



**TWEED**  
SHIRE COUNCIL

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

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

# Agenda

## Planning and Regulation Reports

### **Ordinary Council Meeting**

### **Tuesday 18 October 2011**

held at Murwillumbah Cultural and Civic Centre  
commencing at 3.30pm

## COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

## Items for Consideration of Council:

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## **ORDINARY ITEMS FOR CONSIDERATION**

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

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

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

#### **MATTERS FOR CONSIDERATION**

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

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**8 [PR-CM] Development Application DA10/0766 for Drainage, Shed, Stables, Horse Training Track and Fencing at Lot 1 DP 789618; No. 138 Cobaki Road Cobaki**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0766 Pt1**

**SUMMARY OF REPORT:**

Council at its meeting of 16 August 2011 resolved as follows:

**“RESOLVED** that Item 18 (PR-CM) Development Application DA10/0766 for a drainage shed, stables, horse training track and fencing at Lot 1 DP 789618; No. 138 Cobaki Road, Cobaki be deferred so the applicant can address councillors.”

The applicant subsequently engaged Opus International Consultants to provide a Hydraulic Assessment of the works undertaken on the site. This was submitted to Council on 30 August 2011 and reviewed by Councils Infrastructure Engineer, whose comments include the following;

*‘In my previous memo...the applicant’s flood impact assessment (FIA) was assessed as being inadequate to resolve the issues regarding filling of a rural floodplain. The applicant has now obtained a Hydraulic Assessment by an engineering consultant.’*

*‘The report concludes that the filling and drainage works will have no significant impact on flooding behaviour, but recommends the following works be undertaken to ensure that pre-development flow capacities are maintained:*

- 1. Widen the section of drain from the dam to Section D (shown in Figure 3.0) to provide a trapezoidal channel with a base width of 5m, depth of 0.8m and side slopes of 1:4 (v:h);*
- 2. Install twin 600mm pipe culverts (or equivalent) at the access causeway (Figure 3.0, Section F) to replace the previously installed 300mm pipe culvert;*
- 3. Reduce the level of the low flow outlet from the dam by 200mm (to RL 0.9m AHD), in order for the high flow weir to operate adequately.*

*It is considered that should the above works be undertaken (or conditioned to be undertaken as part of a development approval for the filling works) this will satisfactorily mitigate the potential impacts of the filling works, reinstate previous drainage patterns, and protect adjacent properties from adverse impacts.’*

This Hydraulic Assessment was forwarded to an adjoining neighbour who had provided a submission on this application during the notification period. This has resulted in further

correspondence being received from the adjoining neighbour raising issue with the Hydraulic Assessment and requesting further detail to be submitted as well as assurances with respect to the work carried out not having any impact on their property. This correspondence is included as Attachment 1 of this report.

This correspondence was forwarded to the applicant who was requested to engage their hydraulic engineer to provide a detailed response with respect to the issues raised. Opus International Consultants have provided a response to these issues. This is included as Attachment 2 to this report. Attachment 3 contains the report considered by Council on 16 August 2011.

Having regard to the information provided by the applicant subsequent to the Council meeting on 16 August 2011 and comments provided by Councils Infrastructure Engineer with respect to same, it is considered that the subject development be recommended for approval subject to appropriate conditions of consent.

Further detail with respect to the application is provided below.

Council is in receipt of a Development Application for drainage, shed stables, horse training track and fencing works at the subject site. Following receipt of this application it became clear that earthworks have also been undertaken on the site, however these were described as 'top- dressing' in the submitted application.

Drainage and earthworks were carried out on the site and were brought to Council's attention by residents in the locality. Council requested the applicant to stop work and submit a development application.

The proposal is defined as an 'animal establishment', works for drainage and landfill, and 'earthworks' in accordance with the Tweed Local Environmental Plan 2000 (LEP 2000).

Earthworks, works for drainage and landfill, and animal establishment are listed under Item 2- allowed only with consent under the 1(a) Rural zoning provision for this area.

The development as originally submitted did not adequately address issues regarding the earthworks undertaken on the site, specifically relating to the importation of fill to a flood prone area. The total impact of the development could not be assessed given the lack of detail provided to Council with respect to a Flood Impact Assessment.

As outlined above, further assessment of the site has been undertaken with the result that it is considered that should the recommended works be undertaken, this will satisfactorily mitigate the potential impacts of the filling works, reinstate previous drainage patterns, and protect adjacent properties from adverse impacts.'

The proposal was notified to adjoining owners for a period of 14 days. A number of submissions were received by an adjoining neighbour during the notification period.

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



**RECOMMENDATION:**

That:

- A. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 104(2)(a) of the Local Government Act 1993, because it contains personnel matters concerning particular individuals (other than councillors).
- B. Development Application DA10/0766 for a drainage shed stables horse training track and fencing at Lot 1 DP 789618; No. 138 Cobaki Road COBAKI be approved subject to the following conditions: -

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects, Hydraulic Assessment prepared by Opus Engineering and the following plans;

- Site Plan, prepared by Shane Fraser and dated 28 August 2010;
- Stable Shed Plan, prepared by Shane Fraser and dated 28 September 2010;
- Elevation & Section of Stables, prepared by Shane Fraser and dated 28 September 2010;
- Shed plan- PFP-5626, prepared by Ranbuild and dated September 2011;
- Shed elevation & section- Tweed1-5626, prepared by Ranbuild and dated September 2011.

as amended in red, except where varied by the conditions of this consent.

2. No excavation works shall be carried out on any land shown as being Class 1, 2, 3, 4 or 5 land on the series of maps held in the office of the Council and marked 'Acid Sulfate Soil Planning Map' unless a site specific Acid Sulfate Soil and (if required) Dewatering Management Plan is prepared in accordance with the provisions of the New South Wales Acid Sulfate Management Advisory Committee Guidelines 1998 and submitted to Council's Environmental Health Unit for consideration and approval.

[GEN0005]

[GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

[PCC0465]

4. Council advises that the land is subject to inundation in a 1 in 100 year event to the design flood level of 2.6m AHD.

[PCCNS02]

5. A Section 68 application shall be required for:-
  - Erosion and sediment control works.
  - Stormwater drainage works.

Applications for these works must be submitted on Council's Section 68 Stormwater Drainage Application form accompanied by the required attachments and the prescribed fee.

[PCCNS03]

#### **DURING CONSTRUCTION**

6. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

7. The following works are to be undertaken to ensure that pre-development flow capacities are maintained:

- Widen the section of drain from the dam to Section D (shown in Figure 3.0) to provide a trapezoidal channel with a base width of 5m, depth of 0.8m and side slopes of 1:4 (v:h);
- Install twin 600mm pipe culverts (or equivalent) at the access causeway (Figure 3.0, Section F) to replace the previously installed 300mm pipe culvert;
- Reduce the level of the low flow outlet from the dam by 200mm (to RL 0.9m AHD), in order for the high flow weir to operate adequately.
- All areas of fill shall be provided with adequate perimeter drainage discharging to a legal point of discharge in order to prevent ponding on adjacent land..

[DURNS01]

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

8. Prior to the occupation of any building and prior to the issue of any occupation certificate approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.

[POC1040]

#### **USE**

9. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

10. Prior to use of all prior cut and filling works, a certificate of compliance shall be submitted to the Principal Certifying Authority by a suitably qualified engineer verifying that the earthworks have been constructed in accordance with Tweed Shire Council Specifications.

[USENS01]

11. Prior to use a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act.

[USENS02]

C. The owners of Lot 1 DP 780618 No. 138 Cobaki Road be issued with a Penalty Infringement Notice for undertaking development without consent.

**REPORT:**

**Applicant:** Mr SI Fraser  
**Owner:** Mr Shane I Fraser  
**Location:** Lot 1 DP 789618; No. 138 Cobaki Road Cobaki  
**Zoning:** 1(a) Rural  
**Cost:** \$80,000

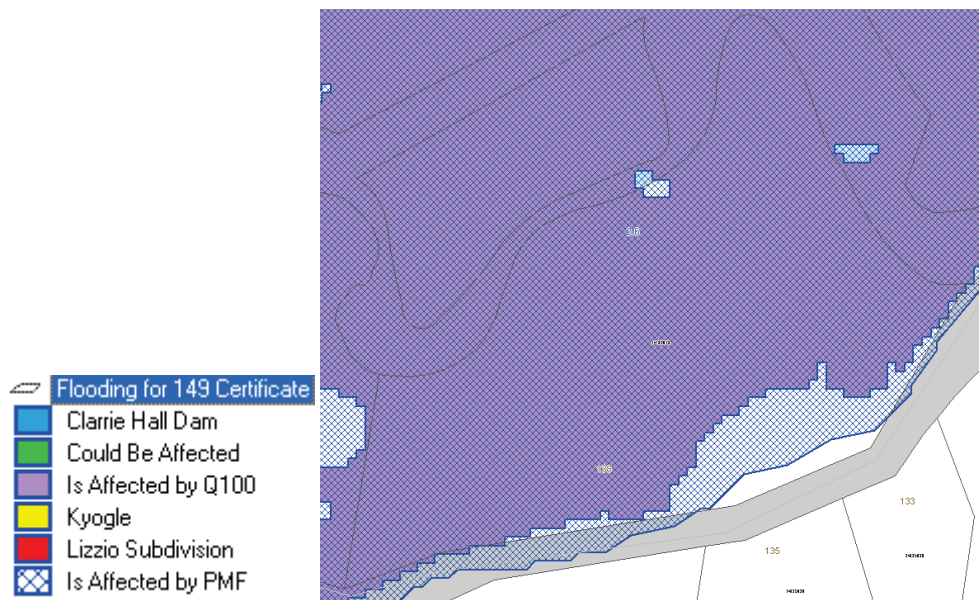
**BACKGROUND:**

The Subject Site

The subject land is described as Lot 1 DP 789618 at No. 138 Cobaki Road, Cobaki and has a total area of approximately 55.33ha. The site has a 425 metre frontage to Cobaki Road at its southern boundary and is defined to the north by Cobaki Creek. The subject site is irregular in shape and has a relatively level topography, with the exception of the area surrounding the dwelling, which is raised by approximately 3-5 metres from the remainder of the site. Improvements to the site include a dwelling and associated outbuildings to the roadside boundary.

Site Constraints

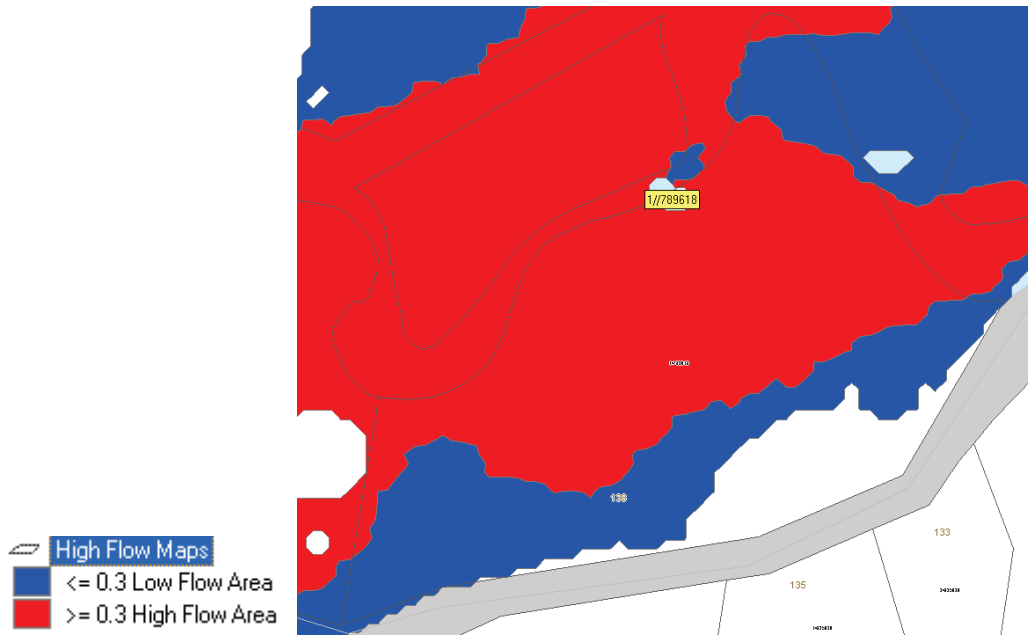
The site is located within an area which is within Tweed Shire Council's Q100 flood level as per Development Control Plan (DCP) A3- Development of Flood Liable Land. This flood level covers the majority of the site with exception of the current dwelling location, which is raised from the surrounding area. The Probable Maximum Flood (PMF) level also covers the majority of the site.



Area of site covered by 1:100 Flood level and PMF flood level.

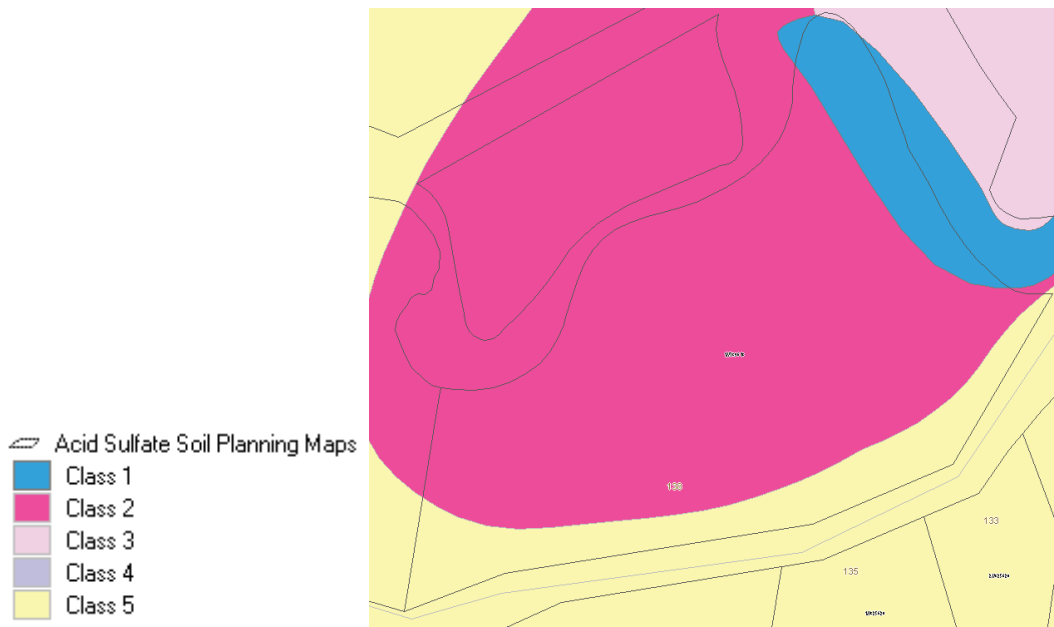
In addition to this, the subject site is also demonstrated as being located on land designated as High and Low flow areas as per DCP A3- Development of Flood Liable Land. This DCP

indicates that development is only permissible within a high flow area if the ground level is not altered by more than 300mm (for local drainage purposes) or obstruct flood flows.



High and Low flow areas over the subject site.

Council's mapping system indicate that the subject site is constrained by Class 1,2 & 5 Acid Sulfate Soils (ASS). Tweed Local Environmental Plan 2000 (TLEP 2000) indicates that works below the ground surface in Class 2 ASS areas as being specified works which must not be carried out without development consent.



Class 1,2 & 5 Acid Sulfate Soils on the site.

## The Proposed Development

Drainage and earthworks were carried out on the site, and were brought to Council's attention by nearby residents. Council officers subsequently requested the owners stop work and submit a development application.

The current Development Application provides for drainage works, to erect a shed and stables, as well as a horse training track and fencing on the subject site. The application was lodged on 25 November 2010.

The proposal includes:

- Works which are described as improvements to drainage on the site. This involves using an excavator to clear out the existing drains and laying two (2) 750mm pipes to aid the flow of water.
- The applicant indicated that the drain was widened to create a dam swimming area to aid the training of horses on the site. This dam has a total area of approximately 512m<sup>2</sup> and has a capacity of 1075m<sup>3</sup>. In addition to this, a overflow drain is proposed off the artificial water body to Cobaki Creek.
- A raised sand jog track is proposed around the site. The submitted plans demonstrate that this will be approximately 40m wide and will run in a oval shape around the site.
- The applicant has indicated that undulations to the centre of the site are to be top-dressed in order to facilitate the drainage of water to the low end of the paddock. It is stated that these earthworks are a maximum of 250mm deep, and only a 'small amount' of areas require attention.
- A 309m<sup>2</sup> stable building is proposed with maximum height of 5.2m. This building contains eight (8) stables, a store and a tie-up area.
- A 96m<sup>2</sup> ancillary shed is proposed.
- New fencing is proposed to the site.
- The planting of native vegetation through approximately 100 native trees to the roadside boundary is proposed.

Much of the above work had been carried out prior to the application being lodged.

## Site History

[0045/91B](#) Building Application – Shed- Approved - 30/01/1991

[1309/90B](#) Building Application – Dwelling. Approved - 29/11/1990

[1260/90B](#) Building Application – Shed. Approved - 9/11/1990

## Public Submissions

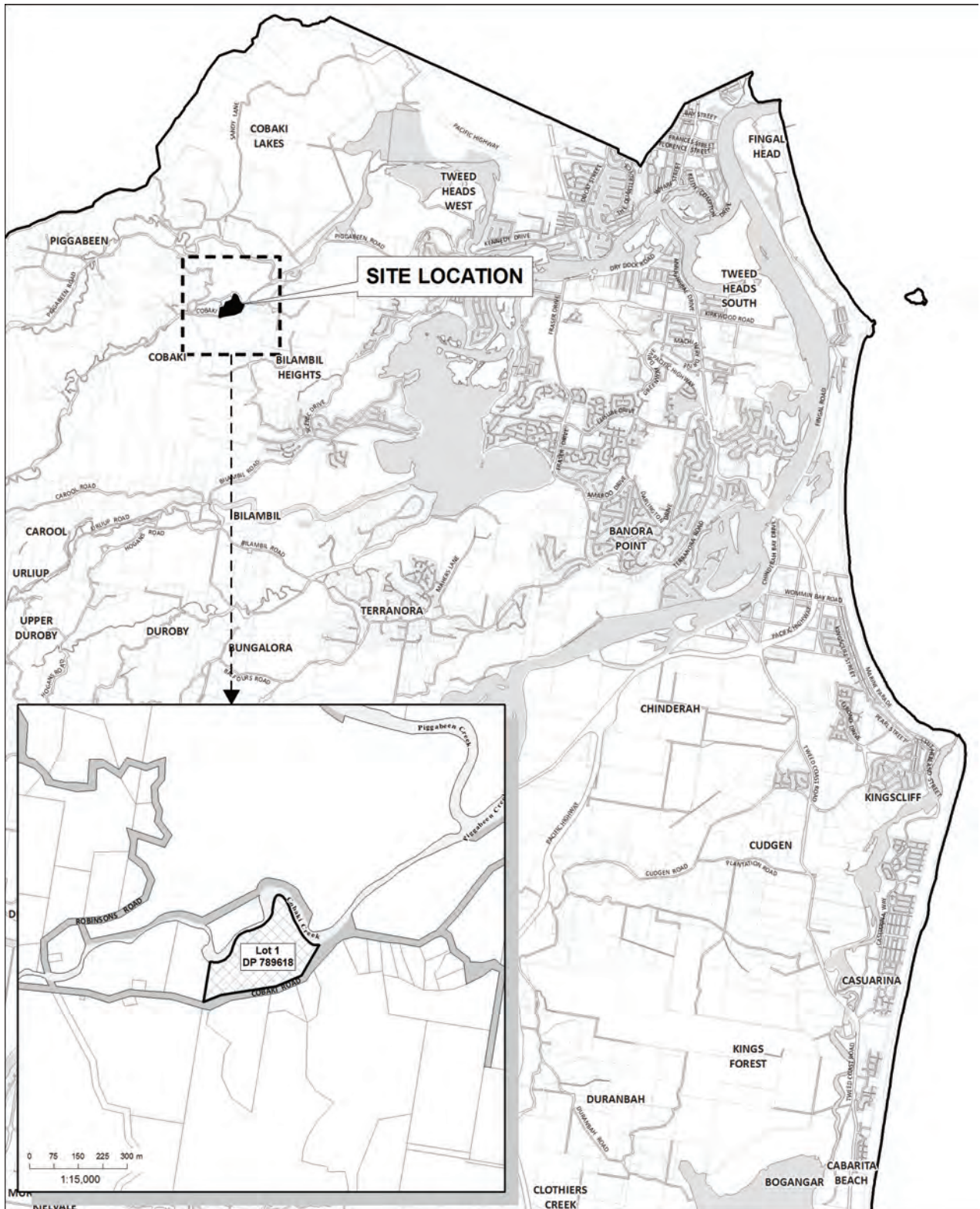
The subject development attracted a number of separate submissions from the owners of one neighbouring property following exhibition of the application. The objections were focused on the works carried out prior to lodgement, with particular attention to the earthworks on the site, the drainage works undertaken, the digging and spreading over the site of acid sulfate soils, the proposed trotting track and fencing.

In addition to this, the objectors have submitted correspondence between them and the applicant prior to a Development Application being submitted, and a factsheet outlining the 'Top 10 Common Law Drainage Problems between Rural Neighbours' from Ontario Ministry of Agriculture, Food & Rural Affairs. A number of photographs were also submitted demonstrating the extent of the works undertaken on the site.

Summary

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

**SITE DIAGRAM:**



**Locality Plan**

Lot 1 DP 789618  
No.138 Cobaki Road, Cobaki

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Cadastre: 04 August, 2011  
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Boundaries shown should be considered approximate only.

0 0.5 1 1.5 Km  
1:75,000 @ A4 Portrait  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED

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

Author: jbatcokler - Planning Reform's List

Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484

PO Box 816  
Murwillumbah NSW 2484

T | (02) 6670 2400 | 1300 292 872  
F | (02) 6670 2429

W | www.tweed.nsw.gov.au  
E | planningreforms@tweed.nsw.gov.au



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Date Printed: 04 August, 2011





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

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

**Tweed Local Environmental Plan 2000**

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

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

The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*. Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

Having regard to the submitted information, the subject development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

**Clause 5 - Ecologically Sustainable Development**

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

Having regard to the information submitted with respect to this application originally, it was not possible to ascertain that irreversible environmental damage had not been caused by the earthworks and works for drainage and landfill undertaken. However following the submission of Hydraulic Analysis it is considered that the proposal is in keeping with the ESD principles.

**Clause 8 - Zone objectives**

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

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*

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

The proposal is generally consistent with the primary objectives of the zone.

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

The proposal is not considered to contribute to any unacceptable cumulative impact in the community, in particular having regard to the submitted information with respect to hydraulic analysis submitted.

#### Clause 11 - Zone objectives

The subject site is located within the 1(a) Rural zone.

The primary objectives of the 1(a) Rural zone are *'to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development' and 'to protect rural character and amenity.'*

The proposed animal establishment, earthworks and works for drainage and landfill undertaken on the site are both listed under Item 2- allowed only with consent under the zoning provision for this area.

#### Clause 15 - Essential Services

This clause of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. Having regard to the proposed development, on a site which currently has an approved dwelling, it is considered that adequate services are available to the proposed shed stables and shed.

#### Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to three storeys. The proposed dwelling complies with this criterion at a maximum height of approximately 5.3m from finished ground level.

#### Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The subject site exhibits Class 2, 3 & 5 acid sulfate soils with respect to this clause. The area of the subject site where the dam/ horse swimming artificial waterbody was created is classified as containing Class 2 and Class 5 acid sulfate soils.

Works carried out on the site include the excavation of an artificial waterbody to a depth of two (2) metres and an overall area of 512m<sup>2</sup>.

The objectives of this clause are outlined as;

- to manage disturbance of acid sulfate soils to minimise impacts on water quality, ecosystems, infrastructure and agricultural and urban activities.
- to require special consideration and development consent for works, including some agricultural and infrastructure-related works, that would disturb soils or ground water levels in areas identified as having acid sulfate soils.
- to provide for a regime of self-regulation by those organisations which have demonstrated to the Council their ability to manage acid sulfate soils issues.

A person must not, without development consent, carry out works on land shown as being Class 1, 2, 3, 4 or 5 land, the works specified for the class of land in the following Table:

Class of land	Specified works
1	Any works
2	<ul style="list-style-type: none"> <li>• Works below the ground surface</li> <li>• Works by which the watertable is likely to be lowered</li> </ul>
3	<ul style="list-style-type: none"> <li>• Works beyond 1 metre below the natural ground surface</li> <li>• Works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface</li> </ul>
4	<ul style="list-style-type: none"> <li>• Works beyond 2 metres below the natural ground surface</li> <li>• Works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface</li> </ul>
5	<ul style="list-style-type: none"> <li>• Works within 500 metres of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD in adjacent Class 1, 2, 3 or 4 land</li> </ul>

The consent authority must not grant consent to works specified above unless it has considered:

- (a) a preliminary soil assessment to ascertain the presence or absence of acid sulfate soils within the area of proposed works, unless the applicant agrees that acid sulfate soils are present within the area of proposed works, and
- (b) where the preliminary soil assessment ascertains (or the applicant agrees) that acid sulfate soils are present, the adequacy of an acid sulfate soils management plan prepared in accordance with guidelines, as amended from time to time, published by the Environment Protection Authority, and

- (c) the likelihood of the proposed development resulting in the oxidation of acid sulfate soils and discharge of acid water from the area of the proposed works,

Having regard to the works carried out on the site, in particular on the Class 2 & 5 land on the site, development consent was required. Assessing the information submitted on the file with respect to ASS disturbance, it has not been adequately demonstrated that the disturbance of acid sulfate soils will not have a negative environmental impact on the locality.

Consequently, it is considered that the works carried out have not been in accordance with the objectives or provisions of this clause.

### Other Specific Clauses

#### Clause 34 – Flooding

Clause 34 of the TLEP 2000 seeks to minimise flood damage to future development occurring on flood liable land along with the adverse effects of flooding on a community. The applicant has submitted information, indicating that approximately 1500m<sup>3</sup> of fill has been imported to the site.

The site is identified on Council's mapping as being affected by the Probable Maximum Flood (PMF) level and as being susceptible to the 1 in 100 year flood level, with that level identified as 2.6 metres AHD.

This clause states that where land is likely to be subject to flooding, Council must not grant consent to development on that land unless it has considered the following:

- (a) *the extent and nature of the flooding hazard affecting the land,*

The subject site is predominately located within an area identified as Councils Q100 and PMF flood level as well as being within a high flow area for flood water.

- (b) *whether or not the development would increase the risk or severity of flooding of other land in the vicinity,*

This applicant has submitted a Hydraulic Assessment as part of this application. This was referred to Councils Planning and Infrastructure engineer who provided comments with respect to flooding.

It is considered that should the appropriate recommended works be undertaken, this will satisfactorily mitigate the potential impacts of the filling works, reinstate previous drainage patterns, and protect adjacent properties from adverse impacts

Based on this, it is concluded that the development would not increase the risk or severity of flooding of other land in the vicinity, subject to the proposed works being undertaken.

- (c) *whether the risk or severity of flooding affecting the development could be reasonably mitigated,*

The submitted information indicates that the applicant is to widen the section of drain, install twin 600mm pipe culverts and reduce the level of the low flow outlet from the dam in order to improve the drainage of water through the site.

Detailed analysis with respect to the improved flow rates or how these would offset the fill imported on the site has been provided. Therefore, it is concluded that the severity of flooding affecting the development could be reasonably mitigated.

- (d) *the impact of the development on emergency services,*

The subject development is not considered to have a immediate impact upon the provision of emergency services, having regard to the lack of any residential development proposed.

- (e) *the provisions of Section A3 - Development of Flood Liable Land of Tweed Development Control Plan.*

The development is assessed against the provisions of DCP A3 elsewhere in this report. It is concluded that the information submitted by the applicant with respect to flooding is acceptable.

#### Clause 39A – Bushfire protection

The object of this Clause is “*to minimise bushfire risk to assets and people and to reduce bushfire threat to ecological assets and environmental assets*”.

Council's mapping system demonstrates that the site is minimally mapped as being located within a bushfire prone area buffer of 30 to 100 metres. However as this buffer surrounds bushfire prone land which is located to the other side of Cobaki Road, it is considered that there is an adequate vegetation free buffer area between the subject development and the bushfire vegetation. Furthermore, the proposed stable and shed buildings are not located in the area mapped as being with the bushfire buffer zone. On this basis referral to the NSW RFS was not considered necessary.

#### **State Environmental Planning Policies**

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

#### Clause 12: Impact on agricultural activities

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

The subject site is listed on Council's GIS Enlighten system as being partially within an area which is identified as being a Regionally Significant Farmland. The GIS enlighten system also demonstrates that the agricultural suitability of the land is both land suitable for grazing and not for agriculture and land not suited for agriculture. It is considered that generally, the site consists of low quality agricultural land suitable for use for grazing. Therefore, the development would not lead to a loss of prime crop and pasture land.

Having regard to the works carried out on the site, the submitted Hydraulic Assessment has indicate that subject to remediation measures being undertaken as outlined elsewhere in this report, it is considered that there would not be any negative impact on the surrounding area in accordance with this Clause.

Clause 15: Wetlands or Fishery Habitats

Clause 15 of the NCREP is applicable to any application to carry out development adjoining a river or stream or within the drainage catchment of a river or stream. As this site adjoins Cobaki Creek and is located within its drainage catchment, this Clause is considered to apply to the proposal.

The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:

(a) *the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,*

The submitted Hydraulic Assessment states '*Additional drainage works.... are proposed to improve the current drainage and ensure capacity in excess of the pre-work scenario.*'

As such it is concluded that the quality or quantity of flows of water is maintained in accordance with this clause.

(b) *the need to conserve the existing amateur and commercial fisheries,*

The subject application is not considered to negatively impact upon any amateur or commercial fishing activities.

(c) *any loss of habitat which will or is likely to be caused by the carrying out of the development,*

The subject development is not considered to result in the loss of any significant habitat.

(d) *whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*

Not applicable to the subject development.

(e) *whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*

The proposal was referred to Councils Environmental Health Section who have indicated that the subject development is acceptable subject to appropriate conditions of consent.

(f) *the proximity of aquatic reserves dedicated under the [Fisheries Management Act 1994](#) and the effect the development will have on these reserves,*

The proposal is not considered to have a negative impact upon any aquatic reserves as outlined above.

(g) *whether the watercourse is an area of protected land as defined in section 21AB of the [Soil Conservation Act 1938](#) and any measures to prevent soil erosion, and*

The proposal is not considered to have a negative impact upon any watercourse as outlined above.

(h) *the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and*

The applicant has indicated the some camphor laurel vegetation is to be removed. This is not considered to be in contravention of the above clause. The proposal is considered to be acceptable in this regard.

(i) *the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.*

Not applicable

This Clause is considered to be adequately satisfied

#### Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

#### SEPP No 71 – Coastal Protection

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development will be considered compatible with existing and approved development for the locality upon completion of the proposed works.

#### SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It

provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

Provisions contained within this SEPP must be taken into account in consideration of granting consent for a dwelling on rural land. Measures designed to reduce these land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities.

The subject site contains a portion of Regionally Significant Farmland. However, this SEPP does not specifically apply to this development as no dwellings or subdivision is proposed on rural land.

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

The subject site is zoned RU2- Rural Landscape under the Draft Tweed LEP 2010. The objectives for this zone include provisions to encourage sustainable primary industry production, to maintain the rural landscape character of the land, to provide for a range of compatible land uses and to provide for a range of tourist accommodation-based land uses.

The drainage and earthworks work proposed and undertaken is listed under Clause 4 (Prohibited) of the indicated zone provisions as 'any other development not specified in item 2 or 3'. As such this element of the proposal is considered to be contrary to the provisions of the zone.

The farm buildings proposed as part of this application are listed under Clause 3 Permitted with Consent and are acceptable under the Draft LEP.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

The subject site is indicated as being flood liable and as such the provisions of this DCP apply to the proposed development. Specifically the site, is flood affected with a design flood level of 2.6m AHD. In addition to this the site is within an area identified as Councils PMF flood level as well as being within a high flow area for flood water.

The application was referred to Council's Planning and Infrastructure engineer for comment, having regard to the fill imported to the site, and the possible impact that this may have on the area. Arising from this the applicant was requested to either remove the fill imported to the site or provide Council with a Flood Impact Assessment considering the impacts of the works on flood events originating from Cobaki Creek as well as local overland flow catchments.

The applicant provided a Flood Impact Assessment prepared by Opus which was referred to Councils Planning and Infrastructure Engineer for comment. In a memo dated 25 July 2011, it is indicated that '*the FIA (Flood Impact Assessment) provides no hydraulic analysis to demonstrate that the works will have no adverse impact on local or regional flood behaviour.*' In addition to this, it is stated that '*the*



*FIA's impact assessment is based on the assumption that the works achieved a balanced cut/fill. This is not the case, as 150 truckloads of fill have been imported to the site.'*

The applicant subsequently engaged Opus International Consultants to provide a Hydraulic Assessment of the works undertaken on the site. This was submitted to Council on 30 August 2011 and reviewed by Councils Infrastructure Engineer, whose comments include the following;

*'In my previous memo...the applicant's flood impact assessment (FIA) was assessed as being inadequate to resolve the issues regarding filling of a rural floodplain. The applicant has now obtained a Hydraulic Assessment by an engineering consultant.'*

*'The report concludes that the filling and drainage works will have no significant impact on flooding behaviour, but recommends works be undertaken to ensure that pre-development flow capacities are maintained'.*

*'It is considered that should the...above works be undertaken (or conditioned to be undertaken as part of a development approval for the filling works) this will satisfactorily mitigate the potential impacts of the filling works, reinstate previous drainage patterns, and protect adjacent properties from adverse impacts.'*

Having regard to the information provided by the applicant subsequent to the Council meeting on 16 August 2011 and comments provided by Councils Infrastructure Engineer with respect to same, it is considered that the subject development is acceptable when assessed against the provisions of DCP A3.

#### A11-Public Notification of Development Proposals

This Development Application was notified for a period of 14 days. One submission was received during the notification period.

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

##### Clause 92(a) Government Coastal Policy

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

##### Clause 92(b) Applications for demolition

The Development Application does not contain any provisions for demolition on the site.

##### Clause 93 Fire Safety Considerations

The subject application was referred to Council's Building Section, who provided recommended conditions with respect to the proposed stable and shed development. As such the proposal is considered to be acceptable in this regard.

##### Clause 94 Buildings to be upgraded

Not applicable. The proposal does not include the upgrade of any buildings.

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

Tweed Shire Coastline Management Plan 2005

Not applicable.

Tweed Coast Estuaries Management Plan 2004

Not applicable.

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

The relevant management plan is the *Coastal Zone Management Plan for Cobaki Broadwater and Terranora Broadwater*.

The objectives of the Plan are:

- To improve water quality and ecosystem health by revegetation/regeneration of riparian vegetation, prioritising the mid – transition zones of all creeks and their ephemeral drainage lines.
- To improve rural stormwater discharge quality and ecosystem health by facilitating and supporting best practice land management and functional On-site Sewage System Facilities (OSSF).
- To improve urban stormwater discharge quality by implementing a Stormwater Quality Improvement Device (SQID) retrofitting strategy in existing priority areas, and ensuring future development does not contribute further to the existing pollutant loads.
- To restore riparian habitat to enhance connectivity of wildlife corridors.
- To protect and enhance shorebird habitat and provide additional high tide roosting sites.
- To increase and enhance public access to foreshores and low-impact recreation activities.
- To protect viable commercial fishery industries by preserving and improving fish habitat, including marine vegetation such as seagrass and saltmarsh and improving fish passage.
- To stabilise degraded creek bed and banks, to restore their natural values, improve downstream instream health, and reduce the infilling of the broadwaters.
- To increase community awareness and protection of areas important to Aboriginal cultural heritage.

## **Comment**

The applicant has indicated that the works for drainage and landfill will improve drainage through the site by providing cleared drain paths and culvert pipes. As outlined elsewhere in this report, the applicant was requested to demonstrate to Council that the works carried out would not adversely impact on local flood behavior.

Subsequently the applicant has provided information by way of an Hydraulic Assessment which has demonstrated to the satisfaction of Council officers that the proposal will not have an unacceptable impact on the surrounding area by virtue of flooding or water flow. As such it is considered that the proposed development is in accordance with the objectives of the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.

**(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**

### Earthworks

The application details state that 150 loads of fill, totalling approximately 1500m<sup>3</sup> of fill has been imported to the site as part of this application. As mentioned previously in this report, measures have been outlined in order to ensure that these earthworks do not have a negative impact on the surrounding area. As such it is considered that these earthworks will not have a detrimental impact on the surrounding natural or built environment.

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

### Surrounding Landuses/Development

The subject site is located in an area which is predominately rural in nature. The immediate surrounding allotments all contain a rural or rural residential use. The proposed stables and shed are considered suitable to the site.

As indicated elsewhere in this report, the earthworks have been demonstrated to not have a negative impact on surrounding landuses arising from the proposal in accordance with the submitted Hydraulic Assessment. As such,

### Natural Hazards

The subject site is indicated as being flood liable under the provisions of DCP A3 as outlined above. As outlined in more detail elsewhere in this report it is considered that the proposal is considered to be acceptable when assessed against the relevant provisions of this DCP or other Council Policy in relation to development on flood liable land, having regard to the submitted Hydraulic Assessment.

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

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

The application was notified to adjoining owners for a two-week period from 6 to 20 December 2010 in accordance with DCP A11. The subject development attracted a number of separate submissions from the owners of one neighbouring property following exhibition of the application.

Issues raised include:

- the works being carried out without Development Consent,
- the earthworks on the site, which are considered to have an impact upon their property,
- the drainage works undertaken,
- the digging and spreading over the site of acid sulfate soils,
- the proposed trotting track,
- the fencing to the roadside boundary.

In addition to this, the objectors have submitted correspondence between them and the applicant prior to a Development Application being submitted, and a factsheet outlining the 'Top 10 Common Law Drainage Problems between Rural Neighbours' from Ontario Ministry of Agriculture, Food & Rural Affairs. A number of photographs were also submitted demonstrating the extent of the works undertaken on the site. A copy of this submission is provided as a Confidential attachment.

**(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 outcome which is acceptable in terms of the public interest.

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 approval.
2. Refuse the application for specified reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant not be satisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

Works were undertaken without consent and therefore it is considered appropriate to issue a Penalty Infringement Notice to the owners for carrying out unauthorised development.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

A comprehensive assessment has been undertaken of the merits of the application by Council's planning, engineering and environmental health staff. The application is considered to be worthy of approval, subject to satisfaction of recommended conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. **Confidential Attachment** - Submission from the owners of a neighbouring property in respect of DA10/0766 dated 14 September 2011 (ECM 40060996)
  2. Letter from Opus International Consultants (Australia) Pty Ltd addressing comments regarding hydraulic information submitted to Council on 26 August 2011 (ECM 40094144)
  3. Council Report considered by Council on 16 August 2011 (ECM 40094145)
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**9 [PR-CM] Development Application DA10/0505 for a Three (3) Lot Subdivision at Lot 9 DP 583345; No. 70-76 Reserve Creek Road Kielvale**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0505 Pt1**

**SUMMARY OF REPORT:**

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 98.47%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zones 1(a) and 1(b2) if the area zoning within each allotment created is at least 40 hectares.

Total land area of the subject site is 30.575 hectares. Land areas of the proposed lots are as follows:

- Lot 1 = 2.058ha (retention of existing dwelling)
- Lot 2 = 5.737ha
- Lot 3 = 22.78ha.

Proposed Lots 1 and 2 are located entirely within the 2(d) Village zone.

Proposed Lot 3 is split-zoned. Zone areas within the lot are as follows:

- 2(d) Village zone = 4265m<sup>2</sup>
- 1(a) Rural zone = 21.75ha
- 1(b2) Agricultural Protection zone = 6100m<sup>2</sup>.

The creation of proposed Lot 3 results in a variation to the 40ha minimum lot size for the 1(a) zone of 45.64% and a variation to the 40ha minimum lot size for the 1(b2) zone of 98.47%. Existing 45.64% and 98.47% variations to the abovementioned development standard currently relate to the site as one lot. The extent of variations will neither reduce nor increase following this subdivision proposal.

The applicant seeks consent for a three (3) lot residential subdivision, including the creation of an internal driveway with Rights of Carriageway over proposed Lots 1 and 2 to provide access to proposed Lots 2 and 3.

Concurrence was granted by the Director General in this instance for the following reasons:

- The proposed subdivision will allow for the residentially zoned part of the lot to be separated from the rural land; and
- All the rurally zoned land in the Rural 1(a) and Agricultural Protection 1(b2) zones will be retained in a single lot as is presently the case with sufficient land within the proposed lot in the Village zone to provide for access and a dwelling.

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

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

**RECOMMENDATION:**

**That Development Application DA10/0505 for a three (3) lot subdivision at Lot 9 DP 583345; No. 70-76 Reserve Creek Road KIELVALE be approved subject to the following conditions: -**

**GENERAL**

1. **The development shall be completed in accordance with the Statement of Environmental Effects and:  
Sheet 1 of 1 Revision D Job No. 21079 (Proposed Subdivision of Lot 9 DP 583345 Reserve Creek Road Kielvale) prepared by Brown and Haan and dated 30 June 2011,  
except where varied by the conditions of this consent.**[GEN0005]
2. **The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.**[GEN0125]
3. **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. **Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -**
  - **Construction of a new driveway access for proposed Lots 1, 2 and 3 in accordance with Council's "Driveway Access To Property – Design Specification".**

**Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction.**

**The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -**

  - **Road works**
  - **Stormwater drainage**
  - **Water works**



- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan.

[GENNS01]

5. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works (including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works).

[GENNS02]

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

6. Prior to issue of the construction certificate, the applicant is to submit a Habitat Restoration Plan in accordance with Council's draft guidelines attached to this consent detailing additional environmental enhancement planting works and the removal of exotic species along the disturbed drainage channel.

[PCCNS01]

7. A Fisheries Permit is required from the Department of Primary Industries prior to issue of a Construction Certificate.

[PCCNS02]

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

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

[PCW0985]

9. The Habitat Restoration Plan must be approved to the satisfaction of Council's Director of Planning and Regulation or delegate prior to commencement of works.

[PCWNS01]

#### **DURING CONSTRUCTION**

10. 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]

11. 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<sub>Aeq, 15 min</sub> noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.**

[DUR0215]

**12. 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]

**13. 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]

**14. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.**

[DUR1015]

**15. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.**

[DUR1025]

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

[DUR2185]

**17. Acid sulfate soils shall not be exposed or disturbed. 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]

**18. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l.**

[DUR2435]

**19. All operations must comply with the fauna and flora protection measures as outlined in the Ecological Impact Assessment prepared by Biolink Pty Ltd and dated June 2011. In the event that any threatened species, populations, ecological communities or their habitats not addressed in the report are discovered during operations, appropriate Plans of Management for those species must be formulated to the satisfaction of the General Manager or delegate. No further operational works will take place until the Plan(s) of Management is/are approved.**

[DURNS01]

**20. Tree removal is limited to two (2) individuals as specified in the Ecological Impact Assessment conducted by Biolink Pty Ltd provided with the application, no other trees may be cleared without specific approval of the General Manager or delegate and works will avoid all other individuals.**

[DURNS02]

21. A spotter-catcher is to be present during clearing works to relocate any displaced fauna and attend to any injured fauna.

[DURNS03]

**USE**

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

[USENS01]

23. Due to the potential for Koala habitat and thus the high probability of Koalas traversing the vegetation of the 1(a) Rural zone, the keeping of dogs on Lot 3 is prohibited.

[USENS02]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

24. 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]

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

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

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

Water DSP2: 2.4 ET @ \$11571 per ET \$27770.4

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

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

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

[PSC0165]

26. **Section 94 Contributions**

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

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

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

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

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

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

(a) Tweed Road Contribution Plan: 13 Trips @ \$1601 per Trips ( $\$1455$ base rate + $\$146$ indexation) S94 Plan No. 4 Sector10_4	$\$20406.28^*$
(b) Open Space (Casual): 2 ET @ $\$526$ per ET ( $\$502$ base rate + $\$24$ indexation) S94 Plan No. 5	$\$1041.48^*$
(c) Open Space (Structured): 2 ET @ $\$602$ per ET ( $\$575$ base rate + $\$27$ indexation) S94 Plan No. 5	$\$1191.96^*$
(d) Shirewide Library Facilities: 2 ET @ $\$792$ per ET ( $\$792$ base rate + $\$0$ indexation) S94 Plan No. 11	$\$1568.16^*$
(e) Bus Shelters: 2 ET @ $\$60$ per ET ( $\$60$ base rate + $\$0$ indexation) S94 Plan No. 12	$\$118.8^*$
(f) Eviron Cemetery: 2 ET @ $\$120$ per ET ( $\$101$ base rate + $\$19$ indexation) S94 Plan No. 13	$\$237.6^*$
(g) Community Facilities (Tweed Coast - North) 2 ET @ $\$1325$ per ET ( $\$1305.6$ base rate + $\$19.400000000000001$ indexation)	$\$2623.5^*$

**S94 Plan No. 15**

- (h) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
 2 ET @ \$1772.82 per ET **\$3510.18\***  
 (\$1759.9 base rate + \$12.9199999999998 indexation)

**S94 Plan No. 18**

- (i) **Regional Open Space (Casual)**  
 2 ET @ \$1042 per ET **\$2063.16\***  
 (\$1031 base rate + \$11 indexation)

**S94 Plan No. 26**

- (j) **Regional Open Space (Structured):**  
 2 ET @ \$3656 per ET **\$7238.88\***  
 (\$3619 base rate + \$37 indexation)

**S94 Plan No. 26**

- \* Includes adjustments which effect compliance with the Directions from the Minister for Planning in relation to the maximum contribution payable per dwelling dated 13 January 2009 and 19 July 2009.

27. 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. [PSC0175]

28. 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: [PSC0825]

- (a) Easements for water supply and drainage over ALL public services/infrastructure on private property.
- (b) Restriction to be created over Lot 2 and Lot 3 stating that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.
- (c) Restriction to be created over Lot 2 and Lot 3 stating that the lots are not connected to a reticulated sewer system, and any dwelling to be constructed on the sites will need to provide on-site sewage management systems.
- (d) Restriction as to user regarding no dogs to be kept. Burden: Lot 3. Benefit: Tweed Shire Council.
- (e) Restriction as to user regarding the environmental covenant area to be described within the approved Habitat Restoration Plan for the site – this area must be subject to an ecological restoration program where native vegetation is protected. Burden: Each lot. Benefit: Tweed Shire Council.
- (f) Restriction as to user regarding protection of all Koala food tree species on the site of 3m or greater in height. Burden: Each lot on the subject site. Benefit: Tweed Shire Council.

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

- [PSC0845]
30. 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]
31. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

- [PSC0945]
32. Prior to issuing a Subdivision Certificate, reticulated water supply 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]
33. 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]

34. The production of written evidence from the local electricity supply authority certifying that the reticulation of electricity and energising has been provided to each allotment.  
Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

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

[PSC1175]

35. Prior to the issue of a Subdivision Certificate, documentary evidence shall be provided to Council to confirm the registration of a Right of Carriageway 10 wide over proposed Lot 1 and Lot 2, benefiting proposed Lot 2 and Lot 3.

[PSCNS01]

36. Prior to the issue of a Subdivision Certificate, a 4.0m wide sealed driveway shall be provided within the existing Right Of Carriageway through proposed Lot 1 and Lot 2, to the property boundary of proposed Lot 3.  
This access must be bitumen sealed from the edge of Reserve Creek Road to the property boundary of proposed Lot 3, in accordance with Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual and Council's "Driveway Access To Property – Part 1 – Design Specification".

[PSCNS02]

37. Prior to the issue of a Subdivision Certificate, Council must undertake a final inspection of the works and be satisfied that all conditions of consent have been complied with.

[PSCNS03]

38. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[PSCNS04]

39. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 68 of the Local Government Act 1993.

[PSCNS05]

40. Environmental restoration works shall be completed to a level specified in the approved Habitat Restoration Plan prior to the release of the subdivision certificate and shall be maintained at all times to the satisfaction of the General Manager or his delegate.

[PSCNS06]

41. The planted area and/or regenerated area shall be fenced to prevent cattle access until species attain the minimum height for protection by Council's Vegetation Management Order.

[PSCNS07]

42. Fencing shall not restrict the free movement of koalas that may traverse the site from time to time and shall allow a clearance of at least 30cm at the bottom to enable koalas to move under it. If post and wire fencing is used, the bottom strand must not be barbed. Thus, subdivision boundary fences to be erected on the property, shall comply with the following conditions:

- a. Fences shall be constructed of wire, with the top wire and the bottom two wires consisting of non-electrified plain wire.

- b. The bottom fence wire shall be no closer than 40 cm to the ground at any point.**
- c. The removal of vegetation for fence construction shall be undertaken with hand tools only (e.g. brush cutters, lawn mowers), and shall be limited to a maximum width of 1 m.**

[PSCNS08]



**REPORT:**

**Applicant:** Mr P Sochacki  
**Owner:** Mr Peter E Sochacki  
**Location:** Lot 9 DP 583345; No. 70-76 Reserve Creek Road Kielvale  
**Zoning:** Pt 2(d) Village, Pt 1(a) Rural, Pt 1(b2) Agricultural Protection  
**Cost:** \$20000

**BACKGROUND:**

History

Current Lot 9 in DP 583345 was created in 1976. A previous division dates back to 1965 but the shape of the allotment has remained virtually the same over these years.

Structures on the subject site are lawful:

- D87/0892: erection of a private dwelling house
- D93/0238: construction of an access road / cattle yards
- 1183/87B: building application – dwelling
- 1167/97B: building application – swimming pool.

The Subject Site

The subject property is legally described as Lot 9 DP 583345 and is more commonly known as 70 - 76 Reserve Creek Road, Kielvale. The property has an area of 30.55 hectares and contains an existing residential dwelling, swimming pool and various farm structures and improvements. The allotment was created in 1976. Vehicular access to the site is provided by way of an existing bitumen driveway from Reserve Creek Road to the dwelling and a dirt track through to the farm paddocks at the rear of the site. The majority of the property is a regular rectangular shape being defined by an irregular section with a 94m frontage to Reserve Creek Road.

The site area of the site to be subdivided is generally clear of vegetation other than the location of remnant bushland in the southern portion of the site. Scattered vegetation is also found on adjoining properties, whilst the land to the north is developed for residential use within the Village zoning.

An unformed Crown road reserve is located to the north western tip of the site, of which there is a 26m frontage along the site boundary.

Three drainage lines of intermittent flow run from east to west traversing the site. The site acts as a watershed from adjoining pastoral lands and drains into a tidal section of the Tweed River via Condong Creek.

Areas of Bush Fire Prone vegetation of Category 1 classification and bushfire buffer zones are present on the southern half of the site in the land zoned 1(a) Rural.

A small dam is associated with the existing dwelling on the northern irregular portion of the site.

### The Proposed Development

The applicant seeks consent for a three (3) lot residential subdivision. In addition to the proposed subdivision, the applicant seeks approval for the construction of a 560m long, 10m wide dual use driveway serving the building envelopes on Lots 2 and 3. The right-of-way (RoW) will contain a 4m wide sealed driveway and carry essential services to these Lots.

A causeway will be constructed with 2 x 1200m pipe culverts laid underneath to enable crossing of a drainage path. The boundaries of the Lots will be fenced and gated. Provision has also been made on the plan for future access from Lots 2 and 3 to the Crown road reserve should it ever be developed as a functional public road reserve.

Land areas of the proposed lots are as follows:

- Lot 1 = 2.058ha (retention of existing dwelling)
- Lot 2 = 5.737ha
- Lot 3 = 22.78ha

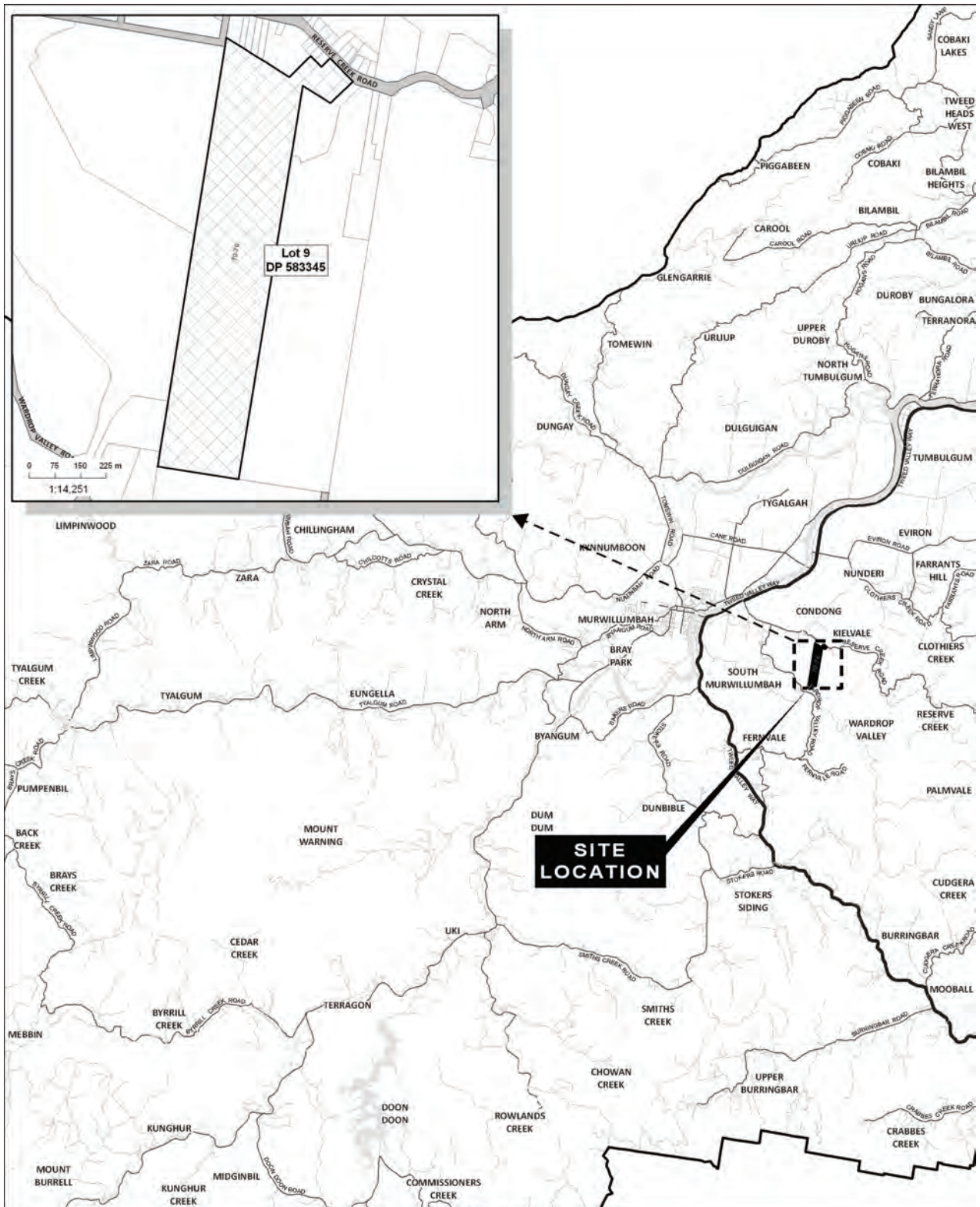
The proposal includes:

- Subdivision of the site into 3 residential lots (Torrens Title)
- Additional provision of Right of Carriageway over the proposed driveway to benefit proposed Lots 2 and 3
- Nomination of a suitable dwelling sites for proposed Lots 2 and 3.

### Summary

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

**SITE DIAGRAM:**



**Locality Plan**

Lot 9 DP 583345  
70-76 Reserve Creek Road, Kielvale

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Cadastre: 27 September, 2011  
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0 1 2 3 Km  
1:145,000 @ A4 Portrait  
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Map Projection: Universal Transverse Mercator  
Australian Datum: GDA94  
Grid: Map grid of Australia, Zone 56

Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484

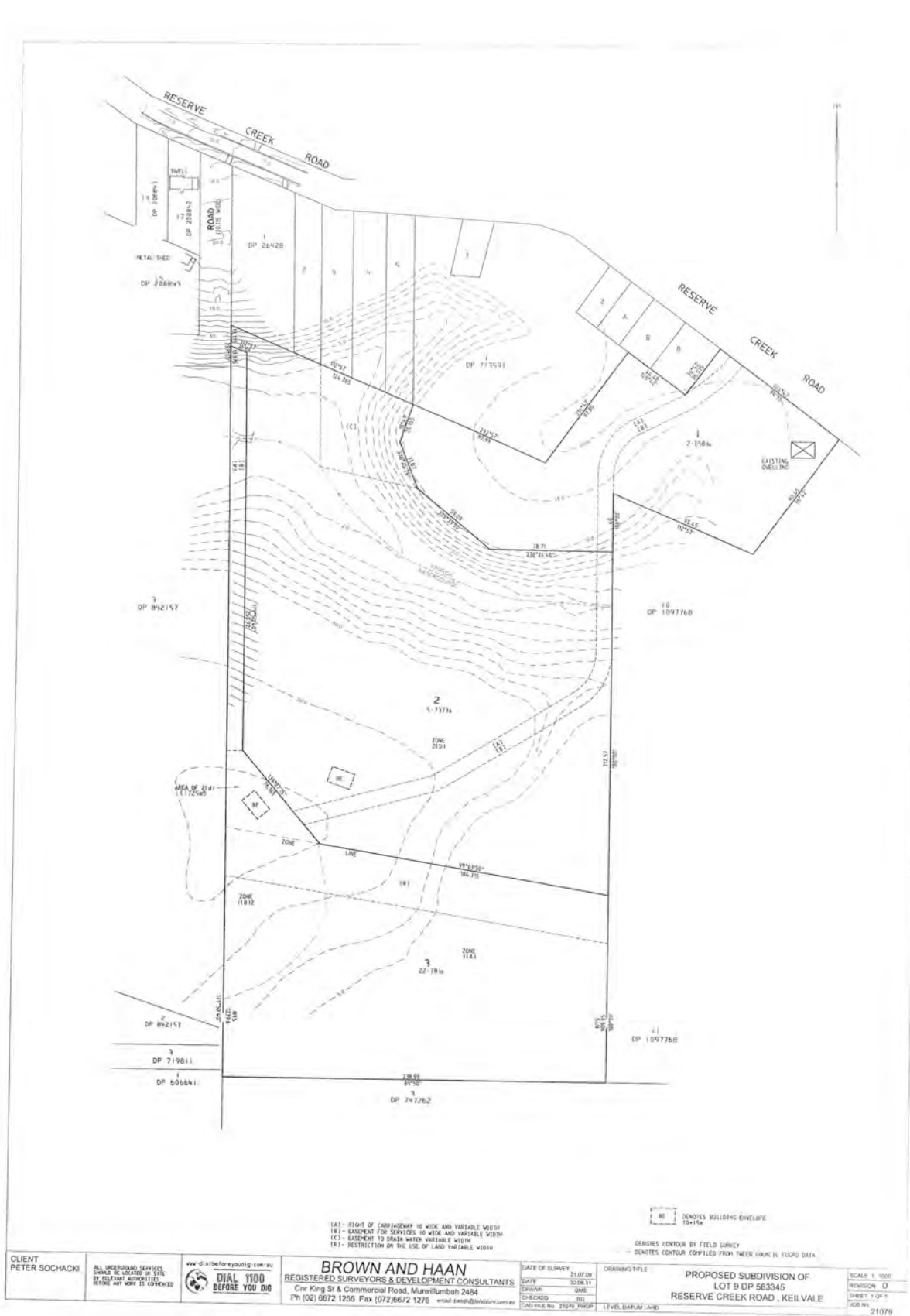
PO Box 816  
Murwillumbah NSW 2484

T | (02) 6670 2400 | 1300 292 872  
F | (02) 6670 2429  
W | [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)  
E | [planning@tweed.nsw.gov.au](mailto:planning@tweed.nsw.gov.au)



**TWEED**  
SHIRE COUNCIL

**DEVELOPMENT PLANS:**



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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Zone objectives

The site is zoned 2(d) Village, 1(a) Rural & 1(b2) Agricultural Protection as per the Tweed LEP 2000.

**2(d) Village Zone**

The primary objective for the 2(d) Village zone is:

- *to provide for residential development and a full range of services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village.*

On balance, the proposal satisfies the abovementioned objectives for the 2(d) zone in that:

- the proposal provides for two additional allotments that will have the same range of services and facilities as the existing dwelling within the rural village locality.

**1(a) Rural Zone**

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

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

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

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

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

- the proposal retains the current viability of the ongoing agricultural (grazing) use of the land. The proposed development does not interfere with surrounding land that is utilised for agricultural purposes;
- the proposal does not detract from the rural character or amenity of the locality.

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

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

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

Dwelling houses are permissible with consent on an allotment of at least 40 hectares. This is discussed in detail below in this report in relation to the SEPP 1 variation to development standards.

In any case, the proposed subdivision does not alter the original zoning configuration of the subject site and does not impact upon the historical and continuing use of the 6100m<sup>2</sup> portion of land zoned 1(b2) for grazing purposes.

The land is not substantially vegetated and is adjacent to land historically used for grazing to the west. The ongoing grazing land use in association with a rural residential land use is considered compatible with the zone objectives.

### **Clause 15 - Essential Services**

Council's reticulated potable water supply is available to the area. A water reticulation service exists for the dwelling in existing Lot 9 (proposed Lot 1). This will be maintained.

Recommended conditions of consent shall require the provision of service for proposed Lots 2 and 3 from Reserve Creek Road to proposed Lots 2 and 3 in accordance with Council's standards.

Council's piped effluent disposal infrastructure is not available within the area.

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

#### Clause 16 - Height of Building

No buildings are proposed as part of this development proposal.

#### Clause 17 - Social Impact Assessment

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

#### Clause 35 - Acid Sulfate Soils

Council's Enlighten indicates that the site is generally covered by Class 5 Acid Sulfate Soils (ASS) with smaller areas of Class 3 Acid Sulfate Soils. However, it is not envisaged that any earthworks will be required in these locations and the ground will remain undisturbed. Proposed dwelling sites for Lots 2 and 3 are located within Class 5 ASS areas.

The road access location traverses Class 5 ASS areas only. An assessment letter has been provided by HMC Environmental which indicates that no excavation of low lying land is required and it is unlikely that Acid Sulfate Soils will be disturbed. Conditions have been applied.

#### Other Specific Clauses

##### Clause 19 – Subdivision (General)

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

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

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

Clause 20 provides for the subdivision in 1(a) and 1(b2) zoned land if the zoned area of each allotment created is at least 40 hectares. This application proposes to maintain the same 21.744 hectare area of 1(a) zoned land and 6100m<sup>2</sup> area of 1(b2) zoned land within a parcel with a total land area of 22.78ha.

There is no change to the land zoned 1(a) and 1(b2). The land will be included in proposed Lot 3. No development is proposed on the land zoned 1(a) and 1(b2). It is therefore the subject of a SEPP 1 Variation Report which has received the

concurrence of the Director General and is discussed in full at a later stage within this report.

#### Clause 34 – Flooding

Council's Enlighten indicates that a section of the existing allotment is flood liable with a Design Flood Level of RL 4.2m AHD. This flood liable area is situated away from the proposed dwelling footprints on proposed Lots 2 and 3 and the existing dwelling on proposed Lot 1.

#### Clause 39 – Remediation of contaminated land

A contaminated land report was not submitted. The applicant has indicated that the property is used entirely for agricultural purposes (cattle grazing), and states "there has never been any other use of the site since subdivision in the late nineteenth century." It also states that there is no record of scheduled contamination chemicals being stored or released on the site.

A review of Council records indicates the following:

- Topographic map - no small cropping or bananas indicated;
- GIS – Indicates about 1km to the nearest cattle dip site;
- Aerial photography – 1962, 1996, 1987, 1970: all indicate open fenced paddocks with no clearly identified small cropping.

No record of potential contamination of the site has been identified in Council records. The applicant has provided a statutory declaration which indicates that he is not aware of any use or storage of potentially contaminating chemicals on the site.

#### Clause 39A – Bushfire Protection

The objective of Clause 39A is:

- to minimize bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the NSW Rural Fire Service on 16 November 2010 for consideration and comment, as the subject site has a component of bushfire prone land. A response was received 15 December 2010 and issued without any specific conditions. A formal subdivision plan was referred to the Service on 5 July 2011. Comments returned confirmed that the advice dated 15 December 2010 was current.

#### Clause 54 – Tree Preservation Order (1990)

The area zoned 2(d) Village is affected by the 1990 Tree Preservation Order. However, there will be no removal of vegetation in association with the proposed subdivision, the internal driveway or the proposed dwelling sites apart from the possible removal of one juvenile Guioa (*Guioa semiglauca*) and a single exotic



pine in order to facilitate the widening of the driveway entrance from Reserve Creek Road. These trees provide little ecological value and are therefore approved for removal.

### **State Environmental Planning Policies**

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

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

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

The history of the use of the site for the past 50 years or so indicates that of grazing and residential use. The small portion of land zoned 1(b2) Agricultural Protection has not been farmed, as indicated in aerial photography dating back to 1962.

Adjoining and surrounding land is utilised for rural residential, grazing and cane farming purposes.

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

##### Clause 43: Residential development

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

Site erosion will be minimised as there are no works proposed apart from an internal driveway. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

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

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

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

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

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

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in

the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

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

*Compliance with the development standard would preclude effective development of the site that would not relate to the characteristics of the site. Upholding the objection would be consistent with the aims and objectives of SEPP No. 1.*

*Compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly development of land.*

*Compliance with the development standard is unreasonable and unnecessary as it would undermine the expressed urban release goals of the Tweed LEP without advancing the goals for protection of agricultural land, which the latter would otherwise need to be out of production to allow the urban development to occur.*

*For the reasons set out above, the proposed minor departure from the lot size development standard is considered to be well founded.*

*It is submitted that upholding of the objection would be consistent with the aims of State Environmental Planning Policy No. 1 in that strict compliance with the control would unreasonable preclude the appropriate development of the site.*

*Accordingly, in the circumstances of this case the subject non-compliance with the development standard is well founded and upholding the objection is considered to be in the public interest.*

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

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

- 1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

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

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

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

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

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

The proposal provides for a Torrens Title subdivision that incorporates two new allotments and no unreasonable burden on public infrastructure.

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

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

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

No public benefit issues are adversely affected by not being able to maintain the development standard in this case as it is already non-compliant and the degree of non-compliance will not intensify.

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

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

- The proposed subdivision will allow for the residentially zoned part of the lot to be separated from the rural land; and
- All the rurally zoned land in the Rural 1(a) and Agricultural Protection 1(b2) zones will be retained in a single lot as is presently the case with sufficient land within the proposed lot in the Village zone to provide for access and a dwelling.

SEPP No. 44 - Koala Habitat Protection

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

Review of the NSW NPWS Wildlife Atlas indicates that there are 31 (thirty one) recorded Koala sightings within 5km of the site. The most recent sighting was in 2008 within 30km of the site. The closest sighting is within 10km and occurred in 2005.

A single preferred koala food tree, Swamp Mahogany (*Eucalyptus robusta*) occurs within the 2(d) Village zone. A thorough search for evidence of koala activity conducted by Biolink Pty Ltd indicated that the tree is not used by koalas.

Portions of Koala Secondary Habitat (Class B) are mapped in the 1(a) Rural zone. A detailed assessment of this mapped area was not conducted as it is well south of the proposed development and works will not have a direct impact on this zone.

Sightings suggest that it is probable that koalas may traverse the site from time to time; and therefore the proposed works have been conditioned to ensure the free movement of koalas and other mobile fauna, and that no dogs are allowed on proposed Lot 3.

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

As stated previously in this report, no record of potential contamination of the site has been identified in Council records. The applicant has provided a statutory declaration which indicates that he is not aware of any use or storage of potentially contaminating chemicals on the site.

As such, the proposal complies with this SEPP.

#### SEPP (Rural Lands) 2008

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

None of the provisions contained within the SEPP relate specifically to this site. The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

The shire-wide Draft Local Environmental Plan was recently placed on exhibition. The draft zones are RU5 Village, RU2 Rural Landscape and RU1 Primary Production. The proposed subdivision includes a 21.744ha portion of land draft zoned RU2 and a 0.61ha portion of land draft zoned RU1 that will not be affected by the proposal. Minimum allotment sizes for the draft zones are as follows:

- 450m<sup>2</sup> (sewered) and 1000m<sup>2</sup> (unsewered) for RU5
- 40ha for RU1 and RU2.

This is consistent with current zoning provisions. Objectives for the three draft zones are also consistent with current zoning provisions.

Dwelling houses are permissible forms of development in the draft zones. A 'dwelling house' is a form of 'Residential' development' and is permitted with consent at Item 3 in the draft zones.

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

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

In the case of this subdivision proposal, the development standard is varied considerably which would require the applicant to justify the contravention of the development standard and for concurrence of the Director-General to be obtained by the consent authority.

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

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

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The site for the existing dwelling is not constrained by development controls located within DCP A1. The intended lot on which it will be located does not reconfigure the existing arrangement.

A2-Site Access and Parking Code

Similarly, access to the existing dwelling will not be altered and remains directly from Reserve Creek Road.

Proposed access to the new lots via an extension to the existing dirt track through proposed Lot 1 is in accordance with DCP A2 provisions.

### A3-Development of Flood Liable Land

Council's Enlighten indicates that sections of the existing allotment is flood liable with a Design Flood Level of RL 4.2m AHD. This flood liable area is situated away from the proposed dwelling footprints on proposed Lots 2 and 3 and the existing dwelling on proposed Lot 1.

### A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State. The DCP defines "subdivision" liberally as "the division of land into two or more parts" and includes the creation of lots in community title subdivisions. Parts of this DCP that are applicable to the proposal have been addressed below with the conclusion that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

#### A5.5.2 Physical Constraints

The rural subdivision proposal is consistent with the surrounding neighbourhood and utilises the existing rural layout and topographical features.

The existing and proposed dwelling sites for this proposed subdivision are both located above acceptable current flood levels. Filling land on a floodplain does not form part of this application. The proposed dwelling sites are not located within any natural water course or drainage systems.

The proposed subdivision integrates with the surrounding rural environment and compliments existing scenic rural landscapes. The proposed dwelling sites and additional access for Lots 2 and 3 are considered to be sensitive to the visual amenity of the site and as such are deemed not to detract from the scenic quality or view corridors of the surrounding neighbourhood.

#### A5.5.3 Rural Water Courses & Drainage

The subject land is traversed by three drainage lines of intermittent flow. The proposal will not change or affect the natural flow paths as the proposed driveway will be raised over the flow paths by a culvert.

#### A5.5.4 Rural Subdivision Structure

The proposed subdivision is consistent with the zone objectives and is consistent with the existing rural character and amenity of the adjoining rural neighbourhood to the east, west and south of the subject land. The proposed subdivision is not an isolated rural development and is not anticipated to provide an unsustainable demand on public amenities and services.

#### A5.5.5 Rural Subdivision and Lot Layout

The position of the proposed new lots was determined taking into consideration the topography, position of existing structures, the landscape and visual character and the environmental values of the locality. The proposed lots comply with the minimum lot size outlined in this DCP for unsewered sites within land zoned 2(d).

#### A5.5.6 Rural Movement Network

The subject land gains access from Reserve Creek Road via an existing bitumen driveway (existing dwelling) and dirt access track (balance of allotment). A Right of Carriageway (ROC) will be provided over proposed Lot 1 which will benefit proposed Lots 2 and 3. Similarly, the ROC over proposed Lot 2 will benefit proposed Lot 3. The 10m width of such complies with the minimum standards as per the DCP. A total of three allotments will share the ROC, which is acceptable to the requirements. The proposed subdivision will not affect the existing situation regarding traffic volumes and the like.

On-site sewer management will be carried out in accordance with the necessary environmental and health protection guidelines and proposed Lots 2 and 3 will be connected to the public reticulated water supply, which enters the site off Reserve Creek Road.

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

Clause 92(a) Government Coastal Policy

The subject land is not affected by the coastal policy.

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

The subject land is not located in any areas affected by coastal zone management plans.

**(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**

Minimal impacts are expected as a result of the proposed development. Further assessment will take place once dwelling applications are lodged for proposed Lots 2 and 3.

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

Surrounding Land Uses/Development

The lot is surrounded by land zoned 1(a) Rural on the eastern, western and southern boundaries and the village of Kielvale lies to the north.

Flora and Fauna

*Ecological values:*

Vegetation on site is mapped as Highly Modified/Disturbed in the north and Brush Box Open Forest on Bedrock Substrate in the south under the Tweed Vegetation Management Strategy (TVMS) 2004. The Ecological Status of the site is variable. Areas of vegetation of high ecological value occur in the southern section within the 1(a) Rural zone and a small pocket of vegetation is identified as of low ecological value in the far north-western corner of the site. The remaining vegetation of the site is unclassified.

A detailed flora and fauna assessment has not been conducted for the entire site, rather survey efforts have focussed only on the land in the 2(d) Village zone. The vegetation of this area is identified by TVMS as being substantially cleared. No works are proposed for the land zoned 1(b2) Agricultural Protection or 1(a) Rural zone.

The proposed works lie wholly within the 2(d) Village zone and vegetation comprises essentially of cleared areas and exotic grasses. For this reason the ecological value is considered low. One juvenile Guioa (*Guioa semiglauca*) and a single exotic pine at the driveway entrance are proposed for removal to facilitate the widening of the existing driveway. The driveway circumvents all other vegetation.

Three drainage lines of variable flow provide a moderate habitat for aquatic flora and fauna. The waters of these drainage lines make their way to a tidal section of the Tweed River via Condong Creek. The wetlands and marshy areas associated with these drainage paths provide valuable habitat for native flora and fauna. At the time of the survey conducted by Biolink Pty Ltd, Purple Swampheens (*Porphyrio porphyrio*) and Common Eastern Froglets (*Crinia signifera*) were active in the drainage line.

*Rehabilitation and restoration:*

The application does not propose any rehabilitation or restoration of the site. The proposed development seeks the construction of a 4m wide, 30m long concrete floodway across a drainage line that provides a valuable habitat for native flora and fauna. Disturbance to localised populations of aquatic species is anticipated and therefore restoration planning and regeneration have been conditioned to improve the viability of the drainage line and associated wetlands and marshy areas for flora and fauna.

*Fisheries Management Act 1994:*

The drainage lines are third order streams that drain into a tidal section of the Tweed River via Condong Creek. The drainage lines and associated wetlands and marshy areas are considered 'water land' under this Act.

Works to construct a causeway and the installation of pipe culverts is defined as 'reclamation work' under this Act. A Fisheries Permit will therefore be required, which is a recommended condition of consent.



### Natural Hazards (Flooding)

The design flood level of the existing site is RL 4.2m AHD. The proposed driveway minimum height is RL 4.50m AHD. The proposed driveway will have a 300mm freeboard from the design flood level.

The probable maximum flood (PMF) level of the existing site is RL 9.20m AHD. The proposed and existing dwelling locations for this subdivision are located higher than the PMF flood level.

### Utilities

There is an existing 100mm diameter water main located within Reserve Creek Road. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

### Effluent Disposal

The existing dwelling is serviced by a 2040L septic tank and 2 x 20m traditional absorption trenches. The system is functioning adequately and the owner has a current approval to operate for the system. There is sufficient area within the property boundary of Lot 1 to allow for construction of replacement effluent Land Application Areas (LAA) is required.

There is sufficient area within the property boundaries of proposed Lots 2 and 3 to allow for the installation of On-site Sewage Management Systems (OSMS) including construction of effluent (LAA) if required for dwellings.

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

The application was not required to be notified to the public but was referred, as integrated development to NSW Rural Fire Service for comment. Subsequently, no conditions were imposed.

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

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

#### **OPTIONS:**

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

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

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**10 [PR-CM] Development Application DA11/0164 for alterations, additions and part demolition of three flats to construct a three storey dwelling at Lot 2 DP557216 26 Tweed Coast Road Hastings Point**

**ORIGIN:**

**Building and Environmental Health**

**FILE NO: DA11/0164 Pt2**

**SUMMARY OF REPORT:**

An application has been received to demolish a large part of the old existing residential flats on 26 Tweed Coast Road and construct a substantial three storey dwelling. The property is a battleaxe block situated on the east side of Tweed Coast Road Hastings Point and is affected by a number of constraints such as coastal hazard erosion lines and bushfire.

The application was notified to adjoining & nearby property owners (45 letters) and seven (7) submissions were received objecting to the proposal. The objectors' main concerns with the proposal were the overbearing bulk of the dwelling, overshadowing, loss of view, possible damage during construction to surrounding property, loss of access to 'right of ways' and non compliance with the Hastings Point Development Control Plan B 23. After consultation with key parties the proposal was modified from the original submission and re-notified with no further submissions being received.

The amended design improved some of the impacts but was likely to still have considerable adverse impact on the amenity of the adjoining property to the south and did not comply with the Hastings Point Development Control Plan B 23. The applicant further modified the design and submitted a final proposal that was notified again to the immediate neighbours and is now the subject of this report.

The proposal is now considered a reasonable development given the specific constraints of the site and while not fully compliant with the Hastings Point Development Control Plan B 23, the extent of non-compliance is not likely to contribute significantly over and above a fully compliant development in regard to adverse effect on the amenity of the surrounding property occupants or to community in general. The proposed building provides a transitional effect across the site between the existing three story units to the north and the lower property to the south.

On the balance of the assessment of the relevant planning matters, it is considered that the proposed development is suitable for approval, subject to conditions.

**RECOMMENDATION:**

**That Development Application DA11/0164 for alterations, additions and part demolition of three flats to construct a three storey dwelling at Lot 2 DP557216 26 Tweed Coast Road Hastings Point be approved subject to the following conditions:**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos Johnston EP:01 Issue V, Johnston DA:01 Issue V, Johnston DA:02 Issue V, Johnston DA:03 Issue V, Johnston DA:04 Issue V, Johnston DA:04A Issue V and Johnston DA:05 Issue V prepared by Brian Kenny and dated 29 August 2011, except where varied by the conditions of this consent. [GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]
3. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines. [GEN0300]
4. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate. The footing design is to incorporate design principles as detailed in the structural design intent certificate by Mark Traucnieks consulting Engineers dated 8th March 2011 to address potential coastal erosion influences. [PCC0945]
5. The existing brick barbeque on the foreshore are east of the site is to be removed. [GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. 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]
7. A construction certificate application for works that involve any of the following:-
  - connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control workswill not be approved until prior separate approval to do so has been granted by Council under S68 of the Local Government Act.
  - a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
  - b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned

works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

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

[PCW1065]

9. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and driveway are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to Council prior to commencement of ANY works on the site.

[PCW0775]

10. Prior to the commencement of work on the stormwater system a site inspection is to be arranged with the Principal Certifying Authority to discuss site drainage.

[PCW0995]

11. Prior to commencement of any work on the site a construction management plan is to be submitted to and approved by the Principal Certifying Authority. The plan is to detail how the construction will manage deliveries, general construction vehicle movement, concrete deliveries, traffic management, and in particular the minimisation of disruption to the residential units that share the driveway access.

[PCWNS01]

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

12. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and

- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

- 13. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:
  - (a) a standard flushing toilet connected to a public sewer, or
  - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

[PCW0255]

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

[PCW0225]

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

[PCW1005]

- 17. 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]

**18. Residential building work:**

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

[PCW0235]

19. During construction the Principal Certifying Authority is to be provided with a Registered Surveyors' floor level certificate at each floor platform stage and when the roof framework is in place, to confirm that the height of the building is proceeding in accordance with the approved plans.

[DURNS01]

20. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

[DUR0675]

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

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

[DUR0645]

22. Construction and management of the building shall comply with Section 1.0 of the Bushfire Threat Assessment Report by BCA Check Pty Ltd dated 15th February 2011 and all boundary fences are to be constructed of non-combustible materials.

[DURNS02]

**DURING CONSTRUCTION**

23. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

24. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain

or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

25. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

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

[DUR2185]

27. The development is to be carried out in accordance with the current **BASIX** certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

31. 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]

32. 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]



33. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building. [DUR0245]
34. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:  
(a) internal drainage, prior to slab preparation;  
(b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;  
(c) external drainage prior to backfilling.  
(d) completion of work and prior to occupation of the building. [DUR2485]
35. Plumbing  
(a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.  
(b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage. [DUR2495]
36. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
37. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
38. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
39. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
40. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-  
\* 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and  
\* 50°C in all other classes of buildings.  
A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]
41. 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]
42. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final

inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

43. Upon completion of all works on the site and prior to the issue of an Occupation (including interim) / Subdivision Certificate, a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the current general condition including the structural condition of the adjoining buildings / sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and provide to Council the written acceptance of the adjoining / adjacent owners confirming agreement that no damages have occurred / repairs carried out are acceptable.

[POC0825]

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

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

[POC0205]

45. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property. The street number is to be on a white reflective background professionally painted in black numbers 100mm high.

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

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

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

[POC0265]

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

[POC0435]

#### **USE**

47. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

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

[USE0505]

**REPORT:**

**Applicant:** Mrs K Johnston  
**Owner:** Mrs K Johnston  
**Location:** Lot 2 DP 557216, No. Tweed Coast Road Hastings Point  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$975,000

**BACKGROUND:**

The property is zoned 2(b) Medium Density Residential under Tweed Local Environmental Plan 2000 and is located on the eastern side of Tweed Coast Road Hastings Point in the Peninsula Street & Northern Entry Precinct. The property is a battleaxe block containing three existing small residential units totalling approximately 193m<sup>2</sup> in floor area.

An application has been received to demolish part of the existing structures and to construct a substantial three (3) storey dwelling on the subject property.

The submitted proposal has been designed to maintain the floors and walls of the existing brick and concrete units at the east end of the site to utilize the existing resource minimising waste and construction costs. An engineer's evaluation of the viability of the existing structure was provided to validate the design brief in this regard.

The application was notified to 45 adjoining & nearby property owners and seven (7) submissions were received objecting to the proposal. The objectors' main concerns with the original proposal were the overbearing bulk of the dwelling, overshadowing, loss of view, possible damage during construction to surrounding property, loss of access to 'right of ways' and non-compliance with the Hastings Point Development Control Plan B 23. After consultation with key parties the proposal was modified from the original submission and re-notified with no submissions being received.

The amended design improved some of the impacts but was likely to still have considerable adverse impact on the amenity of the adjoining property to the south and did not comply with the Hastings Point Development Control Plan B 23. After further consultation with Council's Building Surveyor the applicant further modified the design and submitted a final proposal that was notified again to the immediate neighbours and is now the subject of this report.

The original submitted design has been modified by the applicant in response to the objectors and Council officers concerns by:

- Reducing the overall height by one (1) metre and the southern side wall plate height by 830mm. Achieved by lowering roof pitch, lowering ceiling height on top floor by 300mm and lowering floor level of third storey by 300mm.
- Reduction of the third storey by compressing the floor plan four (4) metres towards the west and realigning 1.5 metres to the north.
- Adjusting the proposed finished ground level adjoining the building and in relation to the existing ground level so as to provide a stable low impact boundary interaction and be able to measure building height more favourably.

These modified plans are now the plans considered in this report and although no submissions were received to the re-notification it is recognised by thorough examination of

the modified plans that some of the concerns previously raised in regard to non-compliance with the DCP B23 would remain.

The proposed building provides a transitional effect across the site between the existing three story units to the north and the lower property to the south.

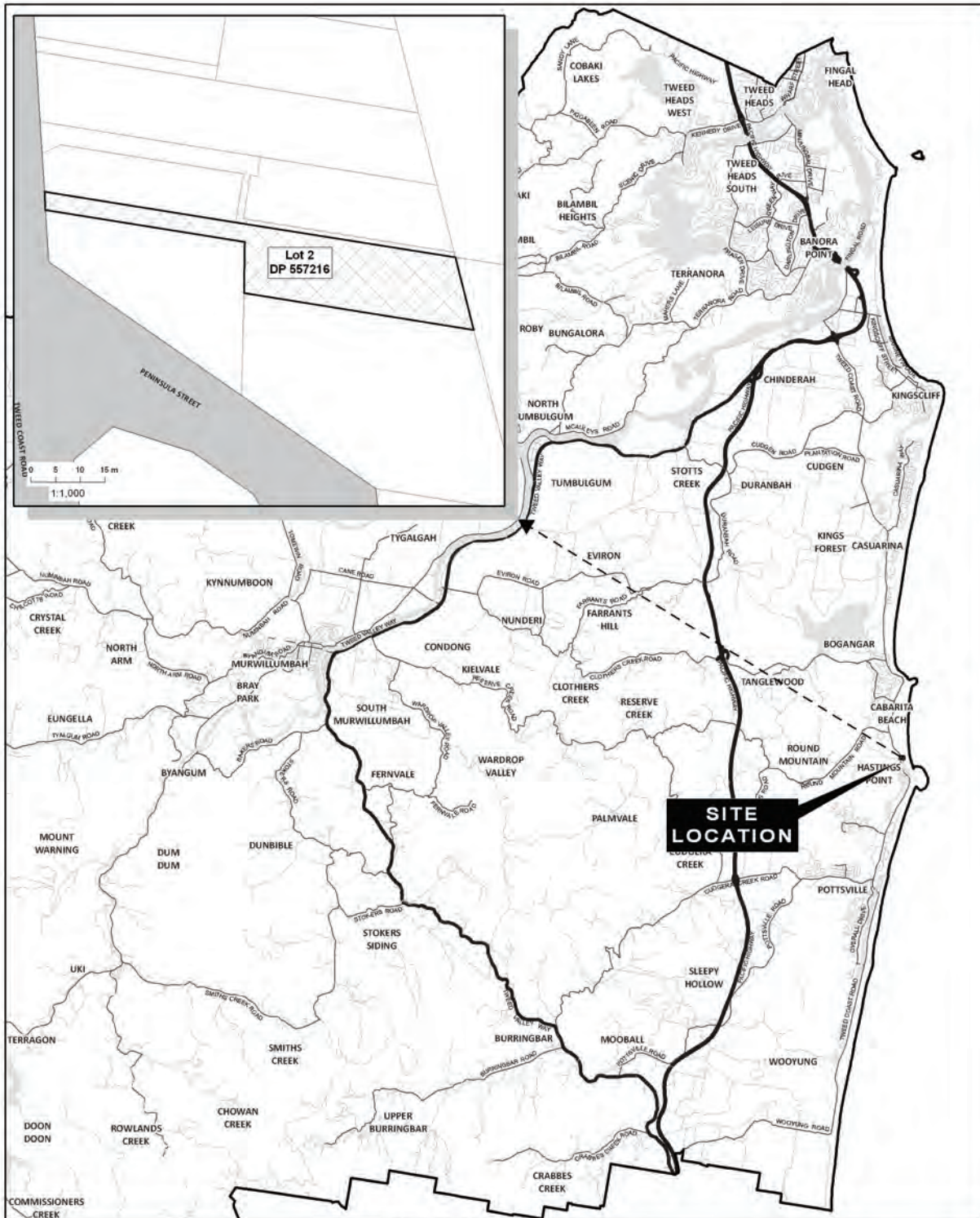
The proposal has one main area of deviation from the Hastings Point Locality Based Development Code - DCP section B 23 in that the height is generally 500mm higher than prescribed.

The proposal also has one main deviation from Council's DCP Part A1 in that the rear boundary setback to the foreshore boundary is 2.5m and not the required 5.0m-8.0m. As an 'addition' variations can be considered and the proposed encroachment allows the landowner to take full advantage of the north easterly ocean/beach views beyond the adjacent three storey building to the north.

In this proposal the extent of works is such that the development could (from Land & Environment Court case history) be determined as new work not additions and therefore could be compelled to comply with all controls.

It seems reasonable however in this proposal to apply the requirements of Council's Development Control Plans as far as practical.

**SITE DIAGRAM:**



**Locality Plan**

Lot 2 DP 557216  
No.26 Tweed Coast Road, Hastings Point

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and does not constitute a 'Call before you Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p>Cadastre: 26 September, 2011 © Land and Property Management Authority (LPMA) © Tweed Shire Council Boundaries shown should be considered approximate only.</p>	<p>0 1 2 3 Km 1:145,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Horizontal Datum: Geoid to Datum of Australia 1984 Map of Australia, Zone 56</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T   (02) 8670 2400   1300 292 872 F   (02) 8670 2429 W   www.tweed.nsw.gov.au E   planning@tweed.nsw.gov.au</p> 
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**DEVELOPMENT PLANS (including shadow diagrams):**



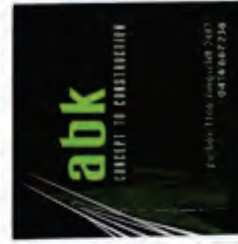
FORESHORE OVERSHADOWING PLAN - DECEMBER 21st - 7pm (DST)







FORESHORE OVERSHADOWING PLAN - JUNE 21st - 4pm



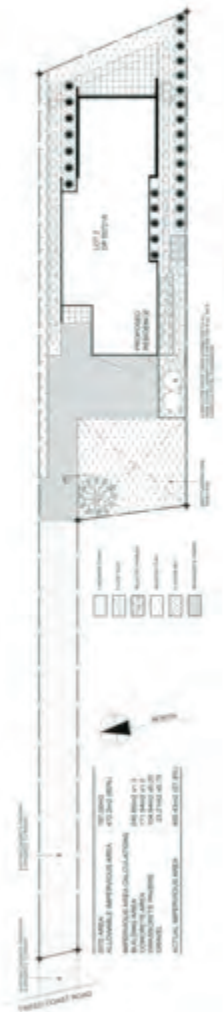
SHADOW PROJECTION PLAN - JUNE 21st



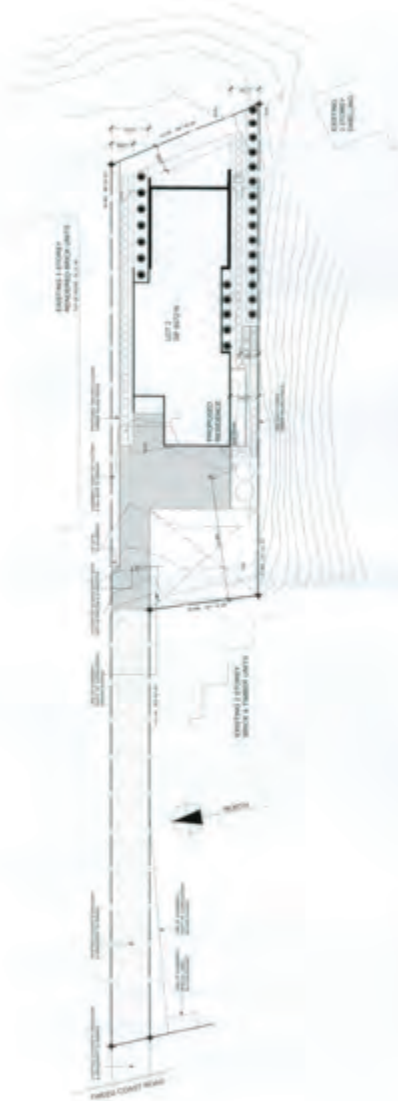
SHADOW PROJECTION PLAN - DECEMBER 21ST



<b>PROJECT INFORMATION</b>	
PROJECT NO.	10/10/11/001
PROJECT NAME	ALLENDALE & WILSON ROAD DEVELOPMENT
CLIENT	MR & MRS J. WILSON
DATE	10/10/11
DESIGNER	MR & MRS J. WILSON
APPROVED BY	MR & MRS J. WILSON
DATE	10/10/11
PROJECT NO.	10/10/11/001
PROJECT NAME	ALLENDALE & WILSON ROAD DEVELOPMENT
CLIENT	MR & MRS J. WILSON
DATE	10/10/11
DESIGNER	MR & MRS J. WILSON
APPROVED BY	MR & MRS J. WILSON
DATE	10/10/11



STORMWATER MANAGEMENT PLAN

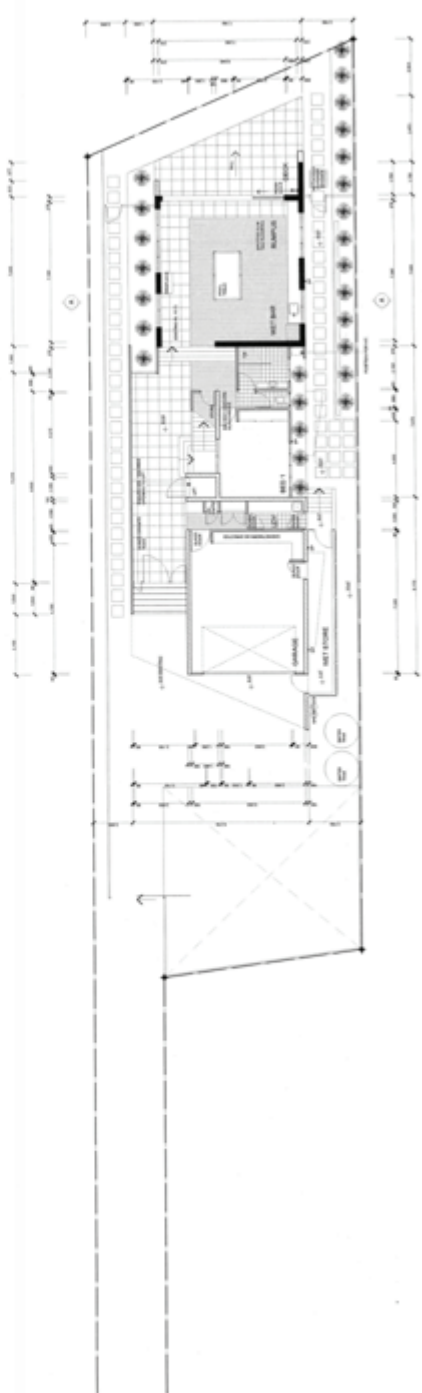


SITE PLAN

<b>REVISIONS</b>	
NO.	DATE
1	15/10/11
2	15/10/11
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PROPOSED FIRST FLOOR PLAN

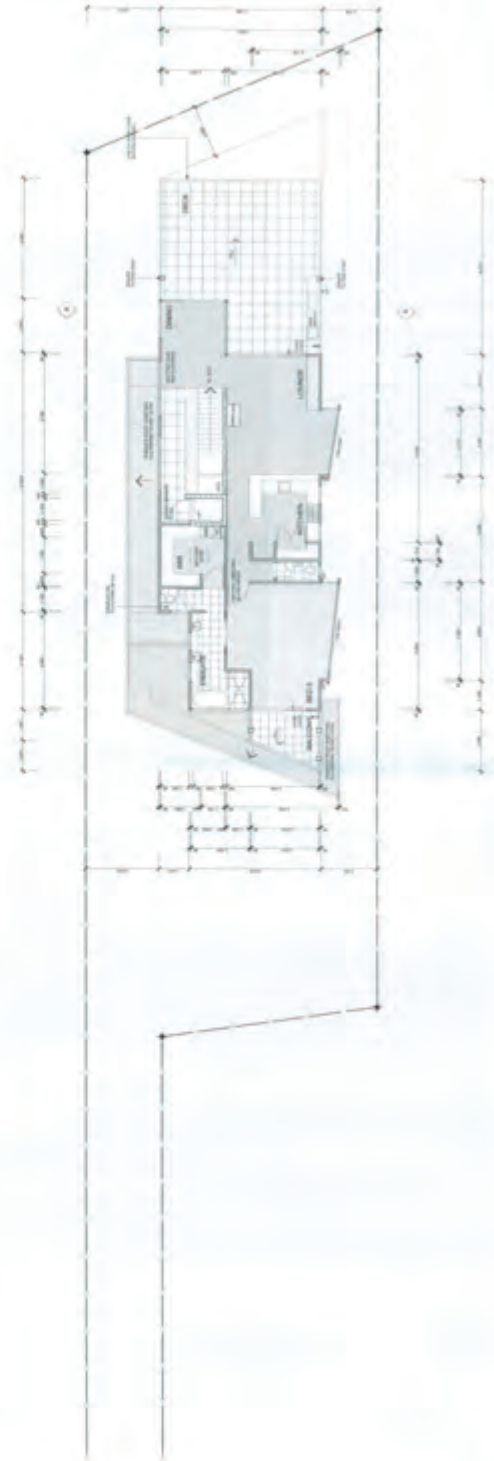


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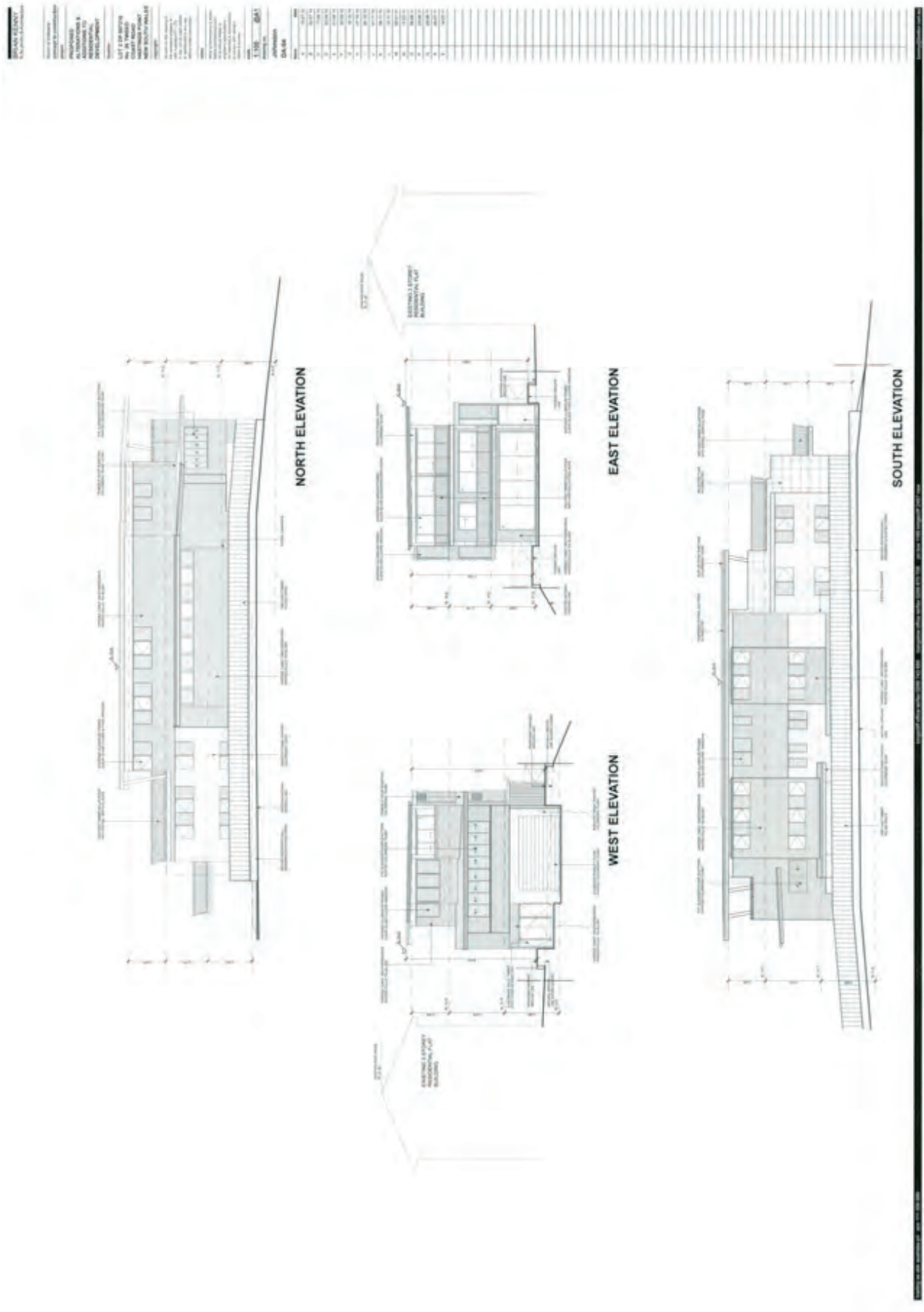
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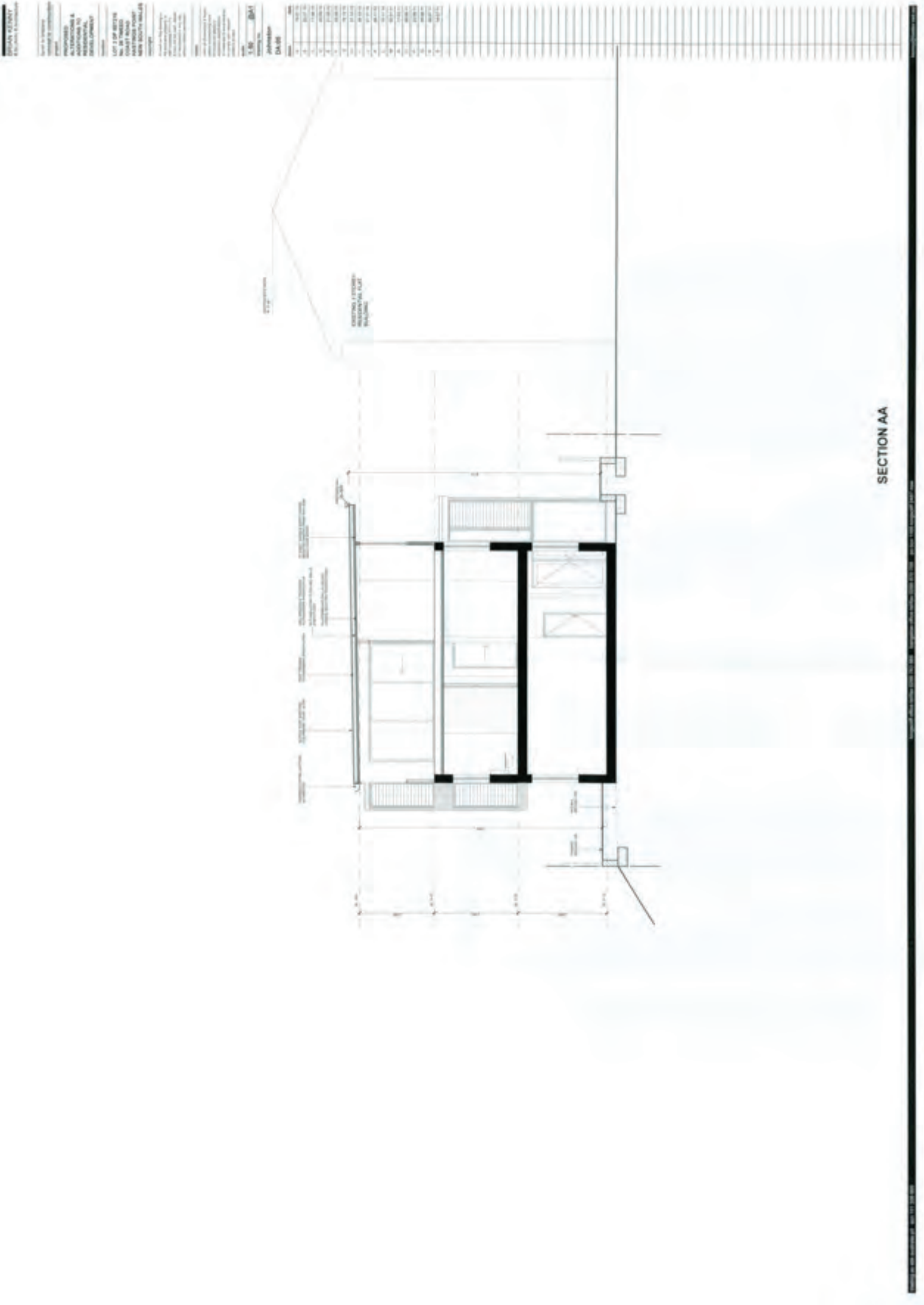
PROPOSED ROOF PLAN



PROPOSED SECOND FLOOR PLAN











The following photos are provided of the site taken by Council's assessing officer.



**Figure 1- view from headland**



**Figure 2- view from beach.**



**Figure 3 –view from beach waterline at low tide**



**Figure 4-West view of existing units foreground building to be partly retained**



**Figure 5- view north from dwelling entry of adjoining property to south**



**Figure 6 – view North West from yard of adjoining property to south**



**Figure 7-East view- single storey unit, garage and carport to be demolished**



**Figure 8 View north from main pedestrian path in village**



**Figure 9 View of adjacent three storey units.**

**ASSESSMENT:**

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

As a part of the assessment process numerous site visits by Council's assessing officer have been undertaken to all of the surrounding properties and viewfields in Hastings Point, involving many hours. Impacts have been discussed by phone with many of the objectors and concerns raised have been discussed in meetings with the owner and her representatives.

The assessment also utilised the expertise of Council Senior Urban Design Planner who gave assistance in gauging the impact of the development in the context of the Hastings Point Locality Based Development Code- DCP Section B 23.

**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**

Part 1 Clause 4 - Aims of the Plan

The aims or objectives of the plan are not compromised by the proposed development

Clause 5 – Ecologically sustainable development

For the scale of this development compliance with the submitted BASIX certificate achieves the objective of this clause.

Clause 8 Consent considerations

Zone Objectives

The subject site is zoned 2(b) Medium Density Residential. The primary objective of the zone is to encourage development for the purpose of medium density housing that achieves good urban design outcomes. The secondary objectives relate to allowance for non residential and tourist development and to discourage the under-utilization of the land for residential purposes, particularly close to the Tweed Heads sub region area.

The proposed development is not consistent with the primary objective of the zone but it has been argued by the applicant that there are a number of constraints to the site that justify the single dwelling being proposed and is therefore not antipathetic to the objectives of the zone.

The coastal hazard 2050 hazard line is positioned on the eastern boundary and the battleaxe site is bushfire affected to BAL 40 & BAL 29. These constraints alone are reasonable argument to limit the risk exposure to a single occupancy. Also a past development of 4 units to the west was established from the original parcel that the subject site was a part of, so it can be argued that medium density has already been achieved.

Cumulative Impacts

The proposed building at three storeys is consistent with other buildings in the area and is unlikely to be dominant amongst the Peninsula Street & Northern Entry Precinct when viewed from a distance and is within the view field boxes contained in the Visual Settings part of Council's DCP -B23.

There is an argument for cumulative impact on the locality in that the building does not comply with the height restrictions of the Hastings Point Locality Based Development Code- DCP section B 23 or rear setback provisions of DCP – A1. That argument can be countered by the unique considerations of this site as discussed further in the report.



Part 3 Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

The proposal complies with the three (3) storey control under the TLEP 2000.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the relatively minor nature of the proposal being satisfied that it is unlikely to have a significant social or economic impact in the locality.

Part 7 Clause 35 - Acid Sulfate Soils

The site is not affected by acid sulfate soils.

Clause 36 - Coastal erosion outside Zone 7(f)

**1) Objective**

- *to protect land that may be subject to coastal erosion (but not within Zone 7 (f) from inappropriate development.*
- (2) *In determining whether to grant consent to development involving the erection of a building or the carrying out of a work at or above the surface of the ground on land that in the consent authority's opinion may be subject to coastal erosion, the consent authority must:*
  - (a) *consider*
    - (i) *the likelihood of the proposed development adversely affecting the behaviour or being adversely affected by the behaviour of the sea, or of water in an arm of the sea or any other body of water, and*
    - (ii) *the likelihood of the proposed development adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea, any arm of the sea or any other body of water, and*
    - (iii) *the likelihood of the proposed development adversely affecting the landscape or scenic quality of the locality, and*
    - (iv) *the potential impacts of climate change including sea level rise.*

The issues requiring consideration in this clause have been discussed further in the report under the heading of 'Any coastal zone management plan' and are considered satisfied.

Clause 39A – Bushfire protection

The issues requiring consideration in this clause have been discussed further in the report under the heading of 'Suitability of the site for the development' and are considered satisfied.

Other Specific Clauses

None apparent

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

Clause 32B – Development Control – coastal lands

This clause controls development which could impede public access to a foreshore or overshadow the foreshore before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

It is recognised throughout all coastal areas that existing urban areas will have some impact in regards to the shadow of the foreshore.

In this case a State Environmental Planning Policy No.1 objection has been included in the application and the facts and argument presented are acceptable.

The extent of the shadow is limited to the vegetated dunal area and does not extend to the beach. In addition, the shadowed areas comprise managed grasslands and are not embellished with playground equipment, picnic facilities, etc and are therefore not used intensively by the public. The shadow diagrams submitted are typical of development along the coastline.

Clause 43 - Development Control- residential development

The proposed development is consistent with the objectives of the North Coast Regional Environmental Plan 1988 Division 2 for Urban Housing requiring broader consideration of roads, access to services, transport, site erosion and of maximising density.

**SEPP No 55 – Remediation of Land**

There is no evidence or past land use activity that would suggest that the land is contaminated.

**SEPP No 71 – Coastal Protection**

The development is generally consistent with the specific provisions and intent of Clause 8 of SEPP 71.

**NSW Coastal Policy, 1997**

The proposed dwelling is not inconsistent with the Coastal Policy

**SEPP (Building Sustainability Index: BASIX) 2004**

The applicant has provided a BASIX certificate for the proposal which is consistent with the required energy target.

**(a) (ii) Any proposed Instruments**

Draft Tweed Local Environmental Plan 2011 proposes similar controls to the site as currently exist. The Draft Plan is due to be re-exhibited latter this year and needs no further consideration in the context of the proposed development.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 of Tweed DCP applies and includes detailed parameters for improved site outcomes including the provision of height controls, deep soil zones, impermeable site area, private open space, landscaping, car parking, setbacks and general street presence.

Section A1 of the DCP is divided into two chapters.

Chapter 1 Building Types

The Building Type proposed is 'Housing'.

The DCP describes that housing developments generally contain up to two storeys and goes on to set the minimum and maximum standards required for this Building Type.

The DCP envisages primarily up to two storeys but does not prohibit three storeys, although it follows, that they demonstrate compliance with the mandatory controls of the DCP and must be permissible by the number of storeys permitted by the Local Environment Plan 2000 for the locality.

The proposal meets generally the mandatory controls of the DCP and specifically for chapter 1 as outlined below.

Objectives

- To be well designed and attractive.
- To be of an appropriate scale relative to the existing or desired future pattern of development.
- To provide landscaped and deep soil areas on the lot.
- To provide amenity for residents without compromising the amenity of neighbouring properties.
- To address the street and to make a positive contribution to its established or envisaged streetscape character.
- To maximise the sustainability of the building during its lifecycle.
- To minimise the impact on the natural environment.
- To minimise the impact on the natural landscape through inappropriate or unnecessary cut and fill.

Controls

- a. Dwelling houses in existing urban areas must be consistent with the scale and character of surrounding dwelling houses or as envisaged through an adopted concept plan, locality plan, design statement or the like.
- b. In new subdivision areas dwelling houses are to be designed to conserve any natural landscape features of the site and surrounding area.
- c. In new subdivision areas dwellings must be consistent with any design scheme adopted for that subdivision.
- d. Deep soil areas are to be provided to the front and rear of sites in accordance with this Part.
- e. Entrances are to be clearly visible from the street, where the allotment has a street frontage, and there is to be a clear line of access to the building from the street.
- f. Dwelling houses are to meet the controls as set out in this Part A: Site and Building Design Controls.
- g. Dwelling houses on non urban zoned land shall not, for the purpose of this Plan, be restricted to the deep soil zone, setback and carport, garages and outbuildings controls where it is demonstrated that compliance with a particular control would be unreasonable in the circumstances.

The proposed building in its original form attracted many submissions objecting to the proposal particularly relating to the bulk and scale of the proposed dwelling. The final plans the subject of this report have addressed reasonably the concerns and are now considered to satisfy the objectives and controls of chapter 1 above.

More detail is provided in the latter sections of this report.

## Chapter 2- Site and Building Design Controls

### Design Control 1-Public Domain Amenity

#### Streetscape and Public Views and Vistas

The proposed development is to be constructed on a battleaxe block and will not be readily visible from the street or other public domain. Because of its location the proposed dwelling will not compromise the objectives of this control.

### Design Control 2 -Site Configuration

#### Deep soil zones (DSZs)

An area of deep soil zone is available at the rear and is considered adequate given the location of the existing building to be retained.

The front deep soil zone is compliant with the controls as applied to a battleaxe block.

## **Hastings Point Development Control Plan B 23- adjustments**

Soft landscaping is required to the rear deep soil zone:

On this site where the existing building is being maintained there is little area available and any significant planting would be in conflict with the Planning for Bushfire Protection objectives for asset protection zones.

#### Impermeable Site Area

The area of the site is 784m<sup>2</sup> subsequently the maximum impermeable site area permitted at the completion of the development will be 60%. From the plans submitted the development will create an impermeable area of approximately 58% and will comply with the design control. This will enable water to adequately infiltrate on the site.

#### External Living Areas

The dwelling makes provision for compliant external living areas in the form of balconies on the second and third level and ground floor deck to the east. These have been designed to gain solar access and views to the north east around the existing three unit building to the north and views to the west.

#### **Hastings Point Development Control Plan B 23- adjustments**

Screening is required to the balconies that overlook neighbouring lots:

There is no screening proposed to the sides of the eastern balconies. Northern solar benefits and north easterly views would be greatly impacted if screening was added. It is also typical for screening to be placed on the south side only of a property as screening the north facing elevations would impede solar access.

#### Landscaping

There is little existing landscaping on the site and some planting is proposed on the north and south elevations of the site but limited so as not to increase bushfire risk or impact on available views and solar access.

#### **Hastings Point Development Control Plan B 23- adjustments**

The plan encourages native species landscaping:

Limited opportunity exists due to the bushfire risk and the existence of a pedestrian 'Right of way' along the northern boundary. The front deep soil zone can accommodate an area of indigenous shrubs consistent with the plan.

#### Topography, Cut and Fill

The property is a generally flat site and the proposed filling and boundary retaining adjustments comply.

#### Design Control 3 -Setbacks

The proposal is consistent with or in excess of the setback controls of DCP A1 for additions; having a 2.0-3.5 metres northern boundary setback, 11-15 metres western boundary setback, 2.5 metre eastern boundary setback and 1.1-4.2 metres from the southern boundary.

#### **Hastings Point Development Control Plan B 23- adjustments**

The 8.0m landscape setback in Fig.4.6 of DCP B-23 does not apply to single dwellings.

The proposal also has one main deviation from Council's DCP Part A1 in that the rear boundary setback to the foreshore boundary is 2.5m and not the required 5.0m-8.0m.

As an 'addition' variations can be considered and the proposed encroachment allows the landowner to take full advantage of the north easterly ocean/beach views.

In this proposal the extent of works is such that the development could (from Land & Environment Court case history) be determined as new work not additions and therefore could be compelled to comply with all controls.

It seems reasonable however in this proposal to apply the requirements of Council's Development Control Plans as far as practical.

The 2.5m rear boundary setback is considered reasonable.

#### Design Control 4 -Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP.

The proposed dwelling house complies having two off street car parking spaces provided behind Council's building line and vehicle access to these spaces is considered adequate.

#### **Hastings Point Development Control Plan B 23- adjustments**

Proposal complies with additional controls.

#### Design Control 5 -Height

##### Building Height

The proposal complies with the three (3) storey control under the TLEP 2000.

The development has a proposed nominated overall height of 8.60m above finished ground level(19.0m AHD) and a nominated wall plate height of 7.80m (18.67m AHD).

This is consistent with DCP Part A1 but generally 500mm higher than the Hastings Point DCP B23.

#### **Hastings Point Development Control Plan B 23- adjustments**

The proposed dwelling does not comply with the maximum overall building height of 8.0m and maximum wall plate height of 7.5m affecting the subject site under Section B23 of Tweed DCP. It should be noted at this point that had a multi-unit development been proposed as permissible on the site, then the maximum building height allowable would be 10.0m

The owners brief in the design was to maintain most of the existing two storey building and this has meant that the floor levels of the existing building have to a large extent dictated the levels and height of the new design.

The impact will be that the upper level unit of the building to the north may lose a small section of rural view to the south but will maintain the majority of view in all other directions. Importantly the view from the living areas to the headland will be maintained as the third storey level is setback 6.0m from the eastern boundary.

The impact of the increased wall plate height is offset on the southern boundary by the fact that the third storey wall has been setback 4.2m from the southern boundary. This increased southern boundary setback of the upper storey has been critical in the consultation process.

It is considered that the increased wall plate height has no significant impact on the property to the south greater than a fully compliant building due to the increased boundary setback.

#### Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a ceiling height of 2.4m which was reduced from 2.7m in the original plans so as to reduce the overall building height. The proposal complies with the DCP.

#### Design Control 6- Building Amenity

##### Sunlight Access

The dwelling includes private open space by the provision of balconies orientated northeast, east and west and therefore will receive sufficient access to sunlight.

The proposed dwelling will overshadow the adjoining southern side property. The shadow diagrams submitted with the application show the extent of overshadowing of the 2<sup>nd</sup> redraft design which has not been required to be redrafted on the basis that the reduced building size will lessen the extent of shadow. The shadow diagrams indicate that some over shadowing will occur to different portions of southern property during in the winter months as the sun moves through the sky. Shadowing is more extensive in the late afternoon as is to be expected from most developments. The prescriptive requirement of this control is to ensure for neighbouring properties,

- Sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9 am and 3pm on June 21.
- Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

The proposed dwelling complies and exceeds the sunlight requirements above.

##### Visual Privacy

The proposed building generally complies with the objectives of this control.

The building has limited windows on the north side and those on the south side are screened by the existing landscaping of the property to the south.

These design features will provide for reasonable protection of visual privacy to the lower properties while at the same time allowing the building owner to take full advantage of the primary ocean views.

### Acoustic Privacy

The sound insulation of this design complies with the objectives of this control and a suitable condition on the consent will be imposed to control air conditioning and other mechanical equipment.

### View Sharing

The impact will be that the upper level unit of the building to the north may lose a small section of rural view to the south but will maintain the majority of view in all other directions. Importantly the view from the living areas to the headland will be maintained as the third storey level is setback 6.0m from the eastern boundary. The primary views of the upper unit to the north will not be impacted and the principles of view sharing are considered satisfied.

### Natural Ventilation

The design complies with this control. The dwelling provides for adequate natural ventilation of the dwelling with openable windows and ample breeze paths.

### Building Orientation

The dwelling has been sited on the property to optimize coastal views and solar access and complies with the objectives of this control.

### Building separation

The proposed building has been sited with generous side boundary setbacks with no primary windows/doors of living areas orientating to side boundaries and complies.

### Design Control 7 – External Building Elements

#### Fences and Walls; Front, Side and Rear

The submitted architectural plans indicate some boundary fencing is proposed and complies with the controls of the plan. It is noted that timber paling fencing is proposed which is in conflict with the bushfire requirements and has been conditioned to be constructed of non-combustible materials.

#### **Hastings Point Development Control Plan B 23- adjustments**

Proposal complies with the additional controls for fencing.

#### Roof

The design of the roof is consistent with the design requirements. A condition regarding the implementation of non-reflective roof materials has been included in the conditions.

#### **Hastings Point Development Control Plan B 23- adjustments**



The proposed roof complies with additional controls to the extent necessary taking into account the height limits imposed.

The elevations, materials and detailing, colour and form are all consistent with the additional controls and the emerging trends of redevelopment in the area.

Design Control 8 -Building Performance

The proposal is consistent with this design control. As discussed previously the proposal is consistent with the SEPP (Building Sustainability Index: BASIX) 2004.

Design Control 9- Outbuildings

There are no outbuildings proposed as part of this application.

Design Control 10- Swimming pools and spas

There is no pool proposed as a part of this application

Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application

Design Control 12 - Floor Space Ratio (FSR)

Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.65:1 for the dwelling as the site has an area of 784m<sup>2</sup> and the site coverage is less than 50%. The proposed FSR for the dwelling is 0.64:1.

**Hastings Point Development Control Plan B 23**

Part 05 Visual Setting

The building complies with this section of the plan.

The proposed building has a maximum roof height of 19.0m AHD which is approximately equal to the eave level of the three storey building to the north. The proposed building will present as a 1-2 storey building from the beach.

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

Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within the policy

Clause 94 Consent authority may require buildings to be upgraded.

The proposed building will comply with the Building Code of Australia and therefore clause 94 is considered satisfied.

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

The proposed building is consistent with the Tweed Coastline Management Plan 2005 which suggests any redevelopment within the maximum 100year hazard line should require deep pile foundations or similar.

Engineers detail with the application show that the building will be provided with deep pile footings.

**Council's Draft DCP B25** has also been taken into account in this application. The deep pile footings in the engineers design statement are consistent with the requirements for development within the 100year hazard line.

Revised Coastal hazard lines show the 50 year line approximately at the rear eastern boundary of the property and the 100 year line just westward of the proposed building. . These revised lines are not yet adopted but the available building envelope of the site is seaward of the existing and revised 100 year lines.

In addition the proposal with the deep pile foundations appears to satisfy as far as practical without sterilising the site, the planning criteria contained in Section 4.2 of the NSW Coastal Planning Guideline: Adapting to Sea Level Rise.

In the future there is potential for the proposed building to collapse under wave action if the hazard line predictions are realised and the building is not further protected or demolished beforehand. This is the same potential for all the development along this particular coastal strip and should collapse occur the beach would be impacted by building debris.

It is likely that cease use and demolition orders would precede such an outcome.

The owner has provided the following signed statement to address the potential for coastal erosion of the site.

Sep 19 11 10:47a

Ian Johnston

+61733956644

p.1

ATTENTION: BARRY STEGEMAN

Risk acknowledgement -- Coastal Erosion

As the owner /owners of the property at Lot...2...Sec.....

DP 551216 ROC (DP 268604)

Address 26 TWEED CONST RD, HASTINGS POINT 2489

I/we acknowledge Council's draft DCP25 "Coastal Hazard" and the NSW Department of Planning "NSW Coastal Planning Guideline Adapting to Sea Level Rise" August 2010.

Having regard to the above documents I/we understand that future coastal erosion has the potential to affect our property and I/we accept all risk and responsibility associated with the proposed development, including the extent to which we will engineer and construct the building to mitigate any future erosion effect.

Owners; Name & Signature

- 1. KAY JOHNSTON *[Signature]*
- 2. 118 WYNDHAM RD
- 3.

COASTAL HAZARD  
 COASTLINE MANAGEMENT PLAN  
 LN 15737

TWEED SHIRE COUNCIL  
 FILE No: DA110164 Pt 2  
 DOC No: .....  
 RECD: 19 SEP 2011  
 ASSIGNED TO: Stegeman B  
 HARD COPY  IMAGE

**(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 property is redevelopment within an established residential subdivision which has been specifically created for residential development. The proposed development is of a design generally in keeping with the architectural style and residential character of the area taking into account the redevelopment occurring overall in the area.

Access, Transport and Traffic

Minimal impact is envisaged, the proposal is a single residence within an approved residential subdivision.

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

Natural hazards

The site is mapped as being impacted by possible coastal erosion. These impacts have been assessed in the earlier section of this report under the heading of coastal management plan and are not considered to be sufficient to prevent the proposed development from proceeding. Future consideration may be necessary to deal with possible retreat in the event that coastal erosion is not prevented.

Site design and Internal design

The building is considered to be of reasonable design taking into account the relationship with the adjacent building to the north. The external finishing is mixed and provides good architectural merit.

The proposal provides for a transition between the large building to the north and the property to the south.

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

Surrounding Land uses/Development

The proposal is not inconsistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing residential area and utilities including reticulated water, public sewer and power are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the dwelling is considered to be in keeping with the existing residential character of the area.

Site Orientation

The living areas of the dwelling have been mainly orientated to the northeast east and west to optimise ocean/rural views and breezes and solar access to the north.

Bushfire

The site is affected by bushfire and can be accommodated by constructing the home in accordance with the provisions of Planning for Bushfire Protection. A Bushfire Threat Assessment Report has been submitted with the application and is supported.

Landscaping is to be strictly in accordance with the report so as to not contribute to the bushfire risks.

A condition has been included to require the building to be constructed in accordance with section 1.0 of that report.

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

The application was notified to surrounding properties when first received and again after the first amendment as the application did not address the initial concerns of Council's assessing officer or those of the objectors. A second and then third amendment was then received which made numerous changes to address the concerns. During the initial notification, seven (7) written submissions were received. The main issues raised have been summarised below:

Issue	Objection Comment	Assessment
Bulk and scale is excessive	The building is too large for the site and will impact adversely on amenity of the property to the south and create overbearing dominance.	The building was reduced in height and the upper story was reduced and moved to 4.2m from the southern boundary. Boundary fence/retaining adjustments were also made.
Loss of views	The proposal will obstruct views to the south from the upper level unit of the adjacent building to the north.	The building has been reduced in height to 19.0m AHD to be no higher than the eaves of the adjacent three storey building to the north. The impact will be that the upper level unit of the building to the north may lose a small section of rural view to the south but will maintain the majority of view in all other directions. Importantly the view from the living areas to the headland will be maintained as the third storey level is stepped back and achieves a 6.0m setback from the eastern boundary. The primary views of the upper unit to the north will not be impacted and the principles of view sharing are

Issue	Objection Comment	Assessment
		considered satisfied.
Height and setback non compliant	Height and rear setbacks do not Comply with DCP B23	Impacts of height and setback have been addressed adequately in the modified plans by reducing the height and adjusting the size and setbacks of the upper floor. The proposal is consistent with the visual setting requirements of DCP B23.
Possible damage to adjacent building during construction	Construction traffic and methods may damage adjacent building and driveways	Conditions have been proposed to require dilapidation reports before commencing and to require construction techniques to address concerns.
Existing right of ways may be obstructed	Existing legal access may be obstructed	Plans have been adjusted to clearly show ready defined access to Right of footway and carriageway.
Shadowing of foreshore and property to south	The proposal will shadow the foreshore and property to the south	The building has been reduced to the extent that the projected shadows will be reasonable in relation to permissible development adjoining foreshores and reasonable allowance for shadowing of adjoining properties as described in DCP A1.
Visual settings not observed	The Visual setting requirements of DCP B23 are not being observed	The reduction of the height of the building complies with the Visual setting requirements of the DCP.

**(e) Public interest**

The proposed development raised no major implications in terms of the public's interest.

**OPTIONS:**

1. Council resolves to approve the development application subject to conditions
2. Council resolves to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court which would incur financial costs to Council in defence.

Should the applications be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application which would incur financial costs to Council in defence.

The possible future legal or financial implications of development affected by Coastal Hazard lines are unknown.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

On the balance of the assessment of the relevant planning matters, it is considered that the proposed development is suitable for approval, subject to conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**11 [PR-CM] Development Application DA11/0278 for a Shed at Lot 6 DP 777940; No. 1282 Tyalgum Road Tyalgum**

**ORIGIN:**

**Building and Environmental Health**

**FILE NO: DA11/0278 Pt1**

**SUMMARY OF REPORT:**

A proposed rural shed 7m x15m is proposed to be constructed within the 30m Designated Road building line of *Tyalgum Road* and therefore does not meet the requirements of clause 24 of Tweed Local Environmental Plan (TLEP) 2000. The applicant has provided a written statement requesting relaxation to allow a 6m setback under SEPP 1 guidelines. The applicant has included an objection letter to the planning controls as permitted under SEPP1. Due to the significant flood constraints to the site and previous Council approval for a house and shed building pad (*DA08/1137*) the variation to a 6m front setback for the shed is considered reasonable and consistent with past Council resolutions which endorsed minimal setback for the site, with adequate screening provided along the site frontage by existing vegetation. It is therefore recommended that Council support the approval of this DA, subject to conditions.

**RECOMMENDATION:**

**That Development Application DA11/0278 for a shed at Lot 6 DP 777940; No. 1282 Tyalgum Road Tyalgum be approved subject to the following conditions: -**

**GENERAL**

- 1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.**
- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
- 3. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.**

[GEN0015]

[GEN0115]

[GEN0300]]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

- 4. Prior to issue of a construction certificate evidence must be provided to the Principal Certifying Authority and Council that the site earthworks comply with drawing No A3 -109 - C01 by Tweed Coast Consulting Engineers Pty Ltd dated as approved with development consent DA08/1137.**
- 5. A certificate from a registered Geotechnical Engineer must provided to the Principal Certifying Authority and Council that the filling operations for the**

[PCCNS01]

approved house and shed pads comply with AS 3798 as required in condition No 7 of DA08/1137 prior to the issue of a construction certificate.

[PCCNS02]

6. Prior to the issue of a construction certificate the 600mm high rock scour protection along the bottom of the fill pad batter as advised by Tweed Coast Consulting Engineers as part of DA 08/1137 must be completed.

[PCCNS03]

7. Prior to the issue of a construction certificate the proposed shed design must be certified by a practising structural engineer that its construction specifications will be capable of withstanding expected flood flow rates in the area during a flood event.

[PCCNS04]

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

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

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

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

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

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

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

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

(ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

(d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

(i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and

(ii) notified the principal certifying authority of any such appointment, and

(iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

10. Residential building work:

(a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

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

[PCW0235]

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

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

[PCW0255]

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

[PCW1005]

#### **DURING CONSTRUCTION**

13. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.
14. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

[DUR0005]

**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]

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

[DUR0245]

16. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

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

[DUR2185]

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

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

[POC0205]

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

[POC1055]

#### **USE**

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

[USE0125]

24. The shed must not be used for human habitation or occupation.

[USE0475]

**REPORT:**

**Applicant:** Mr A Mishtler  
**Owner:** Mr Avraham Mishtler & Ms Zehavit Mishtler  
**Location:** Lot 6 DP 777940; No. 1282 Tyalgum Road TYALGUM  
**Zoning:** 1(a) Rural  
**Cost:** \$9000.00

**BACKGROUND:**

An application has been lodged for a proposed 7m x 12m shed with a 3m wide open attached carport bay to be located on a Council approved fill area (*ref DA08/1137*) with a 6m front building setback to Tyalgum road in the south western corner of the property. As Tyalgum Road is classified as a designated road, Tweed Local Environmental Plan (TLEP) 2000 Clause 24 prescribes a 30m front building setback. The applicant has provided a SEPP 1 objection letter detailing the reasons for a request to vary the 30m front setback requirement.

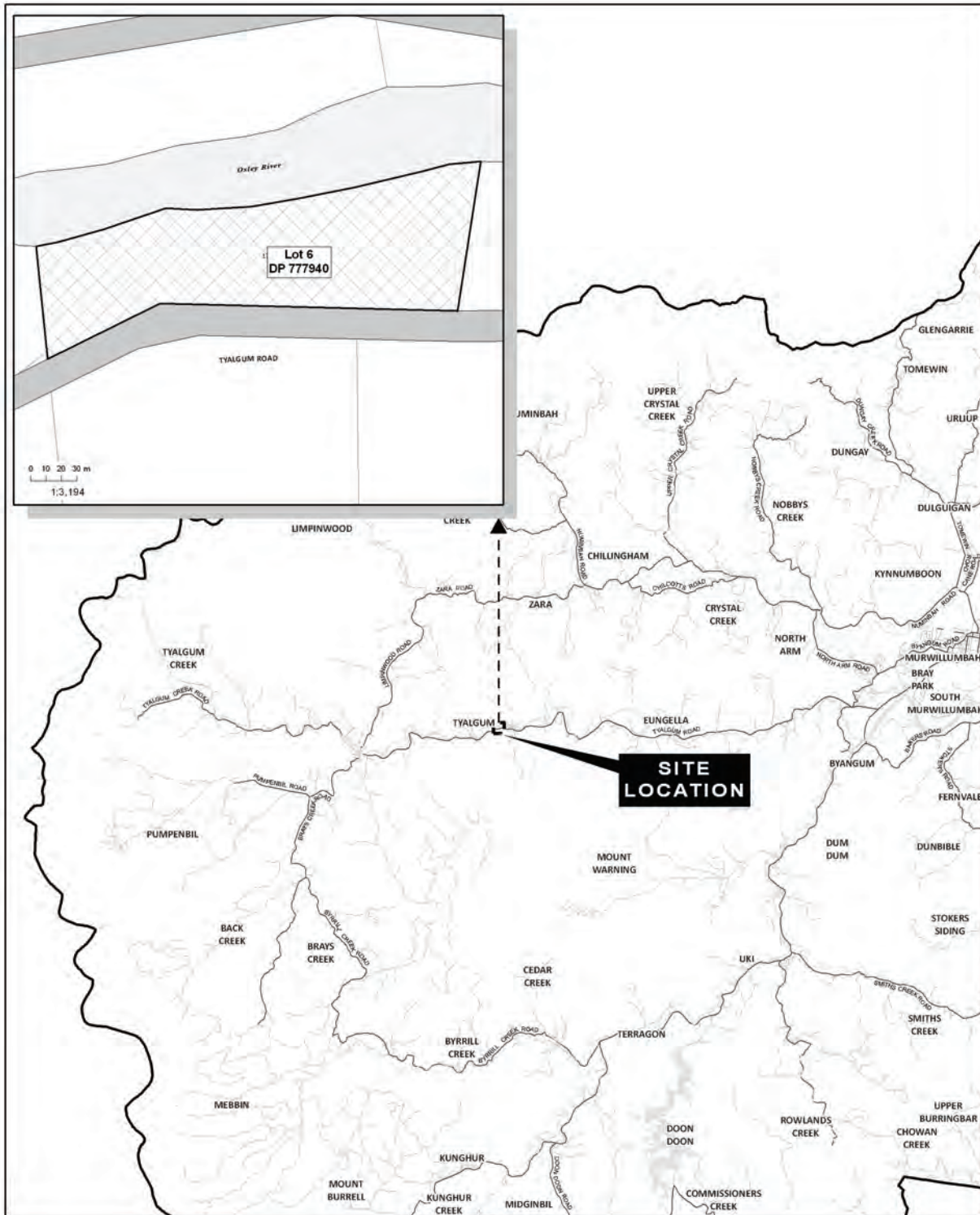
Council records show the property is low lying and can be significantly affected by flooding. Previous Council determinations regarding development on the property and historical records of the site indicates that the south western corner of the property is the only suitable location for built structures due to the flood risk.

The previously approved shed pad level is RL 47.50 (*40.9AHD*) which indicates that the proposed shed is likely to be impacted by peak flood flows. A condition has been placed on the development to ensure that the construction and shed specifications is capable of withstanding expected flood flow rates as the allotment is adjacent to the Oxley River and the property is also burdened with a back channel flood corridor and flood overflow area.

The size of the shed is comparable to existing farm sheds in the area and will not adversely affect the amenity of the local environment, the streetscape or public domain of Tyalgum Road, and will generally be screened by existing vegetation along the site's frontage.

Perusal of DA08/1137 which was for the provision of the filled pads has also indicated that a 600mm high rock scour protection is to be provided along the fill pad batter and the fill earthworks must be monitored by a registered Geotechnical testing consultant who must provide a certificate to Council confirming that the filling operations comply with AS3798 (Guidelines for earthworks for commercial and residential developments). It is proposed to include a condition to ensure these requirements are completed prior to the issue of a construction certificate.

**SITE DIAGRAM:**

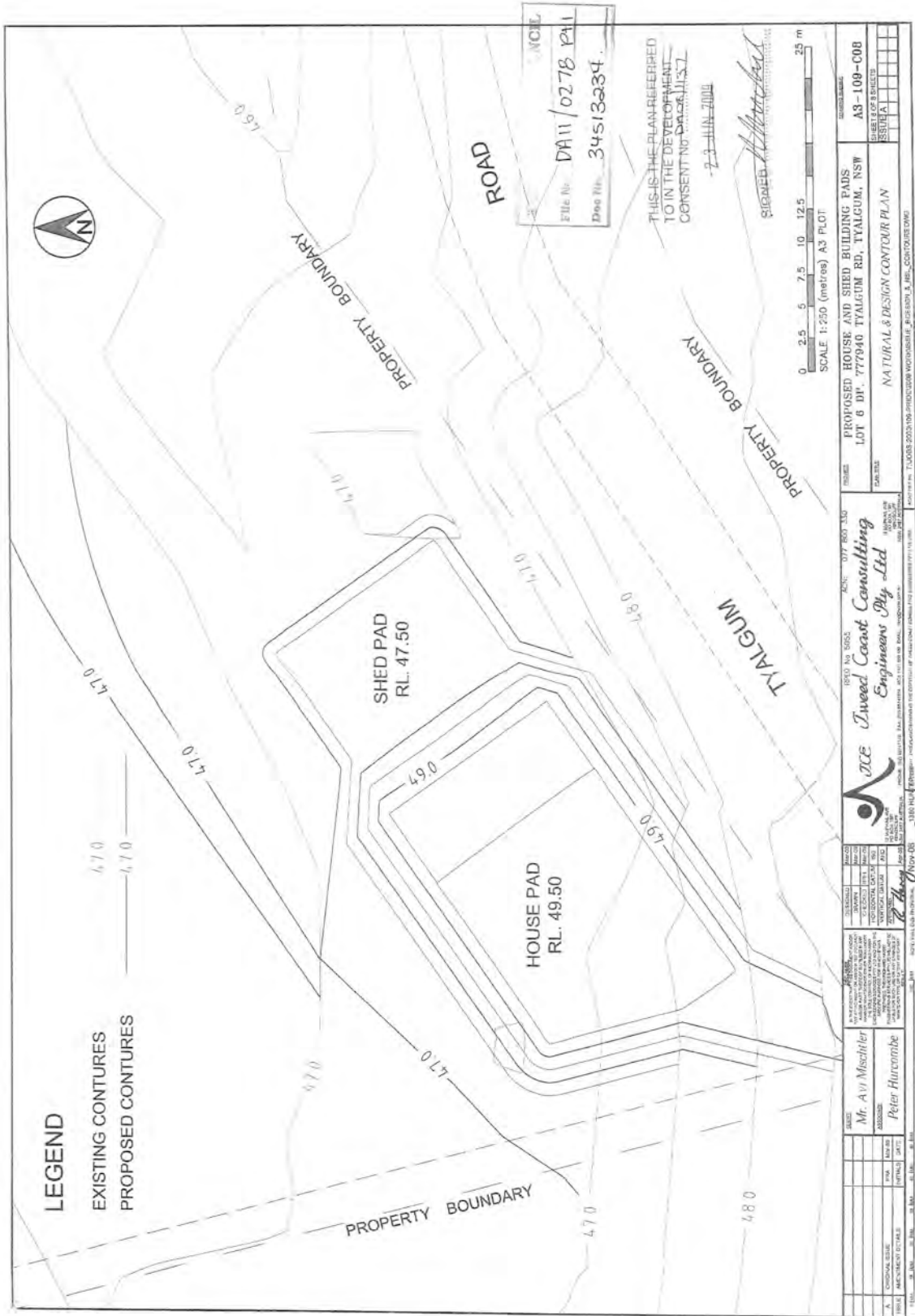


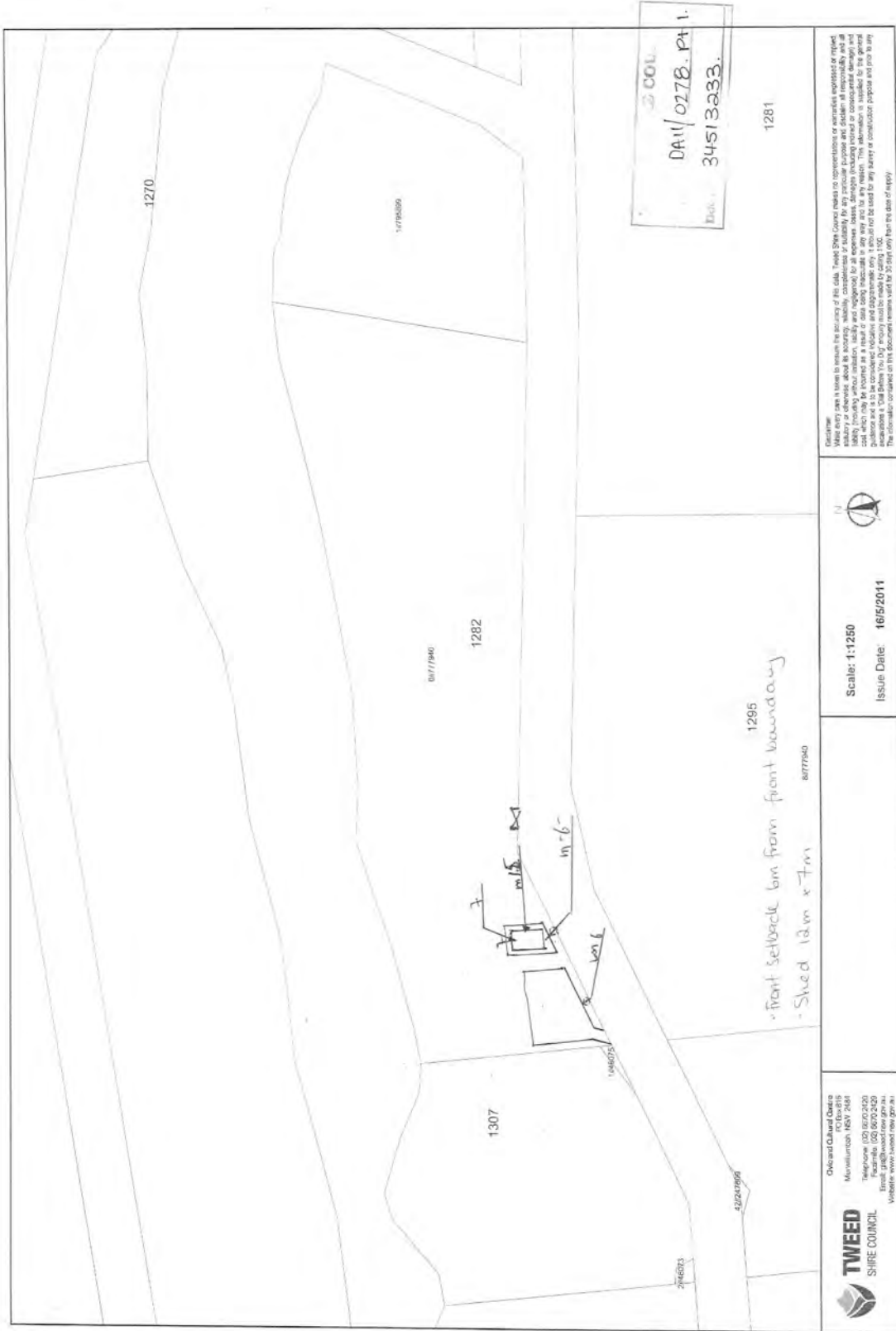
**Locality Plan**

Lot 6 DP 777940  
No. 1282 Tyalgum Road, Tyalgum

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DEVELOPMENT/ELEVATION PLANS:








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Side Elevation (Sheet 1 of 1) 1:100

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**ASSESSMENT:**

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

**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

Development complies with the aims of the TLEP 2000

Clause 5 - Ecologically Sustainable Development

Development is ecologically sustainable; the shed is a rural area and it meets the four principles of ecologically sustainable development as listed in clause 5.

Clause 8 - Zone objectives

Consistent with the zone objectives and clause 8 of TLEP 2000, Council is satisfied that the development would not have an unacceptable cumulative impact on the community and the immediate locality.

Clause 15 - Essential Services

All essential services are provided and appear adequate

Clause 16 - Height of Building

The proposed shed complies with height restrictions permissible in the area.

Clause 17 - Social Impact Assessment

Normal residential/rural influences are anticipated with the proposed shed being a permitted landuse in the area.

Clause 35 - Acid Sulfate Soils

Council records show the house pad is not located in ASS area. ASS management plan not required.

Other Specific Clauses

Clause-34 Flooding:

Flood heights were assessed during approval DA08/1137 which was for filled building pad.

The proposal has also been discussed with Council's Planning and Infrastructure Engineer who raised no objections subject to the conditions provided.

Clause 39A: Bushfire prone land:

The property is mapped as bushfire prone but due to the structure being non habitable no requirements apply.

Clause 24 Designated roads:

Refer to background of report above.

**State Environmental Planning Policies**

SEPP.1 - Development Standards.

A SEPP.1 objection has been received from the applicant in relation to the 30m setback to Tyalgum road, (*a designated road*). A 30m setback is required by clause 24 of the TLEP 2000. The proposed front building line setback requested is 6m.

The objectives of Clause 22 are:

- A) to protect and improve the capacity, efficiency and safety of a designated road.
- B) to prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.
- C) to prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

The applicant contends that compliance with this standard is unreasonable and unnecessary for the following reasons:

1. Previous Council approval DA08/1137 for a house pad RL 49.50 and a shed pad RL 47.50 was granted and expectation was that any future development associated with the pads would be considered for approval.
2. It is assumed the fill was approved in the south western corner of the allotment as it was the most favourable location for any built structures due to the property being flood affected and this area would not negatively impact on flood flow rates during a flood event.
3. Observation of the surrounding area and adjacent properties show existing dwellings and sheds located within the 30m front building setback. The development is on a 6m front setback as required by Tweed Development Control Plan A1 Residential and Tourist Code.

Comment:

It is considered that the reasons put forward could be supported and a check with Council's Design Unit identified that no objection is raised to the proposed 6 metre setback.

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

Clause 12: Impact on agricultural activities

The shed will support agricultural activities

Clause 81: Development adjacent to the ocean or a waterway

Development is for agricultural purposes, the shed is approx 60m to the Oxley River.

SEPP No. 1 - Development Standards

Refer to above report

SEPP (Rural Lands) 2008

The development meets the aims and rural planning principles of the above SEPP

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

N/A

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Shed generally meets the requirements of A1

A2-Site Access and Parking Code

Site access approved as part of DA 08/1137

A3-Development of Flood Liable Land

DA08/1137 has approved building pads for a shed RL 47.50 and house RL 49.50

A11-Public Notification of Development Proposals

The original housing and shed pad DA was notified (DA08/1137). One submission was received relating to potential flooding impacts. There is no requirement under the current DCP to notify the current shed proposal.

A13-Socio-Economic Impact Assessment

The development will not negatively impact upon the Socio Economics of the area.

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

Nil

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

N/A

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

There are no significant impacts envisaged

Context and Setting

Complies

Access, Transport and Traffic

Access approved as part of DA08/1137

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

Surrounding Landuses/Development

Will not impact significantly on existing surrounding development and landuse

Natural Hazards – Flooding

The site is affected by flooding and the proposed location of the shed is accepted as the preferred location to minimise impact of flooding.

Flora and Fauna

No significant impacts.

Topography

Shed to be constructed on approved building pad.

Site Orientation

The location within the front south western corner will reduce impact to flood flow rates during flood event.

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

Nil

**(e) Public interest**

Will not be prejudicial to the public interest

**OPTIONS:**

1. Council resolves to approve the development application subject to conditions
2. Council resolves to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed location and size of the shed is consistent with the objectives of clause 22 of the TLEP 2000 and the primary and secondary objectives of TLEP 2000 1(a) rural zone. Site inspection and perusal of Council records confirms the validity of the SEPP 1 objection to vary the sheds front building line to 6m from Tyalgum Road so as to minimise the impact of flooding.

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

**ORIGIN:**

**Director Planning & 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 September 2011 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

**REPORT:**

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

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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