularly with proposed fill;
- Ecological issues and impact on potential on-site Endangered Ecological Communities (EEC);
- Impacts on amenity due to loss of open space, and
- Issues associated with land use conflict and noise.

The development application was notified and advertised for a period of 30 days from 25 November 2009 to 29 December 2009. The advertising period was extended until 14 January 2010. A total of approximately 50 submissions were received. This includes two petitions, one with approximately 92 signatures and another with approximately 84 signatures.

Council officers recommended approval of the development subject to deferred commencement conditions relating to provision of compensatory habitat for loss of native vegetation and in regards to drainage. Other conditions were also imposed relating to fill, geotechnical considerations, stormwater, landscaping, noise mitigation and flooding.

Despite the Council officer recommendation for deferred commencement, the Joint Regional Planning Panel (JRPP) resolved to refuse the application based on the following grounds.

1. *In accordance with Section 79(c) (1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to have a detrimental impact on the natural and built environment and detrimental social and economic impacts in the locality as the development will result in:*

- *Loss of visual amenity for existing residents in the development because of loss of vegetation and change of view to urban environment;*
  - *Loss of amenity for existing residents due to loss of access to the nature walk;*
  - *Loss of amenity for existing residents due to increased noise from the proposed residences affecting the open space on the southern side of the lake;*
  - *Loss of visual amenity to adjoining properties due to the impact of the proposed fill, retaining walls and noise attenuation fencing;*
  - *The proposed community building will have a setback of only 20m to Tweed Coast Road and is therefore out of keeping with adjoining properties and other developments;*
  - *The impact of retaining walls. Council's design specifications specify that the maximum height of retaining walls & batters is 2.4m. The application is not in accordance with Council's specifications due to the excessive fill and height of retaining walls;*
  - *There is insufficient information to demonstrate that the development will not have a negative impact on flooding affecting neighbouring properties; and*
  - *The noise level impact assessment indicates noise from the adjacent trotting track will exceed background noise levels by 10dBa.*
2. *Pursuant to Section 79C(1)(C) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the proposed development for the following reasons:*
- *The proposed development will have a negative impact on the natural environment as the site is of ecological significance as part of a regional wildlife corridor and in providing habitat for wading birds and other wetland species, a number of which are listed as threatened on the Schedules of the Threatened Species Conservation Act 1995 and all existing vegetation is proposed to be removed.*
  - *A geotechnical report addressing the potential impacts of the development has not been provided. It is uncertain if the site is suitable for the development.*
  - *The design of the internal road as a combined road and walkway will adversely affect the safety and amenity of all residents.*
  - *The development requires excessive fill and alteration to the natural landform and the proposed cantilevered buildings overshadowing the lake which demonstrates that the proposal is an overdevelopment of the site.*

Council was served notice of a Class 1 Appeal against the Joint Regional Planning Panel determination (proceedings number 10857 of 2010 in the NSW Land and Environment Court).

The JRPP was an intervener in this case.

LAND AND ENVIRONMENT COURT - OUTCOME

A detailed report on Council's involvement in the Land and Environment Court proceedings is provided via a confidential attachment from Council's solicitors, HWL Ebsworth. A summary of the report is provided below.

The hearing commenced on-site on 1 March 2010 and was listed to run for two days.

During the course of the first day, it became apparent that the hearing would most likely need to be extended for another three to four days given the complexity of various matters.

The proceedings were however, discontinued at the end of the first day.

This means that the Court made no decision in respect of the development application and the JRRP refusal still stands.

### **Council's Costs**

Discontinuance of the appeal at such a late stage can have cost implications for the applicant if other parties do not consent.

During the hearing, Council's solicitors advised that Council could take the position that it would not consent to discontinuance unless the applicant agreed to a costs order. However, Council's solicitors also advised that if both parties (the Council and the Department of Planning) were seeking costs, the applicant may opt to continue with the hearing to reduce their own costs, as costs can not be claimed at the end of a Class 1 matter.

It is noted that Council had a secondary role in the Appeal and did not appoint any external experts. Council officers did not raise any contentions during the proceedings as officers had recommended approval of the development.

The Department of Planning on the other hand, had principal role in the Appeal against the application and engaged four consultants, a barrister and utilised Department of Planning solicitors and departmental representatives, incurring greater cost than Council in the proceedings. Thus, if the Department of Planning did not consent to the discontinuance, it was highly likely that the applicant would continue with the hearing to minimise cost exposure.

Council officers were required to make an on-the-spot decision about costs and decided not to pursue costs given there was a risk that should costs be sort, the applicant may run with the hearing. This would result in greater legal costs for Council in the long run as the hearing would most likely extend over three or four days and costs can not be awarded in Class 1 appeals (against the 'loser') at the conclusion of the matter.

The option not to pursue costs was considered to be the most sensible option by Council officers and Council's solicitors, ultimately saving Council money.

### **Department of Planning Costs**

It is noted that the Department of Planning also consented to the discontinuance provided they received limited costs. The limited costs order requires the applicant to



pay approximately \$25,000 in respect of Department of Planning geotechnical and flooding experts and travel expenses of witnesses (note Council did not incur these costs). There was no order for the applicant to pay Department of Planning legal costs, barrister costs or costs of their planning or ecological consultants.

In affect, Department of Planning did not receive any more costs than Council, with regard to the additional resources expended by the Department of Planning.

**OPTIONS:**

Nil.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

On 16 November 2010, Council resolved to pursue legal costs against the Department of Planning,

***RESOLVED** that Council in respect of the Joint Regional Planning Panel's decision to refuse Development Application DA09/0727 including 45 new manufactured home sites construction of a community hall and facilities and extension of internal roads (JRPP application) at Lot 193 DP 1014329, No. 34 Monarch Drive, Kingscliff:*

- 1. Engages its solicitors to provide assistance to the Court only in a limited capacity in relation to such matters as conditions of consent; and*
- 2. Pursues the Department of Planning for associated legal costs incurred by Council.*

The estimate of costs for Council's involvement in this Land and Environment Court matter is \$30,000.

As highlighted in the advice from HWL Ebsworth, there is very limited chance of success for Council to claim compensation against the NSW Department of Planning in this matter. It is therefore recommended that Council not proceed with the pursuit of these costs.

**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) 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. **Confidential Attachment** Letter from HWL Ebsworth, Council's Legal Representative for the Land and Environment Court matter, Tweed Shire Council ats Baclon Pty Ltd (ECM 29736089)
-

**16 [PR-CM] Pottsville Employment Lands - Rezoning Application**

**ORIGIN:**

**Director Planning and Regulation**

**FILE NO: GT1/LEP/2000/85 Pt6 (related file: GT1/LEP/2006 Pt22)**

**SUMMARY OF REPORT:**

This report provides an update on the Pottsville Employment Lands Draft LEP No.85, which lapsed on 1 January 2011 and seeks Council's endorsement for a planning proposal to continue with the previously Council endorsed rezoning. The report also updates Councillors on the prior alleged wilful damage of a State Heritage Register listed Aboriginal Scar tree situated upon the land, as well as, issues affecting future waste water management options.

The *Environmental Planning and Assessment Act, 1979*, in particular Part 3 relating to the preparation of draft local environmental plans (LEP), was amended by the *Environmental Planning and Assessment Amendment Act 2008*, which took effect on 1 June 2009. The amendments brought into effect a substantially different process and a corresponding transitional and savings provision to safeguard the continuation of draft LEPs. This provision stipulated the timeframe within which existing draft LEPs were to be completed. The draft Pottsville Employment Lands LEP fell outside of the designated timeframe and lapsed. Based on Council's endorsement of a rezoning of the land and the resource commitment to-date to implement a draft LEP this reports recommends that a planning proposal be prepared, subject to various but necessary safeguard measures being satisfied.

Further, the report updates Councillors on the latest actions taken by the Department of Environment, Climate Change and Water in response to Council's request for action regarding alleged damage to an Aboriginal heritage scar tree situated on the site. Acknowledging the Department's concerns and resolution not to proceed with any prosecutorial action in respect of the damage to the tree, it is recommended that Council officers liaise with the Department in an attempt to secure a better understanding about the Department's ongoing intentions regarding the management of Aboriginal artefacts and native vegetation falling within its Ministerial regulatory and jurisdictional area of responsibility, as occurring within the Tweed.

**RECOMMENDATION:**

**That:**

- 1. Council endorses the preparation of a planning proposal for the rezoning of the site for industrial and environmental protection purposes consistent with Council's resolutions of 17 August 2010;**

- 2. The proponent be requested to confirm their commitment to the provision of a private waste water system by entering into a Voluntary Planning Agreement, to be prepared by Council's Solicitors at the proponents' cost, pertaining to their commitment to provide a stand-alone private wastewater disposal utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART);**
- 3. Council compliance and enforcement officers implement a protocol for the reporting of alleged damage of Aboriginal artefacts to the Department of Environment, Climate Change and Water consistent with a Notice of Motion endorsed at the Council meeting of 16 March 2010, which requires early notification of any alleged damage of Aboriginal artefacts;**
- 4. The General Manager seeks a high level meeting with the Department of Environment, Climate Change and Water regarding a more proactive involvement of the Department in the investigation, enforcement and management of alleged damage of Aboriginal artefacts, and native vegetation within the Tweed.**

## REPORT:

This report provides an update on the investigations and process associated with the draft LEP for Pottsville Employment Lands, and is divided into three (3) sections addressing:

1. Status of rezoning;
2. Options for the management of waste water, and
3. DECCW response to alleged wilful damage of Aboriginal heritage scar tree.

At its meeting of 17 August 2010 Council endorsed the following resolutions:

1. *Endorses the boundary redefinition of the land subject to the rezoning as identified in Figure 5: Option 5 – Revised development footprint and excluded land as proposed by the Proponent; to this report;*
2. *Defers proceeding with legal action in relation to vegetation clearing on the basis of the landowner agreeing to a revegetation management strategy in accordance with Resolution No. 3 below;*
3. *Endorses that Council Officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85);*
4. *Endorses that land identified as unsuitable for rezoning for urban purposes be rezoned to reflect the environmental qualities and constraints of the land; and*
5. *Endorses that the Applicant be advised of Council's concern over the proposed method of waste water treatment proposed and the need for the Applicant to demonstrate certainty of all aspects of the scheme to Council's satisfaction.*

This report addresses progress of these resolutions and reports on the findings of the Department of Environment Climate Change and Water relating to alleged damage of Aboriginal heritage scarred tree on the site.

### 1. Status of rezoning

As a consequence of the Savings and Transitional provisions in the *Environmental Planning and Assessment Act 1979*, draft "amending" LEPs, where a section 65 Certificate was not issued prior to 1 July 2009, must have been finalised or brought into the current Part 3 by 1 January 2011. Due to the unresolved status of significant constraints affecting the site, in particular disposal of waste water, this LEP was not brought into the current Part 3 by the due date and as such ceased to exist.

A fresh planning proposal is required and requires a resolution of the Council in order for council officers to proceed with a rezoning of the land. Fees and charges apply to

planning proposals in accordance with the adopted Fees and Charges schedule 2010/2011.

### **Why should a planning proposal be prepared?**

The Tweed Urban and Employment Land Release Strategy 2009, notes that the Shire has approximately 231 hectares of zoned industrial land, of which 138 hectares is vacant land, which when discounted for physical and infrastructure constraints leaves 102 hectares, or the equivalent of 44% of the currently available land, sufficient land to meet demand for the next 10 years. Notwithstanding this, the Strategy suggests that “if Council wants to maintain a significant stock of zoned land in order to provide a variety of development locations it will need to commence replenishing land stocks through the rezoning process in 2011.”

While there remains a substantial stock of zoned land available for industrial purposes, constraints on development of these sites and market forces have a significant impact on the actual amount of land available for uptake; in addition to which, the Far North Coast Regional Strategy 2006 effectively limits the amount of land which should be zoned for industrial purposes, using population projections as a means of estimating the areas of land which will be required to meet employment needs. Although the methodology is sound in principle it means that undevelopable or ‘banked’ land is counted toward the total supply of available land to match the projected population demand; it is this element that limits the Council’s ability to bring on line other sites which may be more suitable for meeting present needs in the short to medium-term.

It is therefore imperative that Council ensures that land considered for rezoning is both suitable for the proposed landuse, and is likely to proceed. The Pottsville employment land site has significant constraints relating to slope, vegetation, visual impact, and waste water disposal, which have respectively raised questions about the suitability of the site; each of which having been addressed to varying levels of satisfaction.

On balance, the rezoning proposal and the associated management controls or ‘safety’ mechanisms proposed, ensures that this site has reasonable prospects of both advancing to a rezoning of the land and in the provision of much needed employment and service opportunities in the Pottsville locality.

In summary, there is strong justification for a rezoning of the subject lands however, no matter how strong the justification the rezoning should not occur at the expense of the broader strategic planning for the Tweed and the broader provision of employment lands generally, as could occur if this site cannot be serviced with the necessary infrastructure. For that reason it is seen as an essential element of any proposed urban rezoning that relative certainty exists in respect of the provision of essential infrastructure prior to a rezoning occurring.

In this instance, it is recommended that a planning proposal only be prepared if the proponent agrees to enter into a voluntary planning agreement (VPA), to be prepared by Council’s Solicitors at the proponents’ cost, relating to their commitment to provide a private waste water utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) and Independent Pricing and Regulatory Tribunal (IPART) Licensing regime to provide retail services, or as otherwise directed by

Council's Solicitors. A VPA can be finalised prior to the gazettal of a draft LEP amendment.

## **2. Options for the management of wastewater**

The site is currently not connected to Council's reticulated water and sewerage infrastructure. Rezoning of the site for industrial purposes without a guarantee of serviceability could expose Council to undue pressure to reprioritise its works programme to bring this site into operation ahead of other priority localities and projects at substantial cost to Council, were it possible at all.

Therefore, rezoning of this site for industrial purposes should only proceed once a legally binding guarantee of provision of waste water infrastructure and facilities is obtained, and proponent offers to enter into a voluntary planning agreement whereby such guarantees are provided and Council is not committed to facilitating development of the site should the guarantees of the proponent not be realised.

On 9 September 2010 Council officers met with the proponent to define requirements for a waste water management strategy which provided Council with the certainty necessary to justify proceeding with rezoning of the site.

Issues of concern have included:

- Wet weather storage capacity, a major concern especially where disposal on the floodplain is proposed;
- Availability and suitability of the proposed disposal area on the floodplain to the north of Cudgera Creek Road;
- Any special considerations regarding potential environmental impacts of disposal on the site, including impacts on adjoining land and the watertable, not just on the site but potential to elevate the watertable on adjoining land;
- Guarantees about the maintenance of the site as a disposal area in perpetuity;
- Availability and certainty of easements for infrastructure from the site to the disposal area;
- monitoring of impacts of disposal on the site, adjoining land and watertable, and
- Guarantees of consistent quality of discharged effluent.

These are significant issues which have not been addressed in the planning proposal, but which, as discussed below, may be adequately addressed through a licensing arrangement and use of a voluntary planning agreement.

In response, the proponent submitted a planning proposal in 5 October 2010 proposing the use of a private waste water utility manufactured by Sirex Water Utilities Pty Ltd, which they argue is capable of managing the site's waste water and providing potable and recycled water supply to meet the development's non-potable and potable water demands.

Council's Water Unit has reviewed this proposal in line with other broader strategic planning matters, such as servicing of west Pottsville, as reported to Council at its meeting of 15 February 2011, and the recent planning proposal for development of land at Mooball seeking the use of the same technology.

In reviewing the Sirex system and waste water management proposal;

- The Water Unit supports in principle, the proposed stand alone private water and wastewater utility scheme under the Water Industry Competition Act 2006 (WIC Act) including relevant licensing, as administered by the Independent Pricing and Regulatory Tribunal (IPART).
- The Water Unit supports in principle the proposal to enter into an agreement with the utility service provider under an (WIC Act) licence to provide retail services.

The proposed stand alone private water and wastewater utility scheme referred to above is to include at a minimum:

- The establishment of a private utility company which would gain and hold the WIC Act network operational and retail licenses for both water supply and wastewater services including the advanced Wastewater Treatment Plant (WWTP) and irrigation scheme.
- A private WWTP within industrial land producing non-potable residential reuse standard effluent and a third pipe distribution and reticulation system to all lots within the development, maximising reuse of this effluent within the development and providing the opportunity for reuse in the locality.
- A robust treatment process and specifically in respect to achieving the non-potable residential reuse effluent standard proposed and include Membrane Bio Reactor, Ultra Filtration, Reverse Osmosis, Ultra Violet and Chlorination disinfection processes.
- A pressure sewer system which is to achieve low infiltration and inflow ensuring significant reductions in peak flows and the volume of effluent to be treated and reused.
- Effluent storages are sufficient to cater for the extended wet weather periods experienced on the Tweed.
- Capacity to reuse and or irrigate all effluent and these scheme components are sufficient to cater for this objective in perpetuity.
- Obtaining a Protection of the Environment Operations Act 1997 (PEO Act) licensed discharge point for contingency discharges.

The Water Unit has further advised that the strategy document provided is light on detail and is really a statement of intent. It is reliant on the WIC Act application process to develop the detail. The strategy does not include third pipe reuse of effluent on the actual industrial lots. This is a requirement and the strategy will need to be amended or a commitment to do so is required prior to rezoning.

The tenure of the proposed offsite irrigation lands and the linkages to those lands for pipe work and the like must to be gained prior to lodgement of any development application. The irrigation land or lands will have to prove to be suitable for this purpose in perpetuity, and a PEO Act licensed discharge for contingency discharges to a waterway, would be required to be gained prior to lodgement of any development application.



Additionally other Government agency approvals and requirements of the WIC Act Approval would have to be gained and met to demonstrate that sewerage services, effluent management and environmental performance can be provided and achieved prior to lodgement of any development application.

Under the WIC Act, IPART must provide the application to, and invite submissions from the following Ministers:

- Minister administering the Public Health Act 1991 (Minister for Health)
- Minister administering Chapter 2 of the Water Management Act 2000 (Minister for Water)
- Minister administering the Protection of the Environment Operations Act 1997 (Minister for Climate Change and the Environment)
- Minister administering the Environmental Planning and Assessment Act 1979 (Minister for Planning)

IPART must also call for submissions on the application from the public. This will be Council's only opportunity to provide a submission the WIC Act approval process.

### **Voluntary Planning Agreement**

The environmental Planning and Assessment Act 1979 provides a statutory system of planning agreements to accommodate a growing trend in negotiation and agreement between planning authorities and developers to exact public benefits from the planning process.

In the Department of Planning's Planning agreements Practice note of 19 July 2005 it is noted that agreements provide a flexible means of achieving tailored development outcomes and targeted public benefits, and provide enhanced and more flexible infrastructure funding opportunities for planning authorities. Negotiations tend to promote co-operation and compromise over conflict and can provide a more efficient means of public participation in planning decisions.

Voluntary planning agreements are widely utilised by many NSW councils as a means of complementing section 94 contributions and establishing a clear up-front process whereby outcomes are defined and delivered under a legally binding agreement generally prepared by lawyers on behalf of a council.

Due to the complexity of issues and potential adverse environmental impacts and associated risks to Council relating to the management of waste water, its treatment and disposal, it is considered appropriate to complement the requirements of the Water Industry Competition Act 2006 (WIC Act) and Independent Pricing and Regulatory Tribunal (IPART) Licensing regime with a voluntary planning agreement.

The use of a voluntary planning agreement is seen as a reliable means of entering into negotiations with the proponent regarding a guaranteed outcome. Because such agreements are typically prepared by Council's legal service providers, it is recommended that this matter be referred to Council's solicitors should the proponent agree to enter into an agreement, at their cost, the outcome of which would be

consistent with Council's previous resolution which requires the applicant to demonstrate certainty of all aspects of the scheme to Council's satisfaction.

### **Resolutions aim to avoid unreasonable claims upon Council**

As highlighted above, it is not Council's intention to provide sewerage services to this land, and as such, the provision of services are the full responsibility of the developer to be delivered in accordance with a WIC Act approval and voluntary planning agreement. This approach will provide Council with a strong position to defend against any future developers claim that Council is obligated to provide sewerage services because it approved the rezoning.

However, it should be noted that in the event of failure of the private water and wastewater utility company Council is most likely to become the Operator and Retailer of last resort under such an approval.

Because this issue has been a major constraint on the ability to rezone the site, while it is recommended that Council resolve to support the rezoning of the site for industrial purposes, resolutions presented have taken a precautionary approach, as supported by the voluntary planning agreement, by which any failure to secure a WIC Act approval will not place Council in the position of having to provide services to the site ahead of any longer term planning for the broader west Pottsville locality.

Should the applicant not acquire or be unable to obtain a WIC Act licence as has been committed to and that would be required as part of any voluntary planning agreement then Council would have sufficient justification to warrant a planning proposal to rezone the land to a more appropriate and less intensive zoning.

### **3. DECCW response to alleged wilful damage of Aboriginal heritage scar tree**

On 16 February 2010 Council received an electronic copy of a letter to be mailed from the Department of Climate Change and Water addressing requests from Council regarding the Department's investigations into alleged wilful damage of Aboriginal heritage scar tree on the site, a copy of which can be seen in Attachment 1.

The Department's letter refers to a scarred tree (No: 04-2-0173) registered on the DECCW Aboriginal Heritage Information Management System (AHIMS) database, noting that the tree was identified and recorded on 29 May 2008 by a professional archaeologist in conjunction with the local Aboriginal community.

The letter advises that DECCW has conducted an on site visit on 18 June 2010 and further investigations, which has resulted in the property owner and the arborist who assessed the age of the tree after it was burnt, being issued with an Official Caution and advised of their responsibilities and significantly increased penalties.

The Department then notes that Council was aware of alleged breach six months prior to it being reported to DECCW, pointing out that the National Parks and Wildlife Act (NPW Act) had a statute of limitations for Aboriginal cultural matters of two years from the date the incident occurred, and that the delay in notification inhibited DECCW's ability to investigate and prosecute within the remaining timeframe. As of 1 October

2010, the NPW Act amended the statute of limitations to commence from the date the authority has been notified, not from the date of the impact.

In concluding, the Department welcomes the opportunity to work with Council to ensure both agencies efforts to protect the environment and improve investigation processes, and has requested that they be notified as soon as Council becomes aware of any alleged incident.

In responding to this letter, it is acknowledged that reporting to the DECCW was delayed; however, a number of initiatives have been implemented subsequent to the lessons gained through this event, including:

- the endorsement of a Notice of Motion put forward by Cr Holdom at Council meeting of 16 March 2010, which resolved 4:3 that *“At the Ordinary Meeting of Council, following advice regarding damage to Aboriginal Artefacts, the Director Planning and Regulation notifies Council of the said damage, by way of a Confidential Attachment to the Ordinary Business Paper, under “Reports from the “Director Planning and Regulation”, and*
- Completion of a full days training for Council officers involved in the inspection of alleged breaches, collection and presentation of evidence and legal procedures, offered free of charge by Lindsay Taylor Lawyers.

In addition to these initiative of Council it is recommended that Council’s Development Assessment and Regulation Units develop a protocol for the reporting in confidence to the Department of Environment, Climate Change and Water of any alleged breaches concurrent with the report to Council.

### **Scar Tree protected and revegetation to be undertaken**

As previously reported to Council, the scarred tree is now excluded from the proposed area of development and will form part of a rehabilitated parcel to be agreed with the proponent prior to rezoning of the site, consistent with Council’s endorsement of resolution of from meeting of 17 August 2010 that;

*“Endorses that Council officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85)”*

### **Response to the DECCW**

While it is acknowledged that delays occurred in the notification to DECCW, Council has since been pro-active in ensuring a recurrence of such delays does not occur.

However, it is evident from the Department’s response to this and other similar incidents in the Tweed Shire, and their advice at Councillor’s Workshop last year that they have limited resources and capacity to effectively respond to smaller scale, land clearing actions throughout the State, which raises particular concerns for the overall management of native vegetation in the Tweed LGA.

The Tweed is recognised for the value of its natural environment, an asset which brings significant national and international recognition; however, the very legislation which is purported to provide protection of these national landscape assets is failing to meet expectations of Council or the community.

It is therefore recommended that Council seek a high level meeting with DECCW to establish a more suitable arrangement for the assessment, investigation and enforcement of vegetation matters generally, Aboriginal artefacts and standard instrument template implications specifically.

### **Conclusion**

Progression of the Pottsville Employment Land rezoning has been hampered by a series of complex issues, negotiations and legal matters. It has nevertheless advanced to the point where the major outstanding issues affecting the site fall predominantly to the proponent's ability to service the site.

Council's Water Unit has reviewed the Sirex system proposed and provided an 'in principle' support for the proposed a stand alone private water and wastewater utility scheme for the site under the Water Industry Competition Act 2006 (WIC Act) as administered by the Independent Pricing and Regulatory Tribunal (IPART), and supports in principle the proposal to enter into an agreement with the utility service provider under an IPART licence to provide retail services.

Because of the potential exposure of Council to claims for provisions of services should a stand alone system not eventuate, and to provide certainty that the applicant will pursue such a system it is recommended that a voluntary planning agreement be entered into to ensure that the applicant demonstrate certainty of all aspects of the scheme to Council's satisfaction.

The Department of Environment Climate Change and Water has formally responded to Council's request for action on alleged wilful damage of Aboriginal heritage scar tree, which cites limited action taken, which is considered to be less than appropriate. In response it is recommended that a formal meeting with DECCW be convened to better define the Department's intentions and ability to investigate and enforce native vegetation related matters in the Tweed.

### **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. DECCW Letter regarding Scarred Tree (ECM 29068433)
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**17 [PR-CM] Results of the Department of Planning Local Development Performance Monitoring Report 2009/10**

**ORIGIN:**

**Director Planning and Regulation**

**SUMMARY OF REPORT:**

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning report, "Local Development Performance Monitoring 2009/10", released on 7 February, 2011 with particular reference to the results affecting the development assessment performance of Tweed Shire Council.

The Department of Planning commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports for 2006/07, 2007/08, 2008/09 and the most recent for 2009/10. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

It is evident that the overall results of the Department of Planning's "Local Development Performance Monitoring 2009-10" for the Tweed Shire were very positive.

In one of the key indicators, Council has managed to reduce its mean (or average) gross determination times for all development applications from 110 days in 2008/09 to 98 days in 2009/10, or a reduced margin of 10.9%. This is measured against the State average of 67 days. The evidence of improvement can be drilled down further in the results of major DA categories, which saw reductions in processing times as follows: alterations and additions to single dwellings (71 to 61 days), new single dwelling houses (108 to 70 days), and commercial/retail/office (166 to 101 days).

Council's performance is even more favourable through a review of the "mean net" determination indicator, which factors in the use of the "stop the clock" mechanism for those DAs for which additional information has been sought from the applicant. Tweed's average mean net result for all DAs was 47 days, comparing more favourably to the State figure of 43 days.

Tweed Council was also a solid performer in the assessment of complying development certificates, with an average processing time of 11 days, comparing favourably against the State average of 14 days.

The external influences on the assessment performance of local councils are variable, but it is important to note that whilst the 2009/10 reporting period was impacted upon by the commencement of a decline in both the broader economy and property market,

Tweed Council was still experiencing a high quantity of development assessment activity, with the determination of a total of 815 development applications (as compared against the 2008/09 total of 1041) and a total of 246 Section 96 Modification Applications (as compared against the 2008/09 total of 213).

Added to this steady workflow, Tweed Council was also required to allocate significant assessment staff resources to a series of Part 3A Major Projects' applications such as Cobaki and Kings Forest, involving some of the largest developments in the State.

Despite these pressures and an increasingly complex and changing regulatory environment, Tweed Council was still able to seek a major improvement in the 2009/10 reporting results, which can in part be attributed to the hard work and professionalism of Council's assessment staff, as well as the emergence of better prepared, more complete development applications arising from Council's improved, web based DA checklists and information guidelines.

Council will continue to implement improvements to the processing of its development and building applications, and it is expected that these actions will contribute to further reductions in processing times.

**RECOMMENDATION:**

**That the report on the results of the Department of Planning Local Development Performance Monitoring Report 2009/10 be received and noted.**



## REPORT:

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning (DOP) report, "Local Development Performance Monitoring 2009/10", released on 7 February 2011, with particular reference to the results affecting the development assessment performance of Tweed Shire Council.

Copies of the report have been emailed separately to all Tweed Councillors prior to this meeting. The report can also be viewed on-line through the Department of Planning's web site [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

The Department of Planning commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports for 2006/07, 2007/08, 2008/09 and the most recent for 2009/10. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

It should be noted that the accuracy of the results produced in the report are off-set by the fact that virtually all NSW councils record their own assessment statistics in different forms of development categories and IT programs, and the raw data from these systems are then consolidated by the DOP into their own report classifications. Nonetheless, the final DOP report provides a good, indicative guide for Council's to benchmark and improve their assessment processes on a state-wide, regional and Department of Local Government size classification basis.

In terms of interpreting the report, there are a number of key definitions which underpin the collection of application processing times:

Gross determination time – full length of the development assessment process, from lodgement to determination.

Net Time – the gross time minus referral and/or stop-the-clock time.

Mean determination time – the mean or average of a set of data values, which is the sum of all of the data values divided by the number of data values (ie. for DAs, the total number of days taken, divided by the number of DAs determined)

Median determination time – the median of a set of date values is the middle value of the data set when it has been ordered.

Referral time – the time taken by State agencies to either grant concurrence consent (some DAs require council and agency consent), or to provide advice to council on a development proposal. It should be noted that a number of Councils, such as the Tweed Shire, currently do not have the technical capacity in its IT systems to record the referral time statistics, but arrangements are currently being organised to rectify this recording mechanism.

Stop the clock – the time taken by applicants to respond to requests by councils or agencies for further information on a DA.

### DLG Group Averages

Many data tables in the DOP report refer to NSW Division of Local Government (DLG) groups. All 152 councils are grouped into one of 11 council types or groups based on population, size, location and development. Grouping councils according to similar socio-economic characteristics allows comparison between councils' results and the performance of like councils.

The DLG groupings are based on the Australian Classification of Local Governments (ACLG) classification of local government areas as adapted by the NSW DLG for NSW Local Government Councils Comparative Information publication.

The source data tables show the DLG code for each council and the average result for each of the 11 DLG groups. These tables allow anyone to see how a council's data compares to the average for the relevant DLG group.

The grouping for 2009-10 was based on population figures released from the Australian Bureau of Statistics as at 30 June 2009.

Tweed Shire Council is classified in DLG Group 5, which also consists of the major regional councils of Coffs Harbour, Lake Macquarie, Port Macquarie-Hastings, Shoalhaven and Wollongong.

## **Summary of Results for Tweed Council**

### Major Performance Indicators

It is evident that the overall results of the Department of Planning's "Local Development Performance Monitoring 2009-10" for the Tweed Shire were very positive.

Tweed Council has managed to reduce its mean or average gross determination times for all development applications from 110 days in 2008/09 to 98 days in 2009/10, a reduced margin of 10.9%. This compares with the 2009/10 NSW average of 64 days. This is measured against the State average of 67 days. The evidence of improvement can be drilled down further in the results of major DA categories, which saw reductions in processing times as follows: alterations and additions to single dwellings (71 to 61 days), new single dwelling houses (108 to 70 days), and commercial/retail/office (166 to 101 days).

Council's performance is even more favourable through a review of the "mean net" determination indicator, which factors in the use of the "stop the clock" mechanism for those DAs for which additional information has been sought from the applicant. Tweed's average mean net result for all DAs was 47 days, comparing more favourably to the State figure of 43 days.

Tweed Council was also a solid performer in the assessment of complying development certificates, with an average processing time of 11 days, comparing favourably against the State average of 14 days.

The external influences on the assessment performance of local councils are variable, but it is important to note that whilst the 2009/10 reporting period was impacted upon by the commencement of a decline in both the broader economy and property market, Tweed Council was still experiencing a high quantity of development assessment activity, with the determination of a total of 815 development applications (as compared against the 2008/09 total of 1041) and a total of 246 Section 96 Modification Applications (as compared against the 2008/09 total of 213).

### Other Key Statistics

The following statistics have been drawn from the DOP report as they apply to the Tweed LGA, and with a State average comparison, where available. Please also note that the 2008/09 results have been retained, within a parentheses, italics format.

Table 2-13: Volume and Value of TSC DAs and S96 (Page 105)

<b>Number of DAs determined</b>	<b>Total estimated value of DAs determined</b>	<b>Total estimated value of DAs approved</b>	<b>Number of S96 determined</b>
815 (1,041)	\$225.7M (\$290.1M)	\$221.2M (\$281.4M)	213 (246)

Table 2-15: Volume and Value of TSC Complying Development Certificates (Page 114)

<b>Number determined</b>	<b>Total estimated value</b>	<b>% determined by Council</b>	<b>% determined by private certifiers</b>
250 (174)	\$40M (\$5M)	38 (37)	62 (63)

Table 3-30: Mean Gross and Mean Net Determination times (days) for all Councils (Pages 126-130)

	<b>DA Mean Gross</b>	<b>DA Mean Net</b>	<b>DA Median Gross</b>	<b>DA Median Net</b>
<b>Tweed Council</b>	98 (110)	47 (49)	46 (60)	32 (35)
<b>All NSW Councils</b>	67 (74)	43 (45)	42	29
<b>DLG Statistical Division 5</b>	75 (83)	38 (39)	42	27 (25)

Tables 3-31 and 3-32: Mean Gross and Mean Net DA determination times (days) for all councils by value (Pages 131-140)

	<b>&lt;\$100k</b>	<b>\$100-\$500k</b>	<b>&lt;\$1M</b>	<b>\$1M-\$5M</b>	<b>\$5M-\$20M</b>	<b>&gt;\$20M</b>
<b>Tweed Mean Gross</b>	95 (101)	70 (101)	90 (102)	361 (272)	589 (497)	225 (330)

	<\$100k	\$100-\$500k	<\$1M	\$1M-\$5M	\$5M-\$20M	>\$20M
<b>Tweed Mean Net</b>	48 (50)	39 (41)	46 (47)	85 (98)	138 (76)	36 (60)
<b>NSW Mean Gross</b>	57 (60)	70 (83)	64 (70)	174 (189)	257 (230)	317 (324)
<b>NSW Mean Net</b>	38 (39)	45 (50)	41 (44)	97 (102)	131 (113)	190 (157)
<b>DLG Division 5 Mean Gross</b>	64 (66)	76 (92)	71 (78)	214 (234)	298 (244)	319 (196)
<b>DLG Division 5 Mean Net</b>	35	40 (42)	38	73 (83)	128 (95)	255 (253)

Table 3-33: Mean gross DA determination (days) by type (Pages 141-145)

	<b>Residential alterations and additions</b>	<b>Single new dwelling</b>	<b>Commercial Retail Office</b>
Tweed	61 (71)	70 (108)	101 (166)
DLG Division 5	51 (53)	68 (81)	92 (106)

Table 3-34: Effect of stop-the-clock on DAs (Pages 146-151)

	<b>% of DAs with stop-the-clock</b>
Tweed	49 (64)
DLG Division 5	43 (54)

Table 7-5: Construction and occupation certificates issues for all councils (Pages 196-200)

	<b>Construction Certificates</b>	<b>Occupation Certificates</b>
Tweed	752 (848)	761 (1,001)
DLG Division 5	1199 (1,170)	945 (970)

### Other Miscellaneous Facts

- In terms of Table 6-6 Legal Appeals (Pages 190-195) Tweed Council had a relatively limited amount of Land and Environment Court appeal activity, with 3 Class 1 appeals and one Class 4/5 matter.
- In terms of the split of Council/delegated officer determination of development applications, Table 4-14 (Pages 174 to 179), Tweed Council had a relatively comparable % split of 96.6/3.4.

### Comparison of Tweed's Performance in the Context of Other North Coast Councils

- Tweed Council determined a total of 250 Complying Development Certificates, the highest in the North Coast Region (**Refer to Pages 112-115, Table 2-15**);
- Tweed Council's total determination of 815 DAs and total value of DAs of \$225.7M in (**Refer to Pages 102-105, Table 2-13**) are the highest of councils in the North Coast Region: Ballina (622 and \$98.9M), Byron (652 and \$129.4M), Kyogle (139 and \$18.6M.), Lismore (555 and \$60.5M), and Richmond Valley (363 and \$48.7M.);
- Tweed Council's total determination of construction certificates and occupation certificates (**Refer to Pages 196-200, Table 7.5**) also are the highest of other councils in the North Coast Region, as shown in the table below:

<b>COUNCIL</b>	<b>CONSTRUCTION CERTIFICATES DETERMINED</b>	<b>OCCUPATION CERTIFICATES DETERMINED</b>
Ballina	484 (575)	460 (580)
Byron	429 (455)	272 (468)
Kyogle	102 (109)	41 (14)
Lismore	442 (405)	314 (250)
Richmond Valley	304 (301)	205 (209)
Tweed	752 (848)	761 (1,001)

### **Concluding Appraisal of Tweed Council's Performance**

Despite these pressures and an increasingly complex and changing regulatory environment, Tweed Council was still able to seek a major improvement in the 2009/10 reporting results, which can in part be attributed to the hard work and professionalism of Council's assessment staff, as well as the emergence of better prepared, more complete development applications arising from Council's improved, web based DA checklists and information guidelines.

It should also be noted that Tweed Council was also required to allocate significant assessment staff resources to a series of Part 3A Major Projects' applications such as Cobaki and Kings Forest, involving some of the largest developments in the State.

Council will continue to implement improvements to the processing of its development and building applications, and it is expected that these actions will contribute to further reductions in processing times.

#### **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) 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. Copy of Department of Planning report, "Local Development Performance Monitoring 2009/10", released on 7 February 2011. (ECM 29450537)
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**18 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning and Regulation**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

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

## REPORT:

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

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

<b>DA No.</b>	DA10/0099
<b>Description of Development:</b>	five (5) lot subdivision
<b>Property Address:</b>	Lot 22 DP 1058759 & Lot 192 DP 217678 & Lot 2 DP 87339 Poplar Avenue and Poinciana Avenue Bogangar
<b>Date Granted:</b>	17/2/2011
<b>Development Standard to be Varied:</b>	Clause 20(2)(a) of Tweed Local Environmental Plan - 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
<b>Zoning:</b>	1(a) Rural, 2(a) Low Density Residential, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 7(l) Environmental Protection (Habitat) and Unzoned Land
<b>Justification:</b>	1.622ha of 1(a) zoned land and 3200sqm of 7(l) zoned land within Lot 3 is each less than 40ha as per development standard. 8.2ha of 7(l) zoned land within Lot 2 is less than 40ha as per development standard. Justification is possible for proposed Lot 2 as it is an existing lot configuration south of Clothiers Creek Road. Justification is not possible for proposed Lot 3 as creation of this allotment leads to further fragmentation of 1(a) and 7(l) zoned land.
<b>Extent:</b>	Lot 3: Total lot size of 18.37ha includes 1.622ha of 1(a) zoned land = 96% variation. " " " 3200sqm of 7(l) zoned land = 99.02% variation.  Lot 2: Total lot size of 50.29ha includes 8.2ha of 7(l) zoned land = 80% variation.
<b>Authority:</b>	Director General, Department of Planning

<b>DA No.</b>	DA08/1024
<b>Description of Development:</b>	six (6) storey mixed use development comprising 50 units and 1 commercial premise with basement carparking
<b>Property Address:</b>	Lot 7 Sec 4 DP 2379 and Lot 8 Sec 4 DP 2379 No 1 Boyd Street TWEED HEADS
<b>Date Granted:</b>	17/2/2011
<b>Development Standard to be Varied:</b>	Cl 50 of the TLEP requires a Floor Space Ratio (FSR) of 1:1 for land zoned 3(b) General Business with a site area of less than 2000sqm.
<b>Zoning:</b>	3(b) General Business
<b>Justification:</b>	The proposal incorporates an FSR of 2.34:1. Justification for the SEPP 1 refers to the objectives of Cl 50, which relate to limiting retail in the 3(b) zone and consolidation of lots. The proposal has no retail and will consolidate the lots, therefore complying with the clause objectives. Justification includes an assessment against the planning principles set by Chief Justice Preston for SEPP1 objections.
<b>Extent:</b>	The extent of the variation is an additional FSR of 1.34:1, which equates to 1359.16sqm of additional floor area.
<b>Authority:</b>	Tweed Shire Council

<b>DA No.</b>	DA10/0790
<b>Description of Development:</b>	three (3) lot subdivision
<b>Property Address:</b>	Lot 1 DP 746783 and Lot 2 DP 746783 No. 58 McCollums Road DURANBAH



<b>Date Granted:</b>	17/2/2011
<b>Development Standard to be Varied:</b>	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
<b>Zoning:</b>	1(b1) Agricultural Protection
<b>Justification:</b>	One lot to be created is 2.012ha, 80% of the required 10ha standard for the 1(b1) zone. This lot is already undersize (2ha) and application seeks to realign boundary to incorporate existing farm facilities (stables) into the lot. A dwelling is existing. Concurrence has been issued by the DOP.
<b>Extent:</b>	80% variation from prescribed 10ha minimum lot size for 1(b1) zone.
<b>Authority:</b>	Tweed Shire Council

<b>DA No.</b>	DA10/0805
<b>Description of Development:</b>	two storey dwelling house and inground concrete swimming pool
<b>Property Address:</b>	Lot 74 DP 1030322 No. 26 Eclipse Lane CASUARINA
<b>Date Granted:</b>	14/2/2011
<b>Development Standard to be Varied:</b>	An objection under SEPP1 has been submitted in relation to Clause 32(b) of the North Coast Regional Environmental Plan.
<b>Zoning:</b>	2(e) Residential Tourist
<b>Justification:</b>	The proposal which is for the construction of a single dwelling, will result in minor overshadowing of the adjacent foreshore reserve prior to 7pm midsummer. The development standard is considered to be unreasonable and unnecessary in the circumstance and the construction of the dwelling will not result in an adverse environmental impact as the shadow is relatively minor and will be consistent with shadows cast by other dwellings approved in the vicinity.
<b>Extent:</b>	The overshadowing that will occur into the foreshore reserve before 7pm midsummer is considered to be very minor and will be consistent with other approved development within the vicinity.
<b>Authority:</b>	Tweed Shire Council

<b>DA No.</b>	DA10/0842
<b>Description of Development:</b>	in-ground swimming pool, dwelling house additions and carport within 30m of designated road and shed
<b>Property Address:</b>	Lot 3 Sec 1 DP 30012 No. 663 Terranora Road TERRANORA
<b>Date Granted:</b>	23/2/2011
<b>Development Standard to be Varied:</b>	Clause 24 of Tweed LEP 2000 - Variation to the setback from a designated road
<b>Zoning:</b>	1(c) Rural Living
<b>Justification:</b>	Variation to the setback from a designated road (Terranora Road) of approximately 50% for dwelling house additions and approximately 70% for an in ground swimming pool.
<b>Extent:</b>	Variation to the setback from a designated road (Terranora Road) of approximately 50% for dwelling house additions and approximately 70% for an in ground swimming pool.
<b>Authority:</b>	Tweed Shire Council

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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