



**TWEED**  
SHIRE COUNCIL

Mayor: Cr K Skinner (Mayor)

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

# Agenda

## Planning and Regulation Reports

### **Ordinary Council Meeting**

### **Tuesday 19 April 2011**

held at Murwillumbah Cultural and Civic Centre  
commencing at 3.30pm

## **COUNCIL'S CHARTER**

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

Tweed Shire Council has the following charter:

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

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**Items for Consideration of Council:**

<b>ITEM</b>	<b>PRECIS</b>	<b>PAGE</b>
	<b>REPORTS THROUGH THE GENERAL MANAGER</b>	<b>5</b>
	<b>REPORTS FROM THE DIRECTOR PLANNING AND REGULATION</b>	<b>5</b>
7	[PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	7
8	[PR-CM] Planning Reforms Work Program - 2011/2014	9
9	[PR-CM] Planning Proposal PP11/0001 - Part Lot 378 DP 1148511 Overall Drive, Pottsville (Black Rocks Estate)	19
10	[PR-CM] Tweed Development Control Plan Section A8 - Tweed Brothel Code	27
11	[PR-CM] Terranora Area E - Progress Report on Planning Processes and Major Project Application MP09/0166 for a 300 Lot Residential Subdivision at Lot 40, 43 DP 254416; Lot 2 DP 778727; Lot 1 DP 781687; Lot 1 DP 781697; Lot 1 DP 304649; Lot 1 DP 175235; L	37
12	[PR-CM] Land and Environment Court Judgement relating to Development Application DA08/1056 for Conversion of an Existing Farm Shed to Rural Workers Dwelling at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay	89
13	[PR-CM] Development Application D97/0175.02 for an Amendment to Development Consent D97/0175 for the Establishment of a Brothel/Escort Agency at Lot 6 DP 249122, No. 17 Morton Street, Chinderah	93
14	[PR-CM] Development Application DA10/0480 for the Demolition of Existing Dwellings and Construction of a Refreshment Room and Ancillary Function Centre at Lots 9 and 10 Section 4 DP 2974 Nos. 9-11 River Street, South Murwillumbah and Road 5190 Stafford S	121
15	[PR-CM] Development Application DA11/0107 for Dwelling Additions at Lot 18 DP 838549, No. 768 Terranora Road, Terranora	147

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## **REPORTS THROUGH THE GENERAL MANAGER**

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

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

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

#### **MATTERS FOR CONSIDERATION**

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

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

**ORIGIN:**

**Director Planning and Regulation**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That Council notes the March 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/refused where a variation in standards under SEPP1 has occurred.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**8 [PR-CM] Planning Reforms Work Program - 2011/2014**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/LEP/2006 Pt10**

**SUMMARY OF REPORT:**

This report seeks Council's endorsement of the Planning Reforms work program 2011/2014.

This report was preceded by a Councillor Workshop relating to the revision of the works program held on 10 March 2011.

The report acknowledges the competing resource commitments and limitations that were raised at the March workshop and arising from Council's commitment to improving strategic land-use planning for the Tweed, as well as the need to allocate resourcing for shorter-term development through planning proposals originating from the private sector.

The report concludes that it is essential to maintain a balanced works program to assist with the ongoing resource allocation to key strategic projects, and for providing greater certainty in the timing and allocation of resources for accepting private planning proposals. It is an essential project management tool and assists staff in providing greater certainty through more accurate estimates of resource capability for any major developer in their preparation of commercial scheduling and planning for future projects and forecasts.

**RECOMMENDATION:**

**That Council endorses the Planning Reforms - Work Program 2011/2014 identified as Tables 1-3 in this report.**

## **REPORT:**

### **Background**

As part of the on-going project management of Council's strategic land-use planning resources the Planning Reforms Unit works program is reviewed annually and where appropriate revised to reflect and 'match' resource-to-commitment. The work program was first adopted by Council on 16 June 2009 and readopted on 20 July 2010, with a mid-term status update reported in October 2009.

Preceding this report a Councillor's workshop was held on 10 March 2011 to enable Council officers to provide an up-date on the work program and how project commitment targets were being met as well as providing an overview of current funding allocations and shortfalls for existing and future projects.

On 15 June 2010 the Director-General of the Department of Planning, Mr Sam Haddad, under the NSW Government's Planning Reform (Round 7) Projects, announced additional funding opportunities for local councils aimed at supporting; \$2.9 million to assist in the delivery of new comprehensive LEPs; \$2 million to deliver planning policy to help create well-designed and vibrant communities around public transport, and \$2 million to review and update greenfield land release sequencing and policy, over a 2-year period.

Council staff made application under the Round 7 Funding for several key projects and provided an update on those applications, which resulted in the award of conditional grants totalling \$153,000, at the March Workshop. This is discussed in greater detail below.

### **State Government Funding**

Applications were made on the 11 October 2010 under Round 7 of the State Government's Planning Reform Fund for several projects:

1. Tweed Rural Land Strategy \$170,000
2. Agricultural Land Protection Guidelines \$42,000
3. Draft LEP 2010 – Extension Officer \$105,000
4. Local Growth Management Strategy \$105,000
5. Kingscliff Locality Plan \$94,500
6. Housing Affordability Strategy \$73,500

Council received notice dated 17 March 2011 that none of the above project applications under Round 7 were successful.

On 14 October 2010, an application under the State Government's Planning Acceleration fund was also made for the Draft LEP 2010 – Extension Officer in the amount of \$105,000.

The acceleration fund was targeted for that purpose; to accelerate the completion of standard instrument LEPs across the State and consequently the funding criteria was very narrow.

Council received notice dated 24 February 2011 that funding for two projects totalling \$153,000 had been approved. This comprised:

1. Draft LEP 2010 – Extension Officer, referred to as “Planner” in the amount of \$28,000; and,
2. A “Rural Land Strategy & Agricultural Land Protection Guidelines” (deferred) in the amount of \$125,000.

The terms of grant funding under the Acceleration Fund are quite restrictive and access to the recoupment of funds ceases in June 2012. Based on the current Agreement provided by the Department the timeframes allowed for completion for both projects is unreasonable.

Council staff will need to negotiate with the Department for more acceptable terms based on timeframes that can reasonably be met. However, it should be noted that unless the Department can extend the funding period beyond June 2012 it is unlikely that the funding for the rural land strategy and agricultural land protection guidelines will be recoverable, as the funding agreement is based on progress payments in arrears.

### **The Work Program**

The revised works program has taken into account four key project constraining and opportunity factors:

- i. Total PRU staff resources;
- ii. Committed resource allocation;
- iii. Existing funding & commitments; and,
- iv. Potential future funding.

Based on those four elements and the feedback from the March Councillors’ workshop the Tables below provide a proposed work program for the period 2011-2014.

**Table 1 Work Program (1 July – 30 June) 2011/2012 - Estimated Project Delivery**

Planning proposals		Strategic Studies		General Tasks	
	Total		Total		Total
	<b>9.5</b>		<b>11.1</b>		<b>10</b>
PP10-0003 Riva Vue	●	Area E DCP	●	Briefing notes, workshops & presentations	●
DLEP 35 - 106 Dry Dock	●	Brothel DCP	●	Public / Industry Consultation	●
PP10-0005 Hundred Hills	●	Seabreeze DCP	●	General Corro, GIS & s149 support	●
DLEP 85 Pottsville Employment	●	CBHS	●	Student / University Programs assistance	●
PP10- 0002 Marana Street	●	DCP A1	●	Strategic Responses (internal & external)	●
PP10-0001 Boyds Bay	●	FNCRS Review	●	Part 3A Review / comments	●
DA100737 s72J BP Chinderah	●	Small lots policy	●	Grant & Funding Applications	●
DLEP 2010	●	Tweed City DCP	●	NSW Housing Monitor / SEPP Compliance GIS	●
DLEP 2009	●	*Review of TUELRs	●	DCCP - Interdivisional assistance	●
Black Rocks (deed)	●	Aboriginal Cultural Study	●	Meetings / Committees / workshops / Seminars	●
		Tyalgum Locality Plan	●		
		Rural Villages Locality Plan	●		
					<b>Total ALL Task 30.6</b>
Parked		Work Program Items			
PP10-0007 Mooball	●	Tweed DCP Review	●	<b>Total Resource Allocation 2011/2012</b> <b>106.4%</b> (Estimated Maximum)	
PP10-0004 Enterprise Ave	●	Rural Tourism DCP	●		
Lot 129/130 Elrond Drv	●	Kingscliff Locality Plan	●		
PP10-0006 225 Terranora Rd	●	DCP A11 Notification Review	●		
		LGMS	●		
Facilitating Planning Proposal		Facilitating DCP (Rezoning)		<b>Resource Commitment by Project Area</b> <ul style="list-style-type: none"> <li>■ Planning proposals</li> <li>■ Strategic Studies</li> <li>■ General Tasks</li> </ul>	
Hastings Point LDCP	●	Pottsville Employment Land	●		
Pottsville LDCP	●	Marana Street	●		
Cabarita LDCP	●	Riva Vue Estate	●		
		Boyds Bay Garden World	●		
		Mooball	●		
Planning Proposal (notified)		Other			
Pottsville LPMA	●				
Hastings Point (Sth) LPMA	●	DCP Veg Protection	●		
West Murbah Release Area 6	●	Review of Cabarita DCP	●		
Border Park Raceway	●				
Tweed City Shopping Centre	●				

**Rating Schedule**

Current Projects (fully resourced in-house)	●
Current Projects (moderate resources / under contract)	●
Project Pending / finalising (minor resources)	●
Not proceeding at this stage / Future Project	●

**Table 2 Work Program (1 July – 30 June) 2012/2013 - Estimated Project Delivery**

Planning proposals		Strategic Studies		General Tasks	
	Total		Total		Total
CBHS LEP Component	●	Aboriginal Cultural Study	●	Briefing notes, workshops & presentations	●
DLEP 85 Pottsville Employment	●	CBHS	●	Public / Industry Consultation	●
DA100737 s72J BP Chinderah	●	Rural Villages Locality Plan	●	General Corro, GIS & s149 support	●
DLEP 2010	●	Scenic Landscape Study	●	Student / University Programs assistance	●
PP10-0007 Mooball	●	Rural Lands Study	●	Strategic Responses (internal & external)	●
Lot 129/130 Elrond Drv	●	Chinderah Locality Plan	●	Part 3A Review / comments	●
PP10-0006 225 Terranora Rd	●	DCP A1 (Part B & C) Review	●	Grant & Funding Applications	●
Tweed City S/Centre	●	Heritage DCP	●	NSW Housing Monitor / SEPP Compliance GIS	●
Pottsville LPMA	●	Landscaping DCP	●	DDCP - Interdivisional assistance	●
Hastings Point (Sth) LPMA	●	Business Park DCP	●	Meetings / Committees / workshops / Seminars	●
West Murbah Release Area 6	●				
					Total ALL Task
					29.3
Parked		Work Program Items		<p style="text-align: center;"><b>Total Resource Allocation 2012/2013</b></p> <p style="text-align: center;"><b>101.2%</b></p> <p style="text-align: center;">(Estimated Maximum)</p>	
PP10-0004 Enterprise Ave	●	Tweed DCP Review (14)	●		
		Rural Tourism DCP	●		
		Kingscliff Locality Plan	●		
		DCP A11 Notification Review	●		
		LGMS	●		
Facilitating Planning Proposal		Facilitating DCP (Rezoning)		<p style="text-align: center;"><b>Resource Commitment by Project Area</b></p> <ul style="list-style-type: none"> <li>■ Planning proposals</li> <li>■ Strategic Studies</li> <li>■ General Tasks</li> </ul>	
Hastings Point LDCP	●	Pottsville Employment Land	●		
Pottsville LDCP	●	Marana Street	●		
Cabarita LDCP	●	Riva Vue Estate	●		
		Boyds Bay Garden World	●		
		Mooball	●		
Planning Proposal (notified)		Other			
Border Park Raceway	●	DCP Veg Protection	●		
		Review of Cabarita DCP	●		

Rating Schedule	
Current Projects (fully resourced in-house)	●
Current Projects (moderate resources / under contract)	●
Project Pending / finalising (minor resources)	●
Not proceeding at this stage / Future Project	●

**Table 3 Work Program (1 July – 30 June) 2013/2014 - Estimated Project Delivery**

Planning proposals		Strategic Studies		General Tasks	
	Total		Total		Total
CBHS LEP Component	4.8	Aboriginal Cultural Study	15.6	Briefing notes, workshops & presentations	10
DLEP 85 Pottsville Employment		CBHS		Public / Industry Consultation	
		Rural Villages Locality Plan		General Corro, GIS & s149 support	
		Scenic Landscape Study		Student / University Programs assistance	
PP10-0007 Mooball		Rural Lands Study		Strategic Responses (internal & external)	
Lot 129/130 Elrond Drv		Chinderah Locality Plan		Part 3A Review / comments	
PP10-0006 225 Terranora Rd		DCP A1 (Part B & C) Review		Grant & Funding Applications	
		Heritage DCP		NSW Housing Monitor / SEPP Compliance GIS	
Pottsville LPMA		Landscaping DCP		DDCP - Interdivisional assistance	
Hastings Point (Sth) LPMA		Business Park DCP		Meetings / Committees / workshops / Seminars	
West Murbah Release Area 6		(TBA)			
					Total ALL Task
					30.4
Parked		Work Program Items		<b>Total Resource Allocation 2013/2014</b> <b>102.1%</b> (Estimated Maximum)	
PP10-0004 Enterprise Ave		Tweed DCP Review (4/4)			
		Rural Tourism DCP			
		Kingscliff Locality Plan			
		DCP A11 Notification Review			
		LGMS		<b>Resource Commitment by Project Area</b> 	
Facilitating Planning Proposal		Facilitating DCP (Rezoning)			
Hastings Point LDCP		Pottsville Employment Land			
Pottsville LDCP		Marana Street			
Cabarita LDCP		Riva Vue Estate			
		Boyd's Bay Garden World			
		Mooball			
Planning Proposal (notified)		Other			
Border Park Raceway		(TBA)			
(TBA)		(TBA)			
		(TBA)			

Based on the projected body of work commitments and priorities illustrated in the proposed work program it is evident that the Planning Reforms Unit's staff base is not sufficient to undertake a number of projects, particularly planning proposal requests, in the short term. There are also several key projects that will require a funding allocation prior to them being commenced.

The following table is aimed at assisting Councillors with their consideration of any funding allocation requests that be made in the preparation of the Council's annual Operational Plan and Budget processes.

**Table 4 Projects Requiring a Funding Commitment**

Project Name	Funding (Estimate)	Commitment	Project Start-up	Allocation Period
DCP A1 (Parts B & C) Review	\$5,000		2012/2013	2011/2012
Heritage DCP	\$15,000		2012/2013	2011/2012
Rural Land Strategy	\$150,000		2012/2013	2011/2012
Scenic Landscape Protection Strategy & DCP	\$60,000		2013/2014	2012/2013
Kingscliff Locality Plan	\$50,000		2013/2014	2012/2013
Rural Tourism DCP	\$30,000		2013/2014	2012/2013
Chinderah Locality Plan	\$20,000		2013/14	2012/2013
Landscaping DCP	\$25,000		2013/14	2012/2013

These projects will need to be reprioritised on later reviews of the works program and scheduling of some projects may commence in 2013, with the lesser probability of an earlier commencement should one or more planning proposals fail to proceed.

**Balance Public - Private Interests**

The work program is limited by several factors as highlighted above. Ultimately there will always be a limit on capacity and correspondingly on the body of work commitments.

Tweed Council is currently performing very well and making good progress with its new strategic planning within the confines of its current strategic planning resources. In the context of the development pressure on the Council for the release of further greenfield sites and the demand for greater environmental protection and preservation Council could be making better progress if a maintenance program put in place for reviewing the currency and relevance of its existing land-use policies, as well as, preparation new policies. This issue was raised and the March Councillors' workshop and based on feedback received the works program has been designed to strike a balance between current commitments to private originating planning projects and Council's strategic projects, with the view to increasing resource allocation to the latter over time.

This is highlighted in the pie graphs which show a fairly even distribution over the first two period with a significant shift toward Council's planning in the last period. It is worth noting that in the second period that although the percentage figure is higher for 'planning proposals' than it is for 'strategic projects' that there are several DCPs grouped in that category, which are strategic policy documents notwithstanding that they are generated by a private planning proposal.



## **Benefits v Impacts with the Proposed Work Program**

The longer term impact of not shifting the focus of the current capacity and programming toward greater maintenance of the Council's strategic planning framework is that policy will likely continue to lag behind development pressures and demands than it otherwise should. That is, it will largely remain reactive and outdated opposed to proactive and current; decisions makers will be directed by development pressure and the respective desires of the developer opposed to guided by a robust strategy framework.

This will impact not only the ability to provide certainty to the development industry but it may detrimentally compromise achievement of the best use of land in key delivery areas including; supply of lower cost and diverse housing, employment generating development, and a reduction on development pressure / release of further large Greenfield development, as well as, protection of agricultural and environmental protection land.

To assist in minimising those impacts discussed above and consistent with the work program strategy first presented to Council in 2009, the number of privately proposed planning proposals on the work program has been progressively increased in the short term and will be tapered off by 2013/2014 to enable a greater percentage of the Council's resources to be allocated on strategic policy maintenance and preparation.

By 2013/2014 there would be an adequate supply of urban zoned land, supported by an appropriate strategic policy framework, to accommodate population and employment growth for at least 10 years. In the intervening period the additional focus on strategic planning would turn attention to both developing a planning framework required for the time horizon beyond 2020, as well as ensuring that the current policies are updated to reflect changing circumstances. This will lay the foundation ultimately for longer-term forward planning, which would include the rezoning of identified new Greenfield development sites toward the end of that period.

## **CONCLUSION:**

As discussed in this report there are limitations on the capacity of Council's strategic planning resources with a corresponding need to ensure that the work program is reflective of, not necessarily constrained, by its ability to undertake key priority projects.

By 'priority' this reports relies on the underlying premise that all of the strategic policies identified are to varying degrees a priority of the Council, but acknowledging that when the projects are juxtaposed there will typically be those that have some sort of 'edge' or 'advantage' over another, which places them ahead, generating in effect a queue headed by the those projects better representing or referred to as the 'priority' projects.



The proposed work program 2011/2014 has been designed in the light of the need to match the resources with the projects that are likely to yield the most benefit. These projects comprise two distinctive types; those generated by the Council and those generated externally. Both have their place and are equally relevant to the management and growth of the Tweed. The work program aims to balance the resource allocation to accommodate the priority elements arising from both areas. This has resulted with an increase in the number of commercially driven planning proposals and the reduction or deferral of several strategic land-use policies in the first period combined with a reversal of that plan through 2012/2014.

This realignment of priorities and resource allocation is seen to be justified on the basis that without greater stimulus and investment in the private sector through housing and employment generating development any number of adverse impacts will potentially materialise. They may include upward pressure on the cost of housing, missed opportunities for employment, and a furthering of the social economic divide, which for many Tweed families will mean that they will need to relocate elsewhere or their children will have limited opportunity to work and live in the Tweed and within established family and community networks.

At the same time, the strategic planning projects selected for inclusion in the work program are those seen to provide the most benefit in assisting and playing their role in ensuring a better and more secure future for the present and future residents of the Tweed and the protection of its environment.

Although some Council projects are subject to funding, as indicated in Table 4 above, the proposed work program is reflective of the Planning Reforms Unit resource capacity, the need for a balanced approach to managing public/private projects in the short-term, and the views expressed at the Councillor workshop of March 2011.

The proposed work program is suitable for adoption.

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

Forward budget estimates may arise from Council's endorsement of the Planning Reforms work program as key strategic projects are taken up.

#### **POLICY IMPLICATIONS:**

This report seeks a clear direction and prioritisation of Council's strategic planning program and the associated Fees and Charges relating to associated costs of planning proposals.

#### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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

**ORIGIN:**

**Planning Reforms**

**FILE NO: PP11/0001 Pt1**

**SUMMARY OF REPORT:**

This report seeks Council's endorsement to prepare a planning proposal over Part Lot 378 DP 1148511 Overall Drive, Pottsville, which is a newly created allotment within Black Rocks Estate.

A Deed of Agreement (DOA) between Council and the landowner was entered into in 2003, which established, through intensive investigation and negotiation, the extent of land to be dedicated for open space reserve and environmental protection of Koala habitat.

The subject lot is part zoned residential and environmental protection and although there was no specific provision in the DOA for the proposed zoning amendment there was an apparent bilateral intention between the parties to that effect. This is supported, in part, by a specific reference to this Lot so that it was not to form part of the land otherwise identified for dedication, and flowing from the subdivision and construction development approvals that were subsequently approved and acted on.

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

This report concludes that, in recognition of the processes carried on to-date, this planning request is considered more of a 'housekeeping' amendment; a final tidy-up of unresolved or outstanding actions that would otherwise enable the orderly development of the Estate to be concluded.

Council's endorsement for preparing a planning proposal is sought.

**RECOMMENDATION:**

**That:**

- 1. Council endorses the preparation of a planning proposal for a change of land-use zone classification to enable Lot 378 DP 1148511 Overall Drive, Pottsville, to be developed for a low density residential purpose, and**

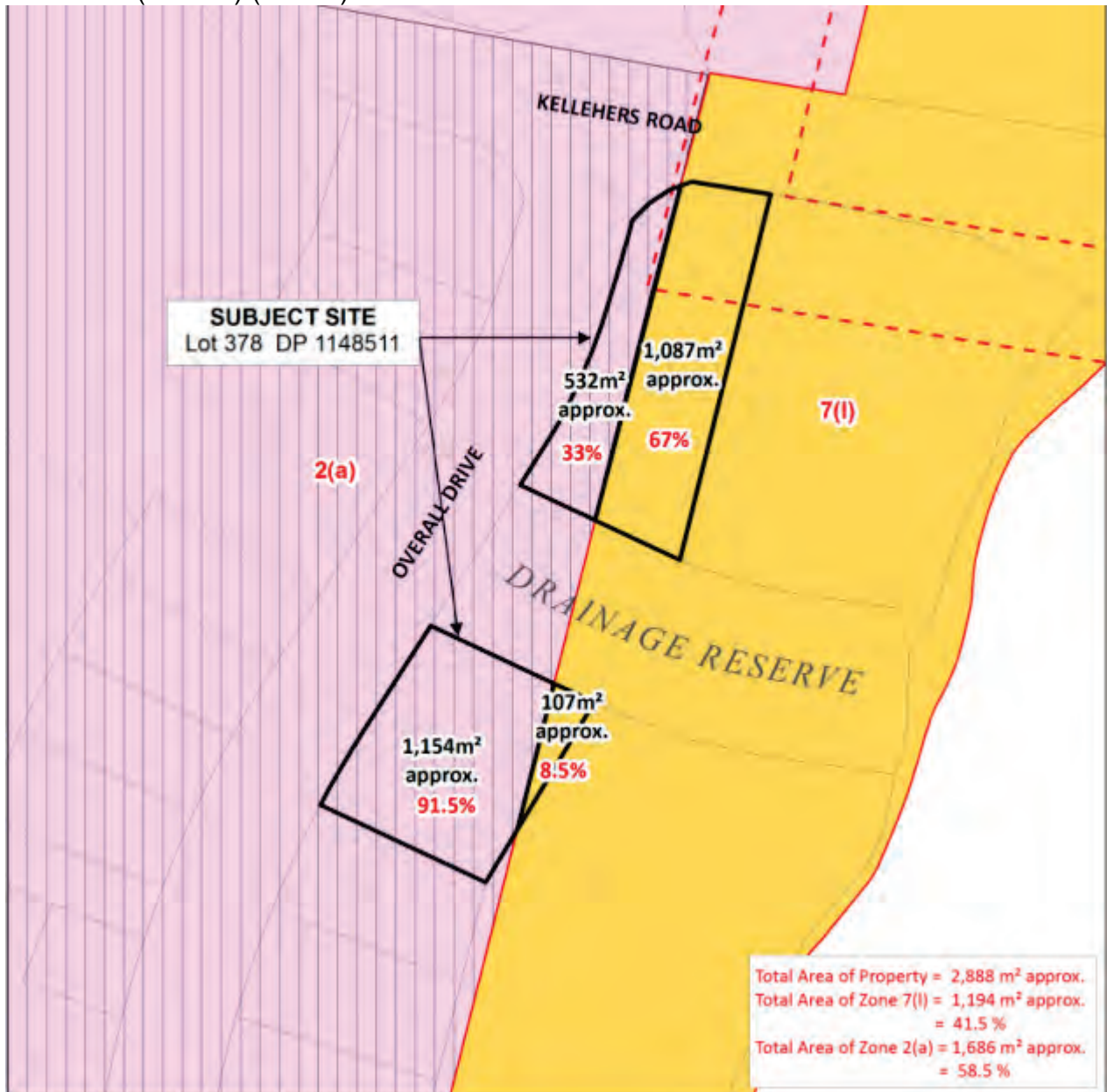
- 2. The planning for Lot 378 DP 1148511 Overall Drive, Pottsville, be referred to the Department of Planning and Infrastructure for a 'Gateway' determination under Section 56 of the *Environmental Planning and Assessment Act 1979*, and**
- 3. Any fees arising in association with the preparation of the planning proposal is to be applied in accordance with the Council's adopted Fees and Charges Schedule in force on the date of payment.**

**REPORT:**

**Background**

A request for a planning proposal seeking a zoning amendment has been received from Darryl Anderson Consulting Pty Ltd on behalf of the owners of Lot 378 DP 1148511 Overall Drive, Pottsville.

The allotment is bisected by a drainage reserve and has a total site area of 2878m<sup>2</sup>. It is zoned part 2(a) Low Density Residential (58.5%), and Part 7(l) Environmental Protection (Habitat) (41.5%).



On 5 June 2003 a Deed of Agreement (DOA) was entered into between Tweed Shire Council and Black Rocks Estate Pty Ltd in relation to certain lands that were identified to be transferred to Council in conjunction with the making of Draft Tweed LEP Amendment No. 8 (Black Rocks Estate).

Clause 4.3 of the Deed of Agreement required the owner of the Black Rocks Estate to dedicate certain land as public reserves, which amounted to about 100 hectares, comprising significant Koala habitat. Under the terms of the DOA the land has been dedicated to Council. The remaining developable areas have been fully constructed into residential housing lots and associated infrastructure.

As part of the DOA investigations the subject site was found to be of limited environmental significance and a specific notation was made to reflect this, specifically the notation ensured its exclusion from the areas to be dedicated. The future use and rezoning for residential purposes was seemingly contemplated as part of the land dedication trade-off that formed the basis of the DOA, and it is recognised by both the lawful construction of the allotment to a residential standard, as well as, the zoning amendment proposed in the Draft Tweed LEP 2010, which is the same as that now sought under a planning proposal.





The request for a planning proposal stems from the negotiated outcomes that resulted in the dedication of 100 hectares of private land for regional open space and environmental protection (Koala habitat). While it was agreed with the landowner to facilitate the zoning amendment through the Draft standard instrument Tweed LEP 2006 (as it then was) the time that has since lapsed arising in part from the many complications arising from the implementation of the State Government's (then) new planning reforms was beyond the contemplation of the parties.

Since 2006 the Black Rocks Estate subdivision has been all but completed, with many new homes under construction. However, as arises with many large scale

development proposals, there are actions that arose out of the initial processes that require attention and which would otherwise enable the orderly development of the Estate to be concluded. This planning proposal request is one such action.

**CONCLUSION:**

While the history and events covering the inception-to-development processes of the Black Rocks Estate project are many and varied it is quite apparent from the negotiated outcomes, arising from the preparation of a Deed of Agreement and the subsequent development approvals, that Council and the landowner alike, if not bilaterally, had either contemplated or had intended that a rezoning should occur. To think otherwise would be to lead questions about the alternative purpose for which the subdivision and construction applications were approved, and the land developed.

The events and occurrences to-date have, save for the remaining partial environmental protection zoning, set in place an allotment that is suitable for and should be pursued for low density residential housing.

For the reasons above, the planning proposal request is considered to have merit and suitable for a recommendation seeking Council's endorsement for the preparation of a planning proposal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The planning proposal canvassed in this report it required to finalise matters outstanding on an otherwise concluded matter, so that this remaining lot can be developed orderly and economically in-line with the development of the Estate already occurring. Because of the built or constructed nature of the lot the planning proposal is considered more of housekeeping matter and is not likely to require substantial resourcing.

Inter-divisional referrals of the proposal have been made and no objections to the proposal on any ground, including environmental/estuarine/coastal/infrastructure, have been raised.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**10 [PR-CM] Tweed Development Control Plan Section A8 - Tweed Brothel Code**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/DCP/A8 Pt1**

**SUMMARY OF REPORT:**

Council resolved at its meeting of 18 May 2010 to prepare a Draft Development Control Plan for Brothel Development to replace the existing Plan. This was followed by a resolution on 14 December 2010 to publicly exhibit a newly prepared Draft Tweed Development Control Plan 2008, Section A8 – Tweed Brothel Code.

Public exhibition occurred between 12 January and 16 March 2011. Two public submissions were received and are addressed in this report. No amendments to the Draft Plan are proposed for the reasons discussed.

Council's endorsement for the adoption of the Draft Plan is sought.

**RECOMMENDATION:**

**That:**

- 1. Council endorses the adoption of Draft Tweed Development Control Plan 2008, Section A8 - Tweed Brothel Code; and**
- 2. A public notice of Council's adoption of the Draft Tweed Development Control Plan 2008, Section A8 - Tweed Brothel Code, be published in the Council's newspaper, the Tweed Link, in accordance with Clause 21 and 22 of the Environmental Planning and Assessment Regulation 2000.**

## **REPORT:**

At its ordinary meeting of 18 May 2010 Council considered a Development Application (DA10/0020) for the establishment of a Brothel at Lot 411 DP 859933, No. 36 Enterprise Avenue, Tweed Heads South.

The application was refused by resolution which stated the reasons for refusal. A separate resolution was resolved as follows:

- "1. Council prepares a new Section A8 of the Tweed Development Control Plan and that this new component of the Development Control Plan be reported back to the Council as a priority.*
- 2. The new Development Control Plan incorporates a set of new controls relating to the appearance, siting, scale and operation of brothels in the Tweed area."*

The Council meeting was followed by two subsequent Councillor workshops on 8 June and 16 November 2010 at which a revised draft Brothel Code was tabled for discussion.

A further report to the Council meeting of 14 December 2010 seeking the public exhibition of the Draft Plan was endorsed by Council, and public exhibition occurred between 12 January and 16 March 2011.

Two public submissions have been received and are further addressed below.

### **Public Submissions**

Two public submissions were received, one of which comprises a petition containing 149 signatories. There is considerable similarity between the two submissions; both refer to journalistic articles, government agency statistics and reference material, of the same kind. Both submissions are attached to this report. It is notable that the two issues raised within each submission are identical. A reference therefore to either "Issue 1 or Issue 2" is a reference to the respective issue in both submissions.

In both instances the broad views and opinions expressed were not specifically directed and applied to the provisions of the Draft Plan by way of critical evaluation of both the 'objectives' and 'controls', with exception, in both instances, to that part of "Part D Planning Controls" dealing with the 'proximity restriction' provisions (Refer Attachments 'Issue 1'). This section of the Draft Plan is reproduced below:

## **PART D - PLANNING CONTROLS**

### ***Prohibitions***

#### **1.0 Proximity Restriction to Specified Land-uses**

##### **Objective:**

- i. To ensure brothels are appropriately located to avoid conflict with other land-uses;
- ii. To minimise the exposure of children or adolescents to a brothel and any associated activities or persons; and,
- iii. To ensure that brothels are located to minimise potential for causing offence to the community at large.

No brothel premises are permitted within the stated radius of any property boundary of the subject property to any property boundary or part thereof of any of the following land-uses:

Use	Metres	Use	Metres	Use	Metres
Place of worship (incl. chapel)	200	Educational establishment	300	Child care centre	300
Pre-school	300	Primary school	300	Youth centre/club	300
Hospital	200	Health care premises	200	Medical centre	200
Recreational ground or facility	200	Bus stop	100	Place of assembly	200
Community centre or hall	200	Youth centre	300	Residential premises	500
Supermarket	200	Licensed premises	200	Any premises frequented by children or adolescents	300
Brothel	300	Any sex services premises	300	Refreshment rooms being a restaurant or café	300

**Table 1 – Minimum distance requirement to prescribed sensitive land-uses**

It is argued, in the context of the evidence relied upon in the submission's journalistic articles, government statistics, and reference material, that the proximity restrictions are inadequate and inconsistent.

There is no factual or otherwise clearly argued case that lends support to the claim of the inadequacy of the controls as proposed, although this point would have a more limited application or merit if the latter argument concerning the inconsistency of the proposed controls is supported.

The inconsistency argument relates to the variation in the proximity distances, detailed in the table above, for the different prescribed land uses. In particular, it is highlighted that the greater limit of 500m applying to residential premises is seemingly unjustifiably higher than those distances specified to other places where young children, families and youth congregate, and therefore raises an "incongruous" outcome. It is argued that those other places should have a greater distance than those prescribed for residential land-uses, "if not the same at the very least".

This view is not concurred with as it seemingly does not take into account the broader context within which brothels are permitted under the Tweed LEP and regulated by the planning provisions proposed in the Draft DCP. This 'context' may become more apparent when considering the component elements or factors taken

in account in the drafting of the proximity restrictions, which included, but were not necessarily limited to, the following:

- i. Under NSW law, brothels (disorderly houses) are prescribed as a legitimate land-use, a total ban or prohibition would likely breach NSW competition law.
- ii. Tweed Council restricts brothel development to industrial zones only.
- iii. Hours of operation (trading hours) are restricted to 6pm to 6am.
- iv. Most industrial and ancillary development operate during a limited range of hours (6am-7pm) reducing scope for conflict.
- v. Many non residential development likely to be located in the vicinity of a brothel including; youth centres, child care centres, schools, recreational open space, pre-schools, places of assembly are more likely to have restricted operating hours extending into early evening if at all, would be less likely to be frequented by young children (in the evening) and more likely to be available to smaller target audiences/groups in the evening when brothel premises operate.
- vi. Residential development being habitable is more susceptible to disturbance or nuisance arising from or associated with the operation of a brothel.
- vii. Residential premises are more likely to be occupied during the duration of the operating hours of a brothel.
- viii. Many uses in the vicinity of a brothel are likely to be used intermittently and or infrequently during the operating hours of a brothel.
- ix. Not everybody attending places or passing through a place in the vicinity of a brothel will be aware of the presence of a brothel.
- x. The sighting of patrons and workers or of the brothel building itself will not necessarily generate or cause any stress or adverse or harmful event; that there is no evidence to suggest otherwise.
- xi. That proposed planning controls will direct the building form, appearance, screening and the like.
- xii. That over-reactive or unnecessarily restrictive controls would operate as de facto prohibitions generating conflict between the DCP and LEP to the effect that the DCP, either in part or in full, would be void for uncertainty or inconsistency.
- xiii. The Draft DCP sets out what it intends to achieve, and includes:
  - a) ensuring that a brothel does not adversely or unnecessarily impact on any resident community;

- b) to ensure that the existing and future character and amenity of the locality is not significantly impacted by any aspect of or associated with a brothel;
- c) to ensure that a brothel is located away from other land-uses that would, or visitors to that land-use would, likely be adversely impacted by a brothel;
- d) to limit the exposure of the Tweed community to a brothel;
- e) to limit the cumulative impact of brothels in any single locality or localities;
- f) to ensure the safety and security for employees and visitors to a brothel, and;
- g) to promote a safe and healthy environment for employees and visitors to a brothel.

The Draft Plan proposes to achieve this through establishing a framework of detailed provisions relating to:

- a) notification requirements;
- b) referrals;
- c) initial limits on development consents (12 months) if deemed necessary; this would typically occur where issues have been raised about the perceived impact upon the locality or another use within the area;
- d) application to close a brothel;
- e) consent considerations;
- f) information required with a development application;
- g) proximity restriction to specified land-uses;
- h) signage restrictions;
- i) streetscape;
- j) building setback;
- k) building design and layout;
- l) carparking and set down requirements;

- m) location, to ensure sited in industrial zones only and discreetly situated and sensitively located so that it is not prominent or unnecessarily exposed to the broader community, and to minimise the impact on other land-uses in the area;
- n) operational, safety and security;
- o) hours of operation;
- p) health and hygiene, and;
- q) waste management

Continuing on from that initial issue, concerning proximity between a brothel and prescribed (sensitive) land-uses, a secondary proximity issue was also raised (Refer Attachments 'Issue 2'). This issue relates to the appropriateness of co-locating a brothel in a street where there are existing licensed or entertainment venues, and 'other' uses, in the one street that 'could' generate 'crime'.

An excerpt from the Gold Coast City Plan was cited, it states:

*"The brothel must not be located where there are four or more licensed premises, entertainment venues and other uses in the one street that could generate crime or nuisance behaviour."*

There are two important aspects to be considered; firstly, the Gold Coast City provision appears from its broad category of described land-uses; "licensed premises", "entertainment venues" and "other uses", to be directed more toward a business or commerce zoning (CBD areas) than it would otherwise seem to relate to an industrial zoning. The distinction between the two is made more clear by reference to the *Tweed Local Environmental Plan 2000*, which prohibits, among others; commercial premises, hotels, motels, refreshment rooms, recreational establishments, and restricted premises, either explicitly or in some cases by virtue of clause 8(2) of the Tweed LEP. These uses are not dissimilar to those detailed in the clause when considering the broad range of land-uses covered by these dominant terms.

Clause 8(2) prohibits specific nominated land-uses, except where the consent authority (Council or Court) is satisfied of specific matters being established. There are very few occasions in which consent is granted under this clause and this situation arises largely because the construction or 'terms' of the clause operate as an exceptional circumstances provision and not as a de facto approval mechanism. Establishing the exceptionality of an otherwise prohibited land-use has always proven very difficult however, this is a positive attribute because it provides a far more stringent 'test':

- i. for evaluating the actual or probable suitability of the specific land-use within the zone (and locality), and



- ii it tests the veracity of the decision making process when enabling-(flexibility)-provisions in the LEP are being relied on for permissibility.

Following the basic language of the LEP this means that the suitability and appropriateness of the particular land-use within that zone must be demonstrated at a reasonably high standard in order for the consent authority to be satisfied in relation to the following matters:

- i. it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and
- ii. it has considered those other aims and objectives of the plan that are relevant to the development, and
- iii. 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, and
- iv. the development is necessary for any one of the following reasons:
  - a) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,
  - b) it meets an identified urgent community need,
  - c) it comprises a major employment generator, and
    - 1. there is no other appropriate site on which the development is permitted with consent in reasonable proximity, and
    - 2. the development will be generally consistent with the scale and character of existing lawful development in the immediate area, and
    - 3. the development would be consistent with the aims of the LEP and at a least one of the objectives of the land-use zone within which it is proposed to be located.

Secondly, the proposed DCP provisions as detailed above adequately mitigate the issue of cumulative impact by addressing, among others, 'location issues' (Part D, Section 8). In particular this provision at sub-clause (c) specifically requires that a brothel must be located to minimise the social and economic impact in the area. In addition, the DCP is underpinned by operation of the mandatory 'heads of consideration' under s 79C of the *Environmental Planning and Assessment Act 1979*, which also specifies consideration of the suitability of the site and the public interest.

Lastly, the clause, as reproduced from the Gold Coast City Plan, is arguably either not enforceable or it would be very difficult to sustain arguments arising out of it because the requisite degree of certainty required to sustain a factual and

constructive argument at law does not seem to exist. In particular, the clause is non specific about how the incidence (the “could generate” component) of crime or nuisance behaviour can be determined or predetermined, at what level the threshold test is or should be, or whether that, or any, ‘test’ is to be measured by the corresponding legal requirements for establishing (making out) a nuisance or “public” nuisance and or crime offence under the common or criminal law (note that “public nuisance” is both a crime and a tort).

In other words, this may be translated to the effect that the consent authority would need to be more than 50% (balance of probability) sure that a prescribed existing land-use could generate a civil offence ‘nuisance’, and 99% (beyond reasonable doubt) certain that an existing prescribed land-use could generate ‘crime’, before it made any determination on a brothel application.

In a planning sense these are not tenable or suitable criteria to apply to the council’s decision making process as evidence or lack thereof about the operation of existing developments available to councils may not reflect the actual or perceived position, whether that be favourable or not to the determination before the council, and as such deliberation and application concerning these threshold tests should be left to the law courts, where the application of common law principles and statutory instruments governing civil and criminal behaviour can properly be applied in their correct context.

Given that the clause is held out to be the ‘genesis’ or ‘cause’ of the crime or nuisance it is difficult to see how, without proper qualification, any land-use fitting the description of a “licensed premises”, “entertainment venues” and “other uses” (whatever that may include), can be excluded from the operation of that clause. The question that arises in relation to the term “other uses” is whether this then creates a discretionary power for the consent authority to include or exclude land-uses at will?

As referred to above, in the list of factors taken into account in the drafting of the proposed proximity provisions, clauses like the Gold Coast example through their uncertainty have the ability to operate as either a pseudo mechanism for prohibition or aimed at curtailing brothel development generally, or alternatively could be applied as a de facto prohibition, possibly at the discretion of the consent authority.

This situation would create inconsistency with the operation of the Tweed LEP and under the statutory hierarchy of planning instruments provided under the *Environmental Planning and Assessment Act 1979* this would likely cast into doubt the legitimacy of the whole of the Draft DCP as proposed.

Whilst it is accepted that antisocial behaviour and crime can be attributed with or linked to certain types of land-uses it is considered that the arguments submitted, and the further research undertaken by Council staff, does not adequately establish a factual or causal link and or nexus between brothel development and other forms of land-use development with the degree of certainty required to justify more stringent planning controls than those proposed.

It is also worth noting at this juncture that the draft DCP (page 4) also refers to and requires consideration of the planning principles discussed in *Martyn v Hornsby Shire Council* [2004] NSWLEC 614.

For these reasons, the proximity distances formulated and proposed in the draft DCP, as reproduced above, are considered to be appropriate and not warranting amendment. However, the DCP should be reviewed periodically to ensure that the objectives of the Plan are being achieved.

### **CONCLUSION:**

The draft Tweed Brothel Code would be one of, if not, the most detailed (draft) DCPs regulating brothel developments in the State of NSW.

The DCP is premised on the need to permit development for commercial brothels because they are a lawful land-use activity. However, there is recognition of the extraordinary sensitivity of this land-use as it sits within the moral beliefs and views of the broader community. There is a need to establish a balanced approach between those views and beliefs and clear parameters to enable an adequate level of acceptability of development through robust planning controls.

The draft Plan has sought to ensure that the controls operate to control the external impacts of development as well as the internalised operational management in a very stringent way without unduly prohibiting brothel development by default. This approach recognises the lawfulness of brothel development and the corresponding requirement on local councils to ensure that they do not breach anti-competition laws by prohibiting development altogether or prohibiting them on unreasonable or unjust terms.

The provisions within the Plan are designed to ensure minimal impact to the broader community by regulating a variety of key criterion relating to building form and location, to ensure that the operational environment of the development responds to needs, security and protection of both the workers within that industry and the public.

The public submissions received in respect of the Plan's public exhibition were, despite no amendments being proposed, considered to be a valuable component of the overall plan preparation process as it prompted further more detailed research and evaluation.

Taking the matters discussed in this report into account the draft Plan is considered to be suitable for adoption and is recommended for Council's approval.

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

Nil

### **POLICY IMPLICATIONS:**

Adoption of the Draft Plan will contribute to the Tweed Council's strategic planning framework which is aimed at achieving the expectations of the Tweed community

through a consistent and relevant approach to the future development of the Tweed and is consistent with Objective 1.2 of the Community Strategic Plan 2011/2021 which states: "*Improve decision making by engaging stakeholders and taking into account community input.*"

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Public submission and Petition (ECM 30815876)
  2. Public submission (individual) (ECM 30815876)
  3. Tweed Brothel Code - Tweed Development Control Plan Section A8 (ECM 31073138)
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- 11 [PR-CM] Terranora Area E - Progress Report on Planning Processes and Major Project Application MP09/0166 for a 300 Lot Residential Subdivision at Lot 40, 43 DP 254416; Lot 2 DP 778727; Lot 1 DP 781687; Lot 1 DP 781697; Lot 1 DP 304649; Lot 1 DP 175235; L**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/LEP/2000/10 Pt6, DA09/0701 Pt3**

**SUMMARY OF REPORT:**

The purpose of this report is to provide Council with an update on the various planning processes currently being undertaken within the urban release area known commonly as 'Area E'.

Area E has been recognised in recent decades by both Tweed Shire Council and the NSW Department of Planning as an important strategic site for urban land release and housing supply, catering for a potential, additional residential population of approximately 4,000 people.

In accordance with the Local Environmental Plan gazetted for this site in 2007, Council's technical officers are presently undertaking the preparation of a Draft Development Control Plan (DCP) and Section 94 Plan (s. 94 Plan) to facilitate the orderly and economic development of Area E.

The DCP is advanced with key strategies and a draft structure plan has already been presented to landowners within the release area. Whilst several key issues still need to be reconciled, it is anticipated that the DCP will be completed for public exhibition in late June/early July.

In parallel to Council's process, NSW Department of Planning (DoP) is currently considering, as the consent authority a 321-lot community title subdivision within the eastern portion of Area E, under Part 3A of the Environmental Planning and Assessment Act 1979.

The application seeks project approval for a 321-lot community title subdivision comprising 317 Residential lots, one community association lot (Lot 711), public reserves (Lots 436 and 710) and one drainage reserve lot (Lot 630) and the provision of all usual urban infrastructure including reticulated water, sewer, stormwater, power and telephone. Bulk earthworks across the site will also be required to create the proposed final landform. The application includes a temporary road access to Fraser Drive to service the first stages of the subdivision. Approval is also sought for the construction of a temporary site sales office on proposed Lot 1103.

The subject application has been reviewed by Council staff and a number of significant concerns have been raised. A snapshot of the concerns raised is as follows:

- The proposal was prepared without an endorsed 'whole of site' structure plan or a coherent well planned, strategic direction, resulting in more of a piecemeal consideration of one component of the site;
- A number of urban design issues pertaining to housing density, neighbourhood facilities, orientation and design of lots and slope sensitive building design;
- Concerns for visual impacts for proposed acoustic fencing along Fraser Drive;
- A proposed temporary connection to Fraser Drive and lack of certainty surrounding the future Broadwater Parkway design, location, construction by others, including necessity to involve other landowners depending on final alignment.
- Demonstration of compliance with bulk earthwork criteria contained in Tweed DCP part A5 – Subdivision Manual, Development Design Specification D6 – Site Regrading and Development Design Specification D1 – Road Design. Further, concern regarding lot grades and implications for building design in accordance with Tweed DCP part A1 – Residential and Tourist Design Code;
- Water and Sewer supply and capacity implications;
- Subdivision discharges its stormwater via central drainage reserve onto private land (Lot 227 DP 755740). The applicant must demonstrate that this is a lawful point of discharge for stormwater, by obtaining owners consent or creating easements. The applicant must demonstrate that stormwater discharge onto lot 227, which contains SEPP 14 wetlands, is suitable in terms of water quality and quantity;
- Environmental issues, including flora and fauna assessment, wetland management, environmental areas management; and
- Connection with overarching s94 implications and feasibility of design and delivery trunk infrastructure. Ad hoc – out of sequence developments, planning should be coordinated with the provision of future road networks, access points, coordinated stormwater treatment etc.

## **RECOMMENDATION:**

**That:**

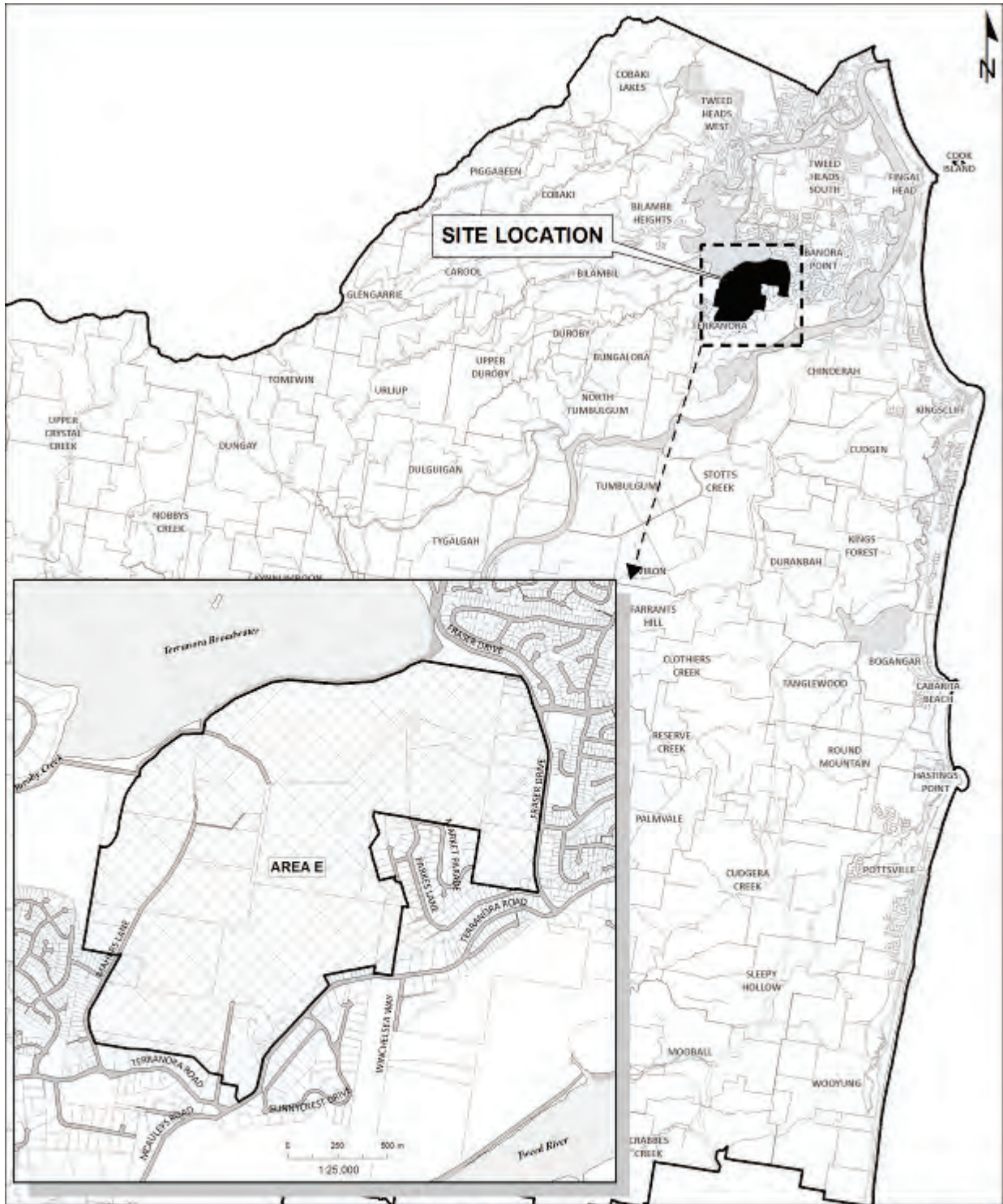
- 1. The report on Terranora Area E - Progress Report on Planning Processes be received and noted; and**
- 2. Council endorses forwarding this report to the Department of Planning and Infrastructure as a submission in relation to MP09\_0166 for a 300 Lot Residential Subdivision at Lot 40, 43 DP 254416; Lot 2 DP 778727; Lot 1 DP 781687; Lot 1 DP 781697; Lot 1 DP 304649; Lot 1 DP 175235; Lot 1 DP 169490, Parkes Lane, Terranora (DA09/0701).**



**REPORT:**

**SITE PLAN:**





**LOCALITY PLAN**

**AREA E  
Terranora**

0 0.75 1.5 2.25 3 Km  
1:150,000

Filename: z:\work\planning\mod\A4P\_B&W SitePlan.mxd

Author: I.Batchelor - Planning Reforms Unit

Date Printed: 04 May 2010

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Datum - GDA 94

Cadastral: 04 May, 2010  
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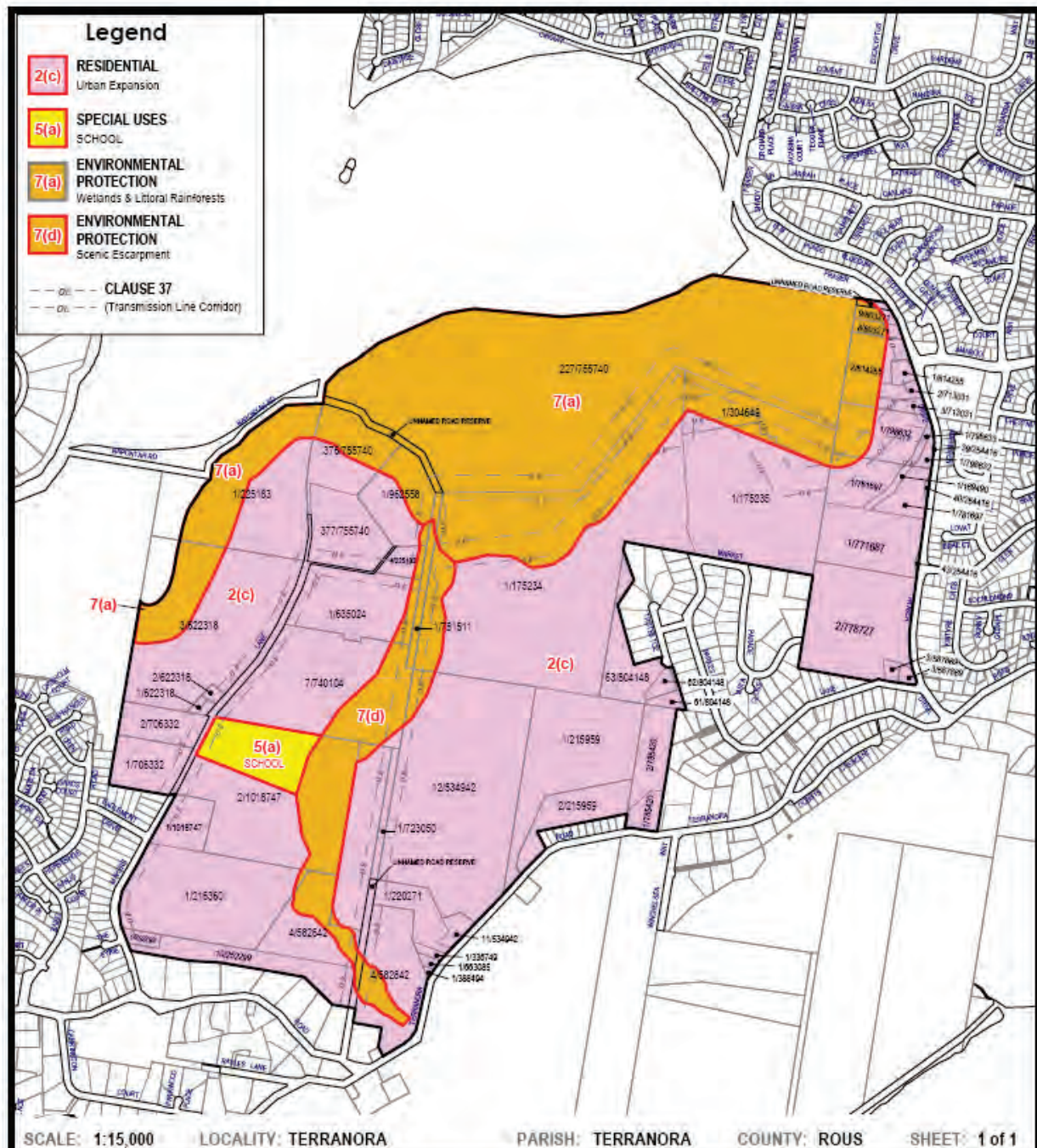
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**LEP ZONING MAP:**



ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 <b>TWEED</b> <b>DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No. 10</b>	
DRAWN BY: <b>J. Batchelor</b> DATE: <b>07/10/2004</b>	STATEMENT OF RELATIONSHIP WITH OTHER PLANS
SUPERVISING DRAFTER:	AMENDS: <b>TWEED LOCAL ENVIRONMENTAL PLAN 2000</b>
PLANNING OFFICER: <b>Eber Butron</b>	
COUNCIL FILE No. <b>GTI/LEP/2000/10</b>	
DEPT. FILE No.: <b>G94/00396</b>	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS
GOVT. GAZETTE OF:	13/03/2006 GENERAL MANAGER    DATE

## **BACKGROUND**

Area E is a greenfield development area located in Terranora, bounded generally by Mahers Lane, Terranora Road, Fraser Drive and the Terranora Broadwater to the north.

Within Tweed Local Environmental Plan 2000 – Amendment No. 10 (LEP Amendment), the site was rezoned in October 2007 to:

- 5(a) Special Uses (School);
- 2(c) Urban Expansion;
- 7(a) Environmental Protection (Wetlands and Littoral Rainforests); and
- 7(d) Environmental Project/Scenic Escarpment.

As part of the LEP Amendment, Clause 53D requires the following:

"(2) *The object of this clause is:*

*(a) to ensure a development control plan has been developed for the land to which this clause applies to avoid ad hoc development....*

(3) *The consent authority must not consent to development on land to which this clause applies unless it is satisfied that:*

*(a) a development control plan has been prepared for the land, and*

*(b) any contaminated land has been identified to the extent necessary to allow for the appropriate location of sensitive land uses, and*

*(c) any wetland on the land will be restored and managed to the consent authority's satisfaction to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges, and*

*(d) the development will generally comply with the Tweed Urban Stormwater Quality Management Plan as adopted by the Council on 19 April 2000."*

In accordance with the above, Council's technical officers within the Planning Reform Unit (PRU) are presently undertaking the preparation of a Draft Development Control Plan (DCP) to facilitate the orderly and economic development of Area E.

The DCP is advanced and key strategies and a draft structure plan has already been presented to landowners within the release area. Whilst several key issues need to be reconciled, it is anticipated that the DCP will be completed for public exhibition in late June/early July.

## **Key Issues within the Planning Framework**

The following section provides an overview of the main site constraints and planning issues relating to the Area E site.

### The Need for a Holistic and Comprehensive Planning Framework

The highly fragmented ownership pattern has posed a significant challenge to the coordination, planning and delivery of key infrastructure such as roads, sewer and water, on the Area E site. It is critical that the feasibility, design, location and staging of this infrastructure (and subsequent delivery) is appropriately planned and underpinned by a robust structure plan, development control plan and accompanying Section 94 plan. These Plans require appropriate consultation and input from Council, Area E landowners and the community.

An initial structure plan and Draft DCP and Section 94 Plan were prepared by the Area E Landowners Group and submitted to Council in February 2008 and February 2009 respectively. These Plans contained numerous unjustified departures from the original Local Environmental Study and Council's technical controls. Council's Planning Reforms Unit has since taken stewardship of the preparation of these plans. The following timetable details work undertaken regarding the preparation of the Area E DCP within 2011:

*Week Beginning January 17 2011:* Constraints analysis and urban structure presented to Area 'E' Internal Working Group

*February 10 2011:* Group workshop on constraints analysis and project methodology with Area E Landowners.

*Week Beginning February 14 2011:* Strategic Objectives workshop and discussions Area E Internal Working Group

*March 17 2011:* Conduct Strategic Objectives workshop with Area E Landowners.

*April 19 2011* Council report on progress of Area E DCP and provide comment on Part 3a Major Project application within release area.

### **Future**

*May 2011* Conduct 3<sup>rd</sup> workshop with Area E Landowners

*June 2011* Report Draft Area E DCP to Council for public exhibition

*June 2011* Commence Public Exhibition

Best practice planning includes the development of a 'whole of site' structure plan providing a coherent, coordinated strategic direction. The DCP currently being prepared by the PRU takes into account the complex interplay of environmental constraints via a detailed Site Analysis report. This Site Analysis, which details the corresponding strategic intent of each constraint, will best inform various development themes including:

- The use of developable land;

- Establishing suitable development yields and density;
- Establishing appropriate building forms to reflect the nature of the area;
- Coordinating and clearly establishing infrastructure provision;
- Detail strategies for environmental protection and management;
- Detail strategies for the provision of structured public open space.

The following key issues highlight the overarching constraints in the development of Area E in a manner which is sustainable, equitable and viable for Council and the wider community. These challenges are highlighted to inform Council and to establish accepted principles and/or objectives to further progress the preparation of the draft DCP.

### Broadwater Parkway

Area E is a complex site given fragmented ownership of land and the intertwined relationship of on site constraints. Principally, the location, design, connection and construction of the trunk road, known as Broadwater Parkway, linking Mahers Lane to Fraser Drive, is critical and essential infrastructure to the development of Area E. This infrastructure is paramount to how the release area will unfold.

As part of the DCP preparation, a number of potential alignments to Broadwater Parkway have been identified and considered at a desktop level. In order to advance the DCP and properly inform and consult both Area E landowners and the community, it is considered vital that a benchmark alignment be established at this time.

For the purposes of this report, Broadwater Parkway will be discussed in three (3) sections, as articulated within Figure 1 below:



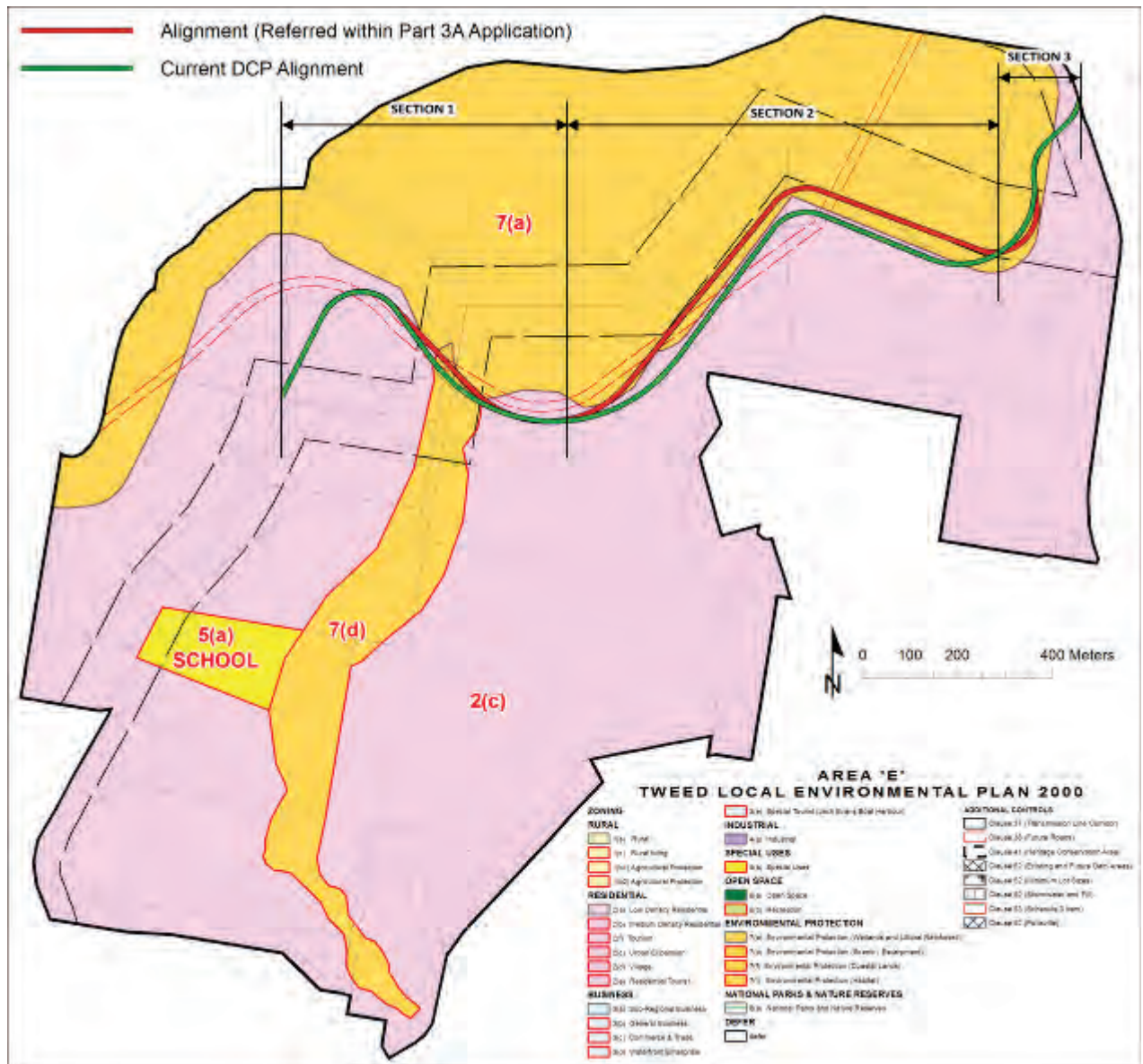


Figure 1: Sections of the Broadwater Parkway Alignment

General Comments

A number of constraints generally impact upon the ultimate alignment of Broadwater Parkway, being:

- o Topography - The topography of the site results in substantial limitations to alignment, particularly at the eastern end of the site, to achieve an appropriate road grade (steepness). Generally, at the eastern end of the site, whilst the slopes are reasonably constant, alignment variations to the south of the alignment shown in Figure 1 increase the height of the land when connecting to Fraser Drive and drastically reduce the length within which the rise of the road is taken;
- o Existing dwelling houses – It has been identified as desirable to avoid an alignment that requires the demolition of existing dwellings;

- Areas of environmental protection - Various Endangered Ecological Communities and State significant wetlands are present within Area E; and
- Integration into the wider road network – Council’s engineers have advised that is highly desirable to discourage traffic ‘rat-running’ via Glen Ayr Drive or Amaroo Drive and as such, network connection has been provided to the North of these streets.

### Section 1

No concerns have been raised regarding Section 1 within the DCP process to-date. It is acknowledged that the alignment will intersect the 7(d) zone, however given the ‘North-South’ orientation of the escarpment; any road alignment connecting Mahers Lane to Fraser Drive will have to intersect this zone.

### Section 2

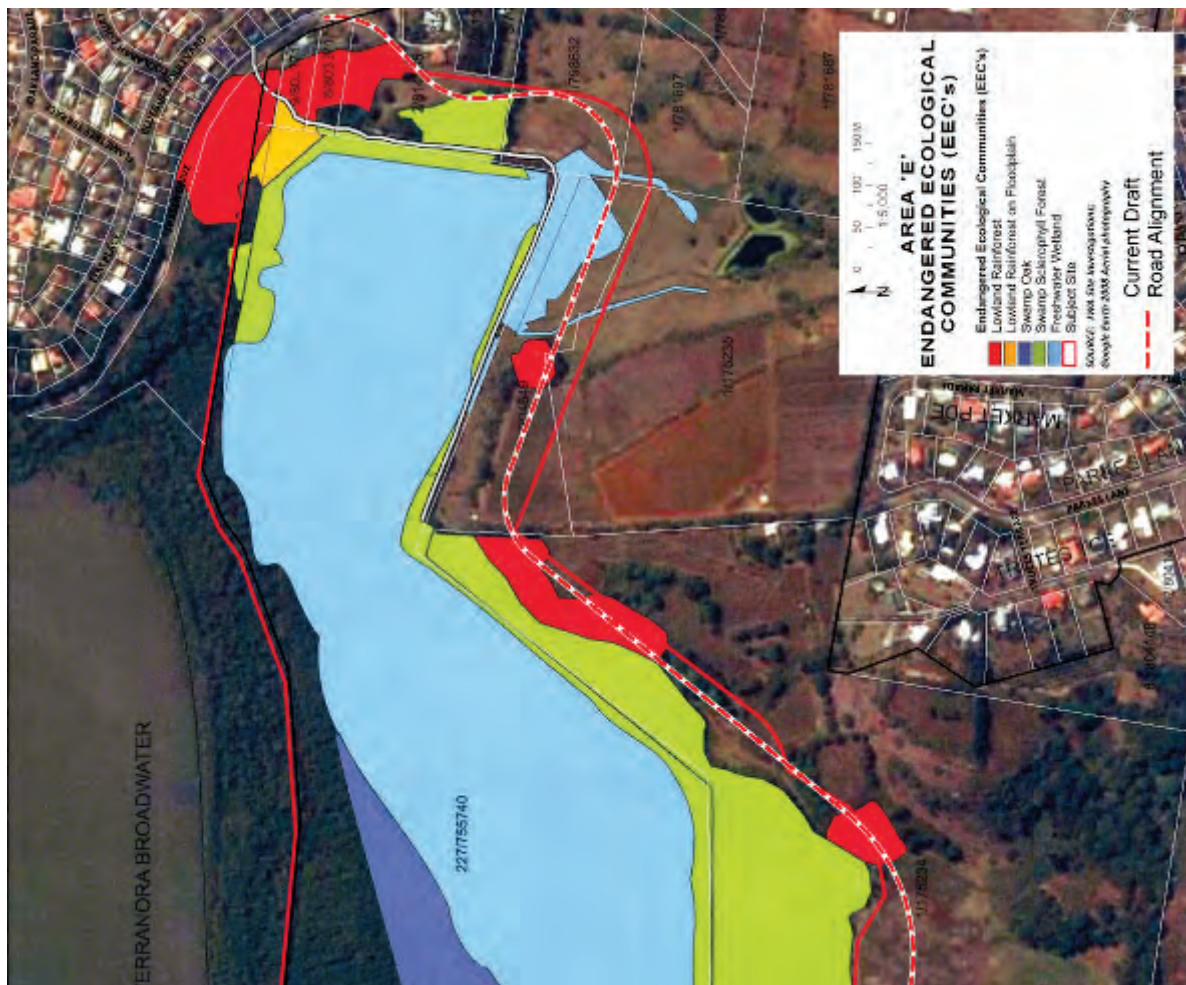
Section 2 of the alignment has been widely debated within the DCP process thus far. Figure 1 demonstrates the two predominate alignment options, the alignment referred within the Part 3A application contained within the 7(a) Environmental Protection zone and the current draft DCP alignment contained within the 2(c) Urban Expansion zone. It is acknowledged that the draft DCP alignment is not formally endorsed by way of Council resolution however within Council’s internal Area E Working Group, no objection has been raised to this alignment to date.

When considering the Part 3A alignment, the alignment traverses the Environmental Protection zone for approximately 1,108 metres. Within this length, two Endangered Ecological Communities (EECs) are intersected on five occasions. The EECs identified include Lowland Rainforest and Freshwater Wetland. Figure 2 shows the Section 2 alignment over these EECs, the mapping for which was prepared by James Warren and Associates, and previously submitted to Council by Metricon. This alignment is not considered to be a desirable outcome. The current DCP alignment contains the road infrastructure within the urban zone, providing reduced environmental impacts.

Within the 7(a) Environmental Protection zone, roads are permissible with consent, subject to satisfying the provisions of Clause 8(2) of the Tweed LEP 2000. Clause 8(2) states that consent may be granted only if the applicant demonstrates to the consent authority that:

- *the development is necessary (i.e. it needs to be in the locality in which it is proposed to be carried out, it meets an identified urgent community need, or it comprises a major employment generator),*
- *there is no other appropriate site on which the development is permitted,*
- *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*
- *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

Investigations into Section 3 have revealed that there are a number of constraints at the eastern end of the road alignment which influenced the final alignment. This component of the alignment is therefore considered to possess an ability to satisfy the provisions of Clause 8(2) as it demonstrates that there is no other appropriate site on which the development can be permitted. Section 2 however is not restricted in the same way. Further, Council has demonstrated through the ongoing DCP preparation process that alternative sites on which the development is permitted are available. Accordingly, the alignment within the Environmental Protection zone is considered prohibited as it relates to this site.



**Figure 2 – Part 3A Alignment with Identified Endangered Ecological Communities**

The land owner of Lot 1 DP 175235 has raised objection to the location of the road outside of the Environmental Protection zone. The landowner has detailed two (2) key items in objection, being:

1. *Perceived 'agreements' as part of the LEP Amendment process*

The following information has been submitted by the applicant:

*"Further to our meeting on 11 February 2011 and discussions regarding locating Broadwater Parkway in the outer 50m of the 100m 7(a) zone buffer to the SEPP 14*



*Wetland, I attach a copy of Council's Resolution No. P82 from Council's meeting on 16 November 2005 adopting the Draft Local Environmental Plan and Page 169 of the accompanying report. Your particular attention is invited to the paragraph regarding verbal discussions with DEC Officers and the statement that:*

*"Verbal discussions were had with DEC officers to discuss the issue of the buffer to the wetlands. It was agreed that the proposed 100m buffer could be made up of 50m of vegetation and fifty metres of other non vegetated land, which can include infrastructure such as roads."*

*The report later notes that the DEC later expressed support for the draft LEP in a letter to Council of the 29th of October 2004.*

*The above documents clearly demonstrate that the siting of Broadwater Parkway as proposed in the Part 3A Application and the Draft Development Control Plan forwarded to Council in February 2008 (ie. showing Broadwater Parkway in the outer 50m of the buffer) is in accordance with Council and the DEC's agreement of 2004/2005."*

The submission identifies that discussions were held between Council and DEC staff, concluding that infrastructure, including a road, could be located in the outer 50m of the 100m environmental buffer. This is reflected within the Tweed LEP 2000 by way of various infrastructure land uses being permissible with consent within the Environmental Protection 7(a) zone. However, it is strongly refuted that a verbal agreement that a road *could be* located, results that a road *must be or, is endorsed to* go through the environmental land. Further, it is noted that the LEP amendment map detailed within the LES (Figure 3) identified a road corridor within the urban expansion zone and not within the 7(a) mapped land. It is acknowledged that the amount of environmental protection identified within Area E was increased post this map, however the road corridor recommended still lays outside of the 7(a) zone except at the eastern-most portion. It could be reasonably contended that this area (where the road aligns north-south) that the basis for discussions with DEC commenced. The annotation of a road corridor within the LEP instrument was ultimately removed to enable the alignment to be investigated and refined further within the DCP process. Accordingly, it is not considered that any formal endorsement or agreement is in-place that restricts the investigation of alternate options to achieve best practice planning principles.

## 2. *Economic Loss*

The landowner details that a road alignment within the 2(c) Urban Expansion zone would have an unreasonable economic impact on the development of the referred parcel. The PRU does not consider these sufficient grounds to limit the road alignment to within the 7(a) zone.

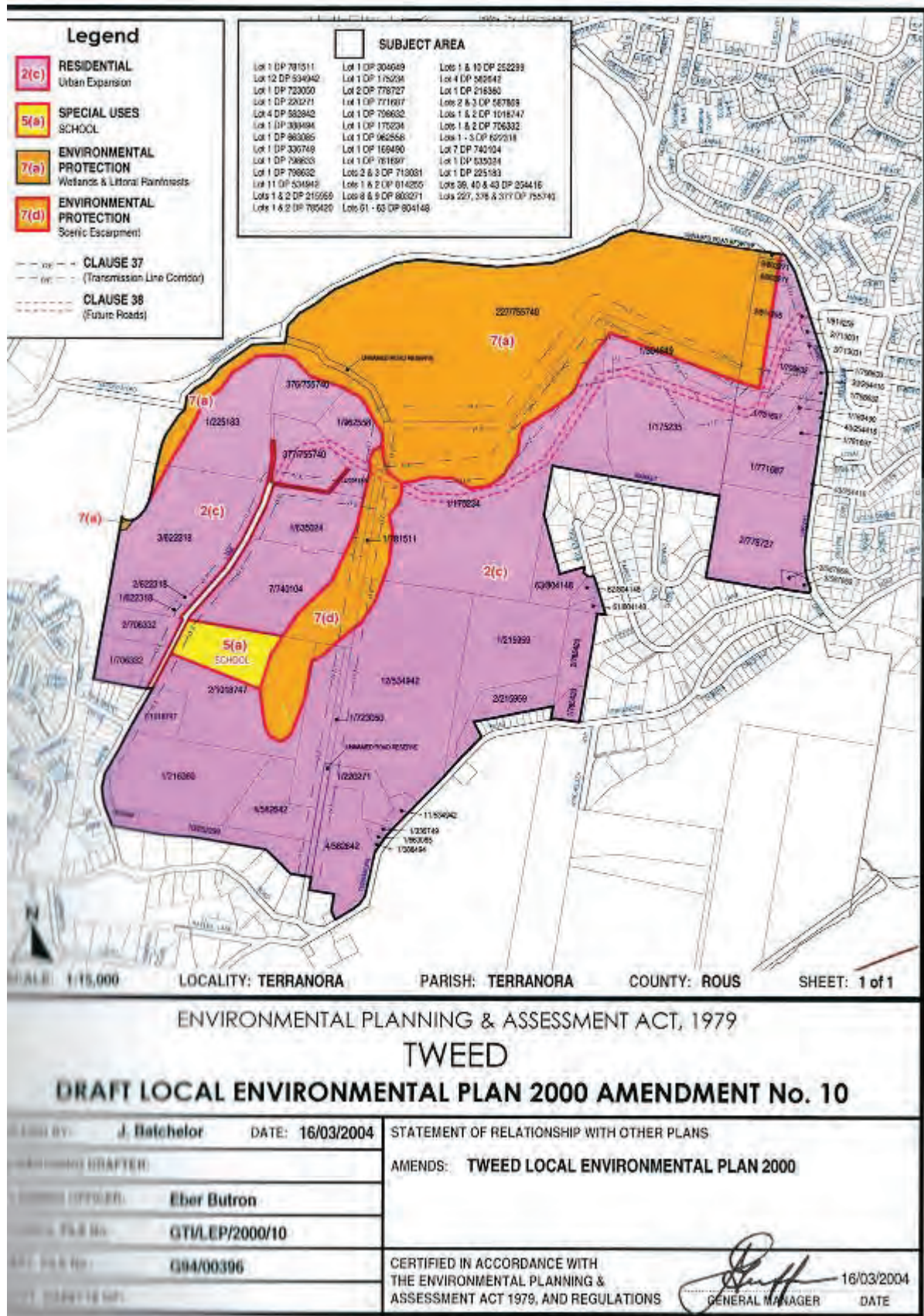


Figure 3 – Draft LEP Amendment Map Displaying the Recommended Road Corridor

### Section 3

The alignment of Section 3 is highly constrained by way of slope, the presence of existing dwellings and the need to achieve satisfactory intersection separation. Desktop analysis suggests that this alignment intercepts EECs at two separate points, though predominately the periphery of these areas. It is acknowledged that further ground truthing would need to be undertaken to confirm the status of the EEC and the ultimate alignment of the road.

Council's Engineering Services Directorate has undertaken initial consultation with affected landowners within this section. Based on discussions thus far, it is highly likely that Council will need to exercise its land acquisition powers to obtain the land necessary for this alignment. Accordingly, Council officers should seek to meet with affected landowners and undertake an appropriate process of consultation and establish an appropriate framework for this section of the road.

#### *Additional Alternative*

As part of the landowners consultation, a landowner cited that the alignment of Broadwater Parkway be adjusted to intersect the SEPP 14 Wetland, or 'hug' its extent and join further to the North. These options are displayed below in Figure 4



**Figure 4 – Alternative Broadwater Parkway Routes**



The two routes were reviewed by James Warren and Associates in January 2008, concluding that both alignments will require the removal of relatively significant areas of native vegetation as follows:

*Road alignment Option 1 will result in the loss of 2.7 hectares (ha) of vegetation, including:*

- *0.58 ha of the EEC Swamp sclerophyll forest;*
- *1.4 ha of vegetation which is considered to represent the EEC Lowland rainforest;*
- *0.36 ha of the EEC Freshwater wetlands on the coastal floodplain;*
- *No threatened species will be lost; and*
- *Only minor indirect impacts are expected on the SEPP 14 wetland.*

*Road alignment Option 2 will result in the loss of 1.4 hectares (ha) of vegetation, including;*

- *0.08 ha of the EEC Swamp sclerophyll forest;*
- *0.65 ha of the EEC Freshwater wetlands on the coastal floodplain;*
- *No threatened species will be lost; and*
- *Loss of approximately 0.7 hectares of native vegetation from within the mapped SEPP 14 boundary.*

Based on the assessments undertaken, it is most unlikely that development consent under Part 4 of the Environmental Planning and Assessment Act or Major Project approval under Part 3A of the Environmental Planning and Assessment Act would be issued for the route through the wetland (Option 2) or the alignment on the eastern side of the wetland (Option 1) given the potential impacts on endangered ecological communities, wetland vegetation and potential changes which would arise to the hydrological regime within the wetland. It is therefore concluded that these alignments should not be pursued further.

#### Relationship to the Part 3A Application

The alignment of Broadwater Parkway is of significance when considering the submitted Part 3A application for Altitude Aspire. As discussed earlier, the application details the road within the Environmental Protection zoning and proposes residential development to the parameter of the urban zone. As such, should the Part 3A be approved in its current form, whilst it does not seek to construct the road, the alignment of Broadwater Parkway for the frontage of the application would be restricted to the Environmental Protection zone by virtue of approving development to the zone boundary. As such, it is essential to pursue an alignment benchmark now and ensure that DoP are adequately informed of any inconsistencies between Council's position and the Part 3A application.

#### Desired Outcome for Broadwater Parkway

Council's Planning Reform Unit recommends that the draft DCP alignment displayed on Figure 1 be forwarded to DoP to inform their assessment of the Part 3A application and embodied as the benchmark alignment within the draft DCP. The PRU acknowledges that alternative routes may be present, however any other routes investigated by developers of Area E will need to demonstrate that the alternate route provides an improved environmental and planning outcome when compared to the present alignment.

#### Stormwater Management and the significance of Lot 227 DP 755740

Stormwater management is highlighted as a significant challenge within the Area E development area. The previous LES identified the challenges and preliminary management requirements for holistic stormwater at the site. At present, it is the opinion of Council staff that Lot 227, the large lot (accommodating a SEPP 14 wetland) on the boundary of Terranora Broadwater (currently in third party ownership) remains the only feasible discharge point, and therefore represents significant challenges for management of stormwater quality and quantity (location, design, capacity of treatment trains, retention basins, constructed wetlands), lawful point of discharge and also contemporary requirements for water quality in the Terranora Broadwater, the eventual location of discharged stormwater.

Further, the LES identified that wetlands on site provide breeding habitat for salt marsh mosquitos which unless managed will impact on the desirability of residential development in the area. The LES purports that the wetlands need to be rehabilitated and restored to a freshwater regime to limit salt marsh mosquito breeding habitat. It further states on page 239 (within part 6.3.2 – Land Use Option 2 – Urban Development) that *“Given the benefit to the whole of the area this should be addressed and funded by all developers within the area.”* The ‘Landowners Group’ have prepared a ‘Wetland Restoration Plan and associated Habitat Restoration Plan (dated December 2008) which has yet to be reported to or endorsed by Council as being the agreed mechanism for restoration, rehabilitation and ongoing management and monitoring at the site. The timing of works identified within any such Plan will also need to be clarified within the DCP.

#### Section 94 Contributions Planning

Pursuant to s.94 of the Environmental Planning and Assessment Act 1979, Council may require development contributions (cash or in kind) for services or infrastructure subject to the approval of a contributions plan. Council administers on behalf of land owners / developers the assignment or apportionment of responsibilities for works in local areas.

Clause 53D of TLEP 2000 details that a s.94 Contributions Plan be prepared prior to development occurring within the Area E site. Any s.94 Plan for Area E is inextricably linked to the DCP and forms part of a number of documents that supports the provisions of a DCP. When finalised, the s.94 Plan will likely require a levy for, but not limited to, the following:

- Structured public open space (whether it be on or off-site);
- Casual public open space;

- Wetland acquisition and restoration;
- Habitat acquisition and restoration;
- Community Facilities, including a Community Meeting Room/Multi-purpose Hall and a Neighbourhood Centre;
- Cycleway/walkways and stormwater management Council administers on behalf of land owners/developers the assignment or apportionment of responsibilities for works in local areas.

In regard to road infrastructure, the Tweed Road Contribution Plan (TRCP) prescribes that work items 126-132 (including Broadwater Parkway) are to be totally funded by 'new' development, as works are not required by the broader community. *'The determination of the Local Area Contribution is purely administrative, to allow Council to share local costs between developers. That is, Council would not manage localised situations, if it meant funding or acting as a banker to the release area.'*

The plan also identifies a number of other road works in the Tweed area which will be impacted upon by traffic generated by Area E. Council's Infrastructure and Planning Unit are presently reviewing these provisions, including the associated costings, with an indicative timeline of exhibiting late 2011.

It is anticipated that upon review of the TRCP and the drafting of the Area E specific s.94 Plan that the contribution rates required could be beyond the current \$30,000.00 cap.

Further investigations between Council, NSW Department of Planning and Area E landowners will occur as the s.94 planning framework for Area E develops.

#### Structured Open Space Provision

The anticipated population of Area E (4,000 people), generates the need for approximately 6.8ha of structured open space to be provided under Council's adopted standards. When considering this land area on a sloping and environmentally constrained site, providing a compliant area of land for typical structured open space uses (i.e. sportsfields) is highly unlikely without substantial earthworks. Accordingly, an ongoing matter to be investigated within the draft DCP is the placement of these facilities.

The Terranora Area E Landowners Group are seeking to pursue an off-site option, being an augmentation of the existing sportsfields at the base of Terranora Valley. Several preliminary constraints are present in relation to the site initially identified, being

- Geographic fragmentation – the identified sportsfields are approximately a minimum 1km walk and a maximum >3km direct link walk from Area E.
- Supporting traffic infrastructure – concern has been raised regarding additional vehicular traffic needing to use residential streets of Terranora Village to access the site.
- Environmental constraints – insufficient environmental assessment has been undertaken to-date, however a site inspection and desktop

- knowledge of the site by officers of Council's Natural Resource Management Unit raised concern as to it's viability.
- Economies of scale – Council's Recreation Services Unit have stated that the existing facilities are to be utilised for tennis courts and that no additional land/courts are being instigated for that immediate area. To introduce another sports use to that site would have a reduced benefit when compared to augmenting a site with planned increased facilities.

Land Acquisition:

A number of concerns relating to the relationship of the proposed road system and possible need for acquisition of private properties has been identified earlier in this report.

**PART 3A APPLICATION AREA:**







## Part 3A Application: Altitude Aspire Area E

### Background

Metricon Queensland Pty Ltd lodged a Part 3A Major Project Application with the Department of Planning in October 2009. The proposal to subdivide land into 300 residential lots at Fraser Drive, Terranora, was previously reported to Council (relevant Council report/s attached) with Council's key concerns including:

- That the proposal was ad-hoc, out of sequence development should not be supported;
- The proposal was prepared without an endorsed 'whole of site' structure plan providing a coherent well planned, strategic direction rather than a piecemeal consideration of one component;
- A number of urban design issues pertaining housing density, neighbourhood facilities, orientation and design of lots and slope sensitive building design;
- A proposed temporary connection to Fraser Drive and lack of certainty surrounding the future Broadwater Parkway design, location, construction by others, including necessity to involve other landowners depending on final alignment.
- Demonstration of compliance with bulk earthwork criteria contained in Tweed DCP part A5 – Subdivision Manual, Development Design Specification D6 – Site Regrading and Development Design Specification D1 – Road Design. Further, concern regarding lot grades and implications for building design in accordance with Tweed DCP part A1 – Residential and Tourist Design Code;
- Water and Sewer supply and capacity implications;
- Contamination investigation and necessary remediation;
- Subdivision discharges its stormwater via central drainage reserve onto private land (Lot 227 DP 755740). Applicant must demonstrate that this is a lawful point of discharge for stormwater, by obtaining owners consent or creating easements. Applicant must demonstrate that stormwater discharge onto lot 227, which contains SEPP 14 wetlands, is suitable in terms of water quality and quantity;
- Environmental issues, including flora and fauna assessment, wetland management, environmental areas management; and
- Connection with overarching s94 implications and feasibility of design and delivery trunk infrastructure. Ad hoc – out of sequence developments, planning should be coordinated with the provision of future road networks, access points, coordinated stormwater treatment etc.

Despite these concerns, the application has subsequently been amended and was publicly exhibited formally from 25 February to 4 April 2011. The application in its current form seeks project approval for a 321-lot community title subdivision comprising:

- 317 Residential lots,
- One community association lot (Lot 711),



- Public reserves (Lots 436 and 710),
- One drainage reserve lot (Lot 630) and,
- The provision of all usual urban infrastructure including reticulated water, sewer, stormwater, power and telephone.

Bulk earthworks across the site will also be required to create the proposed final landform. A temporary road access is proposed to Fraser Drive to service the first stages of the subdivision. Approval is also sought for the construction of a temporary site sales office on proposed Lot 1103.

Council officers review and comment of the amended application is as follows.

### **Scenic Landscape Evaluation**

Tweed Council commissioned a Scenic Landscape Evaluation, which was completed in 1995. The study culminated in three volumes, comprising; Volume 1, a background report highlighting the communities desire to protect the aesthetic qualities of the region and what is appreciated as contributing to landscape identity or image and further recommendations; Volume 2, detailing folio data sheets, which describe the districts and their characteristics and management opportunities, and; Volume 3, which provides the district mapping.

It is widely recognised that Tweed Shire has a great diversity of landscapes, with its high diversity of landform and vegetation patterns, predominantly natural character and frequent views to and from the water, with generally high scenic quality. Its scenic and predominantly natural views are a contrast in character to much of south east Queensland and present a highly attractive destination for visitors or a location for development.

Generally, and in more recent times, the parts of the landscape experiencing the most significant change are the coastal hill-slopes, rural valleys and the edges and setting of villages. These are all parts of the Shire landscape that have visibility and prominence, therefore, the changes in the locations, in particular the Area E site, could and most likely would significantly affect the scenic amenity of the Shire.

The protection of the Shire's aesthetic values are instrument to retaining its identity and value as a significant tourist destination, therefore, management of the changes or impact on the scenic amenity resulting from any development is an integral part of the development design and assessment.

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

Australia's National Iconic Landscape's program aims to achieve conservation, social and economic outcomes for Australia and its regions through the promotion of superlative nature based tourism experiences, partnering tourism and conservation to:

- Promote Australia's world class, high quality visitor experience;
- Enhance the value of tourism to regional economies;
- Enhance the role of protected areas in those economies; and,
- Build support for protecting Australia's natural and cultural assets.

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

With international focus now being placed on Australia's Green Cauldron, and the Tweed at its hart, not just as a tourist destination, but also a place of national scenic and biodiversity value, the need for comprehensive scenic impact evaluation on all, but particularly large scale development, is paramount.

The Part 3A Application is grossly deficient of any acceptable level of assessment on both the scenic impact locally and on the Shire.

The design of the proposed subdivision, with its reliance on significant bulk earthworks and retaining walls, particularly when combined with the relatively small lots and limited opportunity for scenic and landscape (landform) protection, will adversely impact on the Tweed's scenic value, as discussed above, and will undermine the Shire's significance and listing as one of Australia's National Iconic Landscapes.

Given the high sensitivity of this site in a regional as well as local context it is essential that a comprehensive visual impact assessment, undertaken by a suitably qualified person, is undertaken. It must consider the cumulative impact of the proposed development of the Tweed.

### **Tweed LEP 2000 – Clause 53D – Specific provisions for Terranora Urban Release Area E**

As discussed throughout this report, Area E comprises a highly constrained urban release area with substantial infrastructure requirements. The fragmented ownership pattern, the coordination, planning and delivery of key infrastructure such as roads, sewer, water and structured open space require a coordinated approach to the development of the Area E site. It has been identified that the feasibility, design, location and staging of this infrastructure (and subsequent delivery) needs to be appropriately planned and underpinned by a robust structure plan, DCP and accompanying Section 94 plan. These Plans require appropriate consultation and input from Council, Area E landowners and the community.

Council's PRU have been preparing a draft DCP for some time now and anticipate a public exhibition period to commence in approximately July. In this regard, the proposed Part 3A application is 'out-of-sync' as it does not provide certainty or contribute to the construction of critical infrastructure required to facilitate Area E as a whole, and if approved, could stifle the ability of the remainder of Area E to develop efficiently, if at all.

The Part 3A application makes numerous references to the Draft DCP and the proposals consistency with such. Such references are inaccurate and should be removed. The Draft DCP referenced within the Part 3A application refers to a Draft DCP prepared by the Terranora Landowners Group, which was never adopted by Council and was identified as having a number of critical issues. The 'official' Draft DCP for Area E is presently being prepared by Council's Planning Reform Unit. As the document is still being prepared, it is not possible for the applicant to state consistency or inconsistency with the draft.

At its meeting of 16 November 2005, Council resolved Pursuant to Section 68 of the Act, to forward the draft Local Environmental Plan Amendment No 10 – Terranora Urban Release Area (Area E), to the Minister of DoP (then DIPNR) so the Plan could be made. Council also resolved at that meeting that:

*Council shall not consent to development on the site known as Area E unless a Development Control Plan, Section 94 Plan, Master Plan/Concept Plan, Wetland Rehabilitation Plan and A Stormwater Management Plan have been approved for the land.*

Council's intent for a DCP and s. 94 Plan to be adopted prior to the development of the land was reflected within the written instrument, via Clause 53D. It is noted that application has satisfied the provisions of Clause 53D by preparing and submitting a draft DCP in 2008. In this regard, Council has previously informed various parties within Area E that the DCP that was prepared was not adopted, endorsed or satisfactory to Council. This position has not changed. As discussed earlier, Council's PRU is presently preparing a Draft DCP for Area E and is anticipating public exhibition of that document in the near future. The PRUs view that a satisfactory DCP has not been prepared for this site and as such the provisions of Clause 53D are not yet satisfied.

Clause 53D also states that the consent authority must not consent to development on land to which this clause applies unless it is satisfied that:

- (c) *any wetland on the land will be restored and managed to the consent authority's satisfaction to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges,*

Council's Natural Resource Management Unit have reviewed the submitted *Amended Ecological Assessment* (James Warren & Associates November 2010), *Vegetation Management & Rehabilitation Plan* (JWA November 2010) and *SEPP 44 Koala Habitat Assessment* (JWA November 2010) and a Wetland Restoration Plan (JWA December 2008) referred to, but not included within the Part 3A application.

The Wetland Restoration Plan referred was submitted to Council with the Draft DCP, however there does not appear to be any commitment from the applicant of the Part 3A application to implement restoration within the large SEPP 14 wetland area in accordance with a Wetland Restoration Plan.

The Wetland Restoration Plan submitted to Council is not considered satisfactory in its present form. Any Wetland Restoration Plan must include actions and

mechanisms to restore a freshwater regime to the wetland area and control saltmarsh mosquitoes, not just be restricted to actions of weed control and revegetation. Additionally, any Plan will need to include detail on restoring previously modified hydrology in the area, including restoration of the levee in Area E to retain freshwater and prevent uncontrolled incursions of saltwater during higher tide events.

Whilst Council is not the consent authority in relation to the subject Part 3A application, it does not appear as though this provision of the LEP has been met and the application should not be approved accordingly.

### **Living Design Guidelines**

The submitted Part 3A application includes 'Living Design Guidelines' which are intended to prevail in the event of an inconsistency with Tweed Development Control Plan 2008. Whilst a number of the items contained within these Guidelines are not of particular concern, two predominate areas are, being:

1. Unjustified departures from established controls within the Tweed DCP 2008
2. Lack of clarity on how, if adopted, these Guidelines sit within the Environmental Planning and Assessment Act 1979.

With regard to issue 1, the Living Design Guidelines contain no supporting justification as to why Council's established DCP controls are irrelevant or impractical to this site. For these controls to have any validity, the applicant is required to justify these departures and demonstrate how Council's existing controls result in a worse outcome than the controls within the Guideline. In their current form, the Living Design Guidelines are not supported.

With regard to issue 2, the Part 3A identifies that the Living Design Guidelines prevail in the event of an inconsistency with Tweed Development Control Plan 2008. The application however does not detail how this will occur within the applicable legislative framework. It cannot be considered that these guidelines are meant to form the basis of a specific DCP for the site as the controls are not comprehensive. In their current form, the Living Design Guidelines would require a second DCP to apply to the site, which is contrary to DoP requirements. Council has an established process for landowners to amend the Tweed DCP, however, no discussions with the applicant have been held in this regard. The applicant is requested to detail how these controls are to integrate within the planning framework.

### **Housing Density, Affordability and Housing Choice**

The Part 3A application details a residential yield of approximately 8.8 lots per gross hectare. The application also states that the North Coast Urban Planning Strategy 1995 target of fifteen dwellings per hectare cannot be met without significantly impacting on landforms and the established character and amenity of the area.

The validity of this statement is questioned when the application involves only single dwelling lots. It is acknowledged that the site is constrained by topography, however the application does not seek to introduce a mixture of housing typologies. Within

the NSW Far North Coast Regional Strategy (FNCRS), a target for housing growth of 60% single dwellings and 40% multi-unit within Town and Village Growth Boundaries is established. This target has not been discussed or addressed within the application. The application details that a range of lot sizes have been included in the design of the development to provide potential housing choice for future residents, however this statement is considered narrow in its scope as dwelling types other than a single dwelling house have not been included.

The application seeks subdivision under a Community Title scheme. Accordingly, there appears to be a number of opportunity areas throughout the site where a more 'traditional' community title development could occur, involving private roadways to provide for integrated housing types, such as villas or townhouses. These development forms don't necessarily require additional landforming, and are often used with regularly with slope constrained sites. Council recommends that the housing mix goals of the FNCRS are addressed and that alternate housing typologies are investigated to provide increased housing mix, density and a development form that better acknowledges the topography of the site.

### **Broadwater Parkway/ Permissibility of Infrastructure**

Placement of the proposed Broadwater Parkway within the 7(a) Environmental Protection Zone and buffer area is inconsistent with a number of DGEAR including;

- 5.12 *Ensure environmental objectives are not significantly compromised by the design layout of the proposed road network, including the proposed Broadwater Parkway's interaction with the SEPP 14 wetland.*
- 13.3 Likely impacts on threatened species and their habitat need to be assessed, evaluated and reported on. The assessment should specifically report on the guiding principles for threatened species assessment at section 1.2 of the draft Guideline for Threatened Species Assessment (Part 3A). *Identify measures to protect remaining native fauna and flora on the site where appropriate.*
- 13.4 *Provide an assessment of the proposal that ensures (if possible) adverse impacts on identified areas of ecological significance are avoided or mitigated (including the adjacent SEPP14 wetland, Endangered Ecological Communities, threatened species habitat etc.)*
- 13.6 *Provide appropriate buffers and habitat protection measures for known significant ecological habitats as identified in the constraints map contained in Figure 3.4 of the Tweed Area E Local Environment Study (Parsons Brinckerhoff, 2004).*

Whilst the proposal shows only the section of the proposed Broadwater Parkway alignment within the area subject to the current development application, the ecological impacts of this alignment along the length of the entire road corridor from Mahers Lane to Fraser Drive should also be considered. The portion of the proposed future Broadwater Parkway within the proposal site will result in the clearing of small areas of Lowland Rainforest and Freshwater Wetland EECs. The proposed construction and operational impacts of the Broadwater Parkway will extend further still into areas of remnant and regrowth vegetation, including areas of high conservation value.



However looking beyond the proposal site to the west and northeast, the alignment of the proposed Broadwater Parkway as provided for in this development application is highly likely to result in additional clearing of Lowland Rainforest EEC, Lowland Rainforest on Floodplain EEC and/or Swamp Sclerophyll on Floodplain EEC, in addition to impacts beyond the actual road itself including altered hydrology, sedimentation, acid sulfate soil runoff, fragmentation and edge effects to vegetation and habitats, etc.

Should this Part 3A application be approved, it will significantly limit the location of the proposed Broadwater Parkway alignment. Therefore the ecological impact for the entire road alignment should be considered within the current proposal.

The proposal notes that within the proposal site, the future Broadwater Parkway and 15m wide transmission line corridor are located within the 7(a) Environmental Protection Zone. Whilst the proposal does not include the actual construction of the Broadwater Parkway and transmission line corridor, the proposed residential lot layout is wholly reliant on the location of these future infrastructure corridors to service future development within Area E.

The Revised Environmental Assessment Report notes that *“Development for the purposes of roads and public utility undertakings is permissible, with consent, as an Item 3 use in the 7(a) zone. The Local Environmental Study which informed Tweed Local Environmental Plan Amendment No. 10 in respect of the Area E Release Area foreshadowed the use of the outer 50m of the 7(a) buffer for the purposes of roads, utility installations and urban stormwater facilities. The proposal is consistent with the provisions in the Local Environmental Study.”*

As above, for development consent to be granted for the future Broadwater Parkway and transmission line corridor in the 7(a) zone, the development would need to satisfy clause 8(2) of the Tweed LEP. As discussed elsewhere in this report, Council has identified alternative routes within the Area E land release area. Accordingly, it is not considered that Clause 8(2) of the Tweed LEP is to be satisfied.

It is critical to the assessment of the Part 3A Major Project that an acceptable road alignment be resolved, so that it can be determined whether the proposed subdivision layout is compatible with the future provision of the road, as required by the DGRs. As detailed throughout this report, the alignment of Broadwater Parkway detailed within the Part 3A application is not considered to satisfy the provisions of Clause 8(2) of the Tweed LEP 2000 and does not represent the desired alignment within the Draft DCP.

Stormwater infrastructure is also proposed within the 7(a) zone. With reference to whether stormwater infrastructure is allowable development within the 7(a) zone as per the Tweed Local Environment Plan 2000, the Revised Environmental Assessment Report notes that *“Development for the purposes of “environmental facilities” (i.e. stormwater/sedimentation ponds) is permissible, with consent, as an Item 2 use.”*

Under the Tweed LEP ‘environmental facilities’ is defined as:

*a structure or work which provides for: (a) nature study or display facilities such as walking, board walks, observation decks, bird hides or the like, or (b) environmental management and restoration facilities such as bush restoration, swamp restoration, erosion and run off prevention works, dune restoration or the like.*

The stormwater infrastructure proposed in the 7(a) zone would be seemingly be defined as 'urban stormwater water quality management facilities' which is permissible in the 7(a) zone but only after the provisions of clause 8(2) of the Tweed LEP are satisfied. Similarly to road infrastructure, it is unlikely placement of stormwater infrastructure in the 7(a) zone would satisfy clause 8(2) as there are other locations on the proposal site this infrastructure could be located.

### **Acoustic Barrier**

The application details the construction of a 2.4m high acoustic fence along the Fraser Drive frontage. This is not considered to be a satisfactory urban design outcome and is not considered to enable view sharing as detailed within the Part 3A application. The application suggests that:

*With regard to views from residences along Fraser Drive, it is unlikely that any fences, walls, or future built form on the site would affect views from these residences in any significant way. The proposed development would affect views of travellers along Fraser Drive, who currently enjoy an open view across the site as this view would be obstructed by fencing and future built form along the Fraser Drive boundary of the site. However, this loss of views would be consistent with what would be likely to occur from any typical residential development of the site. This is deemed to be an appropriate view sharing outcome and so the proposal can be seen to comply with the relevant planning provisions and guidelines.*

It is not demonstrated how the construction of a 2.4m high fence along the perimeter of Fraser Drive will enable view sharing. In addition, it is considered unreasonable to claim that the loss of views is consistent with any typical residential development for the following reasons.

1. With regard to residential development 'generally', dwellings would seek to address Fraser Drive, providing articulation and visual interest in their form, as opposed to an acoustic fence. Additionally, the dwelling would include the provision of side setbacks and building massing controls to enable view corridors to be maintained.
2. With regard to the subject application, the extensive level of cut along the Fraser Drive frontage results in the majority of future single storey dwelling houses to be contained below the level of Fraser Drive, enabling views to be achieved over these residences.

It is acknowledged that the acoustic barrier provides purpose, however better site planning could have embodied these constraints into the subdivision design. This may have resulted in bigger or deeper lots fronting Fraser Drive, mitigating the need

for a barrier of this scale. Of note, this would likely assist in achieving a reduction in the landforming required at the boundary of the property.

## **Landforming**

Much of the land is steeply sloping (exceeding 25% in parts), with elevations above RL 80m AHD at Parkes Lane, grading down to level flood prone land at the north of the site at about RL 1m AHD, adjacent to SEPP14 wetlands and Trutes Bay. The site is bisected in a north-south direction by a gully line and watercourse, to which most of the site drains. The site is bound by Fraser Drive (a designated road) along its eastern boundary.

The proposal was presented to a Development Assessment Panel (DAP) meeting of 26 March 2010. A number of concerns were raised at that meeting regarding road access, site regrading, access to water and sewerage infrastructure, and stormwater discharge. It is noted that despite the above issues being identified, the subdivision layout provided with the EA is generally the same as that considered by DAP.

The development aims to provide balanced cut and fill. According to the report, 18% of the site will require earthworks greater than 5.0m in depth. This does not comply with Council's Development Design Specification D6 - Site Regrading, which restricts these larger cut/fill depths to 10% of the site by area. The report specifies that the majority of this is deep fill proposed in the existing watercourse (up to 13.5m deep), which raises concerns about future flood risk and conveyance function of this watercourse in the post development scenario. Various clauses in both DCP-A5 Subdivision Manual and D6, aim to incorporate and preserve watercourses in the urban form. The proposal to fill the watercourse to reduce allotment grades elsewhere in the subdivision and to create new allotments on this fill within the watercourse is contrary to these clauses.

Further earthworks are proposed to reduce lot gradients to 5-15%. A network of inter-allotment retaining walls and batters is proposed, across the majority of lots, ranging from 1.2m - 1.8m in height. This does not comply with D6, which restricts inter-allotment retaining walls to a maximum height of 1.2m, and only in cases where the lot gradient will not be reduced below 10%.

Perimeter retaining walls up to 3m high are proposed along the eastern boundary along Fraser Drive and the south-western boundary adjacent to Market Parade. 2 x 3m high tiered walls are also proposed along the south-eastern boundary adjacent to residential lots off Parkes Lane. Again, this does not comply with D6, which restricts perimeter subdivision walls to a maximum height of 1.2m.

The report does not provide any specific justification for these departures from Council's standards, and as such, variations are not supported. Council's adopted policy is that subdivisions should be designed to fit the topography rather than altering the topography to fit the subdivision. As such, the application is recommended for refusal, unless the landforming plan is amended to comply with Council's site regrading policy.

## **Proposed Drainage Reserve**

The application is highly unclear on the role and ongoing management and maintenance of the proposed drainage reserve. As is discussed elsewhere in this report, Council has strong concerns regarding the following components of the drainage reserve:

- The mixture of land uses (Adjoining residential, drainage purposes, compensatory EEC areas, casual open space)
- The extent of earthworks; (up to 13.5m fill)
- Significant loss in potential flow area, and corresponding velocity increase in order to maintain flow capacity;
- Removal of available storage volumes and vegetation, affecting times of concentration, channel roughness and peak discharge rates
- Hydraulic modeling that examines pre-development and post-development flow regimes
- Creation of compensatory EECs in an area that will have conflicting land uses (i.e. stormwater treatment and conveyance and passive open space)
- The extent of embellishments (viewing decks, waterfalls etc) without a corresponding management and maintenance component.

Council requests that all lots between Roads 2 and 5B be deleted, and fill be significantly reduced within the gully line. Council also advises that the creation of an EEC in an area that will have conflicting land uses (i.e. stormwater treatment and conveyance and passive open space) is not supported.

In addition, further clarification is required from the applicant as to how these land uses can co-exist as it appears at present that many of these items conflict and do not have appropriate management plans for their maintenance in the future.

Council's Works Unit has advised that alternative land dedication or management arrangements must be identified if the current level of embellishment is to be retained. A clear delineation between the 'community association property' and Council managed reserves will be required in this regard.

Should the level of embellishment and plantings for the drainage reserve be accepted, further negotiation is required on the detail of these embellishments. For example:

- Galvanised steel blades as balustrade on the bridge represents long term issues such as sharp edges, possible entrapment points in the carving, strength, long term maintenance and replacement costs.
- The drainage corridor is nominated as a revegetation area and includes proposed translocation of threatened plant species. Council's Works Unit manages drainage reserves, and is not resourced to manage special plantings with conservation status.

## Infrastructure

### Water

The proposed water supply system purports to be in alignment with the strategy set out in the Area E LES. Council officers does not agree with such statements as the LES also identified the need for an established planning framework, via an adopted DCP for Area E, which would establish the water infrastructure requirements for the site. The proposal but gives no guarantee that the LES detailed service reservoir, pump station and associated pumping and distribution mains will actually be built at any stage in the future nor does it provide any financial contribution towards the construction of these assets.

The Revised Preliminary Engineering Report for Altitude Aspire (PER) cites that the "PB report proposes an interim water supply strategy for the development of the Altitude Aspire which consists of a temporary connection to the 600dia main (including PRV as required) and a co-current connection to an existing 100dia main on Fraser Drive to service the higher level allotments."

However, Council officers have been unable to identify where this is clearly articulated. Further clarification and referencing is requested in this regard.

Beyond the findings of the LES, more recent water infrastructure studies relevant to the study area have been undertaken. These studies have shown that the current loading on the Rayles Lane Large and Rayles Lane Small reservoir system to have only 500EP spare capacity despite the design demand having recently been reduced.

With relation to water supply networks in Fraser Drive adjoining Area E, there are two separate water supply zones:

1. The 100 dia main is in the Rayles Lane Small supply zone which is already significantly over loaded in relation to reservoir capacity.
2. The 250/300 dia main that connects the 600 dia trunk main through Water Pump Station 22 to Chambers Reservoir as well as returning water from Chambers Reservoir to the reticulation system in Glen Ayr Drive and Amaroo Drive. The recent revision of the Water Network Analysis has shown that the 3.2 ML Chambers Reservoir is now fully committed.

Accordingly, it is now established that there is no spare capacity within the water networks in the vicinity of Fraser Drive. Whilst it has been identified that there is approximately 500EP spare capacity in the Rayles Lane Large zone, this zone only services the Mahers Lane end of Area E.

To service any of the zone directly from the 600 dia trunk main is considered very high risk for a number of reasons which have previously been detailed to the applicant. Consequently, Water Unit will not agree to the proposed interim connection of this development to the 600 dia trunk main. Accordingly, Council's Water Unit requires that a service reservoir be provided for this development with all portions of it being supplied from that service reservoir.

One suggested scheme to satisfy this criterion would be to develop a small reservoir adjacent to Council's existing Chamber Reservoir, seeking to utilise the same base and top water levels. In addition, Council would be willing to enter into discussions with the applicant to contribute to the incremental marginal cost to build a larger reservoir than required by this application to address potential growth of loading in the existing Chambers Reservoir Zone. Whilst some upgrades would likely be required, including a distribution main from the reservoir to the development, pressure reducing valves and potentially a booster pump station, at a desktop level, this potential scheme appears viable.

Should the proponent does not wish to pursue this option, it will be necessary for the construction of the 3ML reservoir supply mains and water pump station and a distribution main from Mahers Lane to the subject site to be constructed as in the PB LES strategy.

### *Demand Management Strategy*

In addition, it is requested that the statement of commitments include a commitment to ensure that the provisions of Council's adopted water supply demand management strategy be implemented within the proposed development. In light of the subdivision method, use the Community Title Scheme and/or Section 88B instruments to enforce the minimum tank size and connected roof areas within the strategy for development is also recommended.

In particular, the strategy for green field sites within Tweed Shire requires as a minimum:

Single Dwellings	Minimum 5000L rainwater tank with a minimum 160 m <sup>2</sup> roof area connected to it.
Multi Dwellings & other buildings	Rainwater tanks to be provided on a similar basis connecting 80% – 90% of the roof area

These tanks shall be plumbed to provide water for external uses, toilet flushing and laundry cold water for washing machines.

### Key Outcomes

Council reiterates that the proposal in its current guise is unacceptable. A Water Supply Strategy is required to be developed in conjunction with and approved by Council to finalise connection to the Tweed District Water Supply. Alternatively, the proposal implements the essential water infrastructure as detailed within the DCP for Area E, when finalised.

It is requested that the proponent incorporate the Tweed Shire Council's adopted Demand Management Strategy within its Statement of Commitments and use the Community Title Scheme and/or Section 88B instruments to enforce the minimum tank size and connected roof areas within the strategy for development.

## **Sewer**

The point of connection for this development as a stand alone development is the Banora Point Wastewater Treatment Plant as there is no capacity in the existing transport system available for this development.

Connection to Banora Point WWTP may utilise some discrete portions of the existing system but may require the development to upgrade such facilities and construct new sewer rising mains. For example, it may be possible for this development to construct a SRM to gravity sewer at Fraser Drive, but the receiving sewer pump station SPS 3018 is currently fully loaded and may need upgrading to handle existing connections. A further upgrade of this SPS would be required. The size of the upgrade would depend on the size of rising mains from the SPS to Banora Point WWTP. When the full flow from this development is added to the existing flow estimated at SPS 3018, the friction losses in the existing sewer rising main become excessive resulting in higher pressures to be generated by the pumps than is desirable. The power required to pump becomes greater exponentially and will require an upgrade of the pump station to a greater size than the site can accommodate.

The strategy for Area E requires the construction of a regional sewer pump station that will ultimately pump directly to the WWTP through a new 375 diameter SRM. Interim staging proposed had included using the existing route but had not anticipated the growth in loading that has eventuated in the catchment of SPS 3018 prior to the development of Area E as it had been expected that Area E would have progressed further prior to build out in the catchment of SPS 3018.

In relation to the preliminary internal sewerage design, the layout of sewers may not be the most optimal as the arrangement to minimise works for early stages results in a greater length of sewer main and more manholes than may otherwise be required. This can be negotiated during detailed design phases and may depend upon any alterations to the layout prior to approval.

The estate proposes two sewer pump stations where it would appear that a single sewer pump station would have sufficed. Detailed justification of this will be required before the finalisation of the design. It should also be noted that Council required sewerage pump stations to be located in separate lots to be transferred to Council in fee simple, rather than the pump stations being located on road reserve, park land or other reserves.

### Key Outcomes

Whilst sewerage is available for this proposal with connection at the Banora Point Wastewater Treatment Plant, large portions of existing transport infrastructure will require upgrading as a result. The development may necessitate upgrading of an intermediate pump station or construction of a sewer rising main between the intermediate pump station and the treatment plant. A Sewerage Strategy is required to be developed in conjunction with and approved by Council to identify the scope of improvement works, the provision of separate lots for the proposed sewerage pump station/s and finalise connection to Banora Point Wastewater Treatment Plant.

Alternatively, the development could be developed as part of the broader Area E scheme that provides a regional pump station and associated mains to service the whole of Area E.

### **Stormwater**

There are a number of issues with the proposed stormwater management system:

- A lawful point of discharge has not been demonstrated on the downstream private property (Lot 227 DP 755740). In this regard, the applicant must obtain the landholder's consent to create an easement to discharge over the receiving property. Given the applicants belief that this consent is not required, it is recommended that DoP seek independent legal advice.
- Stormwater catchments differ significantly between the Stormwater Management Plan (SWMP) and the engineering report. This has a significant bearing on constructed wetland sizing. Clarification is sought in this regard before Council is able to make any further comment.
- Wetland sizing has been significantly discounted based on lot level rainwater tank installation, which requires adoption of tank arrangements that exceed BASIX requirements. As discussed on-site with DoP officers, Council's demand management strategy details controls also above those prescribed in BASIX, however the relationship between those controls and BASIX is not entirely clear. The application needs to address this matter further to support their wetland sizing.
- Maintenance access to the wetlands is via Broadwater Parkway, and alternate measures are required until this road is constructed;
- Continuity of major system flow paths from the street system to the central watercourse has not been provided, many of these would pass through residential lots. This requires reconfiguration of allotments adjacent to the watercourse;
- A water recirculation pump station and rising main has been proposed for the central watercourse, with no explanation or apparent net benefit. (During site inspection this was clarified verbally to be an aesthetic feature only to provide trickling water through the bypass channel.) The applicant intends for this infrastructure to be in Council ownership. Until the net benefit of this infrastructure is identified, Council will not accept the dedication of this infrastructure. Further comment can be made upon the receipt of further information;
- No consideration of external catchment from Fraser Drive, noting there is a 3m high retaining wall proposed along this boundary;



- No consideration of interallotment drainage along the western boundary, to control stormwater discharge to private land (Lot 1 DP 175234);
- Provisions for inter-allotment drainage (IAD) lines in general, have not been satisfactorily addressed. The generally narrow lots do not make appropriate allowance for future building areas (within the lots) where easements along side boundaries will be required – for both IAD and sewer provisioning. For example: Lot 506 should be widened to cater for an IAD line (and probably sewer) from Lot 502 and possibly Lot 501 (although Lot 501 could be serviced via Lot 503). This issue arises in several locations – such as the rear of Lots 408, 431, 629, 622, and 615.
- Sag points in all roads will require provision of relief overland flowpaths. Clarity of the submitted plans is insufficient to depict chainages at critical points to assess this issue.
- No information provided on the adequacy of the proposed watercourse filled cross section, in relation to capacity, maintenance, environmental impact and public safety (refer also to detailed comments in Section 4);
- Water Sensitive Urban Design is not considered an appropriate design consideration for most of the site, due to gradients generally exceeding 5%, however the proposed Broadwater Parkway is an ideal thoroughfare where WSUD can be implemented.

## **Traffic**

The report discusses the proposed "temporary access" from the subdivision to Fraser Drive, near the south eastern corner of the development. The report states that construction of Broadwater Parkway is to occur concurrently with Stage 7 of the development, subject to acquisition of the road corridor for the Parkway. Once connected to Broadwater Parkway, the "temporary access", which would be provided as an easement over a residue parcel, would be closed and redeveloped into residential allotments.

As discussed previously with DoP, Broadwater Parkway is included in the Tweed Road Contribution Plan (TRCP) works program, and is subject to a Local Area Contribution. As a result, the construction is dependent on the development of Area E alone, not the broader Terranora / Banora Point area. As such, limited investigation of the road alignment and its potential environmental impacts has occurred, and no efforts have been made at present to acquire a future road alignment or to gain approval to construct the road.

The draft preliminary road alignment that is referenced in the EA from Tweed Shire Council is not a final or endorsed route. As is discussed elsewhere in this report, further analysis has been undertaken, identifying an alternate alignment, displayed in Figure 6.

The Broadwater Parkway is a long term prospect linked to other potential development projects in Area E, and cannot be relied upon by the subdivision for

road access. As such, the subdivision must demonstrate that it has an acceptable alternate road access, to be considered a stand alone development.

*Proposed Fraser Drive Access*

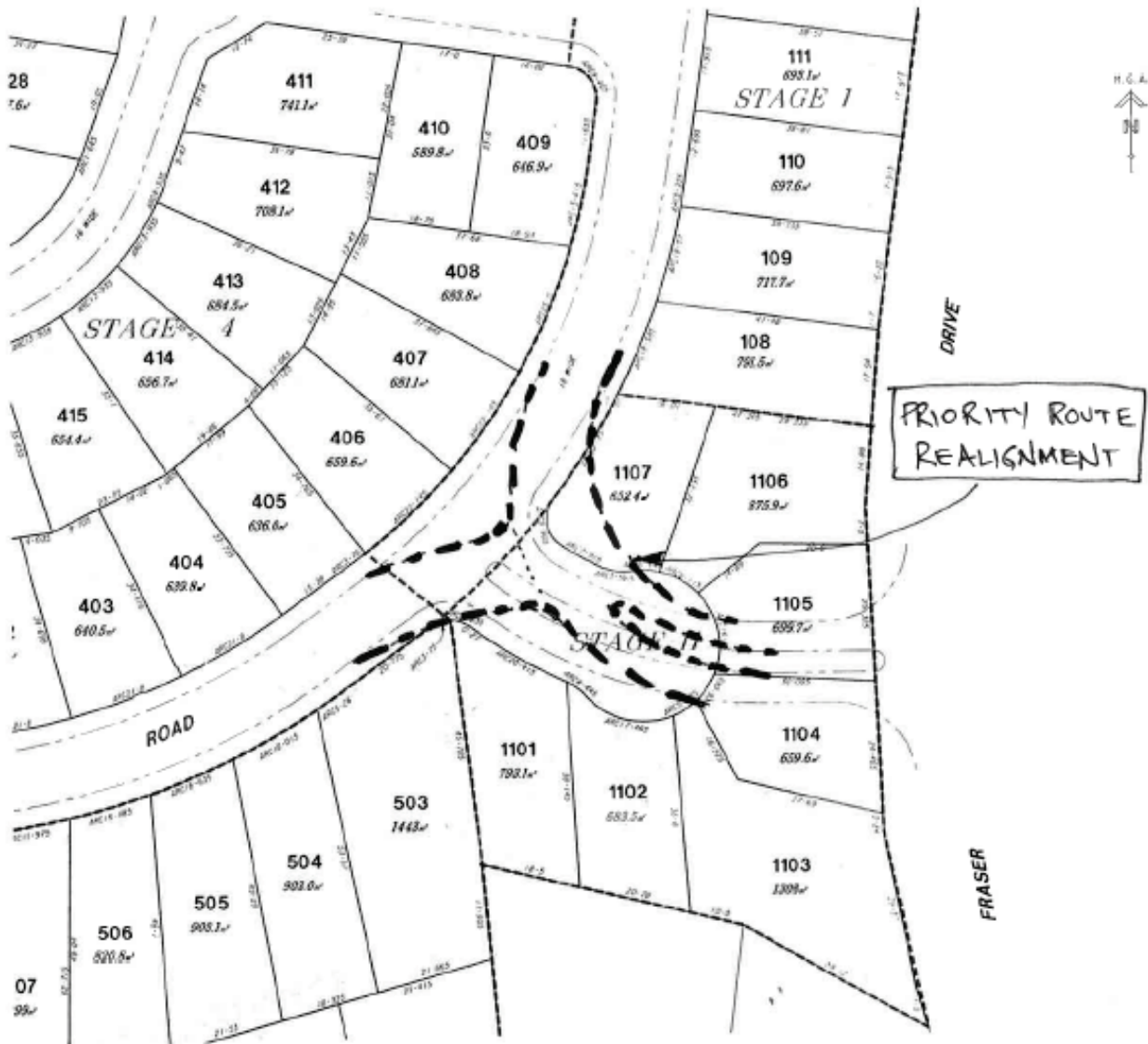
The notion that the road access to Fraser Drive is "temporary" should not be factored into engineering assessment of the proposal. The subdivision application must demonstrate that all road and traffic objectives for the subdivision can be achieved for two cases: with and without Broadwater Parkway. The submitted application generally shows that the subdivision will operate satisfactorily in terms of road, public transport, cycleway and pedestrian networks with the Broadwater Parkway, but neglects to examine the alternative and more immediate scenario without the Parkway in place.

To address this concern, the following information is provided for consideration:

The design of the internal T-intersection, where the connection road from Fraser Drive meets the main internal road in Stage 4 requires either:

- a. a priority route realignment to minimise potential vehicle collisions (refer to Austroads "Guide to Traffic Engineering Practice – Part 5: Intersections at Grade" and Austroads "Guide to Traffic Management Part 6 : Intersections, Interchanges and Crossings"). This has not been commented on in the report; or
- b. a roundabout at the intersection of the connection road from Fraser Drive and the main internal road in Stage 4.

Any consent for the development must include a condition which requires that the connection road from Fraser Drive which meets the main internal road in Stage 4 must be realigned generally in accordance with Drawing No. E-01 (refer to Diagram 1 below) or a roundabout is to be constructed at the intersection of the connection road from Fraser Drive and the main internal road in Stage 4.



**STAGE 4 PRIORITY ROUTE ALIGNMENT**

**DRAWING NO E-01**

**23.3.11**

**Diagram 1 - Stage 4 priority route alignment - Drawing No. E-01**

Bus routes are depicted in Figure 6.2 of the report based on the Broadwater Parkway being constructed. The report should also consider an alternative bus route based on the Broadwater Parkway not being constructed. This will affect carriageway widths which are to be designed to cater for any anticipated bus route (i.e. 9 m minimum carriageway widths). These routes should be provided for further assessment or alternatively a condition of consent should be included in any approval requiring the identification of potential bus routes without the proposed Broadwater Parkway being constructed.

The current proposed easement for the road connection does not give Council adequate tenure to carry out its duties as road authority. The road corridor, to standards required by DCP-A5 must be dedicated to Council. Should a future connection to Broadwater Parkway occur, the applicant may apply to close the road and re-subdivide it with adjacent residue land. The application for road closure would be supported by Council, provided a public pedestrian and cycleway connection is maintained through to Fraser Drive. In addition, the applicant will also be responsible for removing any embellishments including 'entry statement' items should that site is to be converted to residential allotments.

#### *Internal and External Connectivity*

A second road connection stub to the north-east (from Road 5B) should be provided to adequately cater for appropriate development potential of adjoining lots.

Proposed Roads 10 and 11 should be relocated to the west, to align with the existing ridge line at the property boundary. Alternatively, a second road connection stub to the west (from Road 11) should be provided to adequately cater for appropriate development potential of adjoining lots.

The application includes less than desirable connectivity to Parkes Lane, with the existing road carriageway and stormwater infrastructure being predominately ignored. The proposed carriageway location is too far east of the existing road, and is poorly angled – requiring total reconstruction of the existing intersection with Market Parade. This is considered unnecessary and should be avoided. Council encourages an extension to Parkes Lane that prolongates the existing road direction and generally follows the ridge line at the property boundary. Should this not be possible, a second road connection stub to the west (from Road 11) should be provided to adequately cater for appropriate development potential of adjoining lots.

The proposal fails to adequately address the frontage to Market Parade. Investigations into large-sized lots for the Market Parade frontage, as a reasonable way of merging with the existing urban fabric on the south side of the road are encouraged. The erection of rear boundary fences should be avoided along this frontage.

The Market Parade extension warrants reconsideration: Lots 516/517 should be merged to create a larger lot and avoid an immediate visual barrier of rear and side fencing.

Poor pedestrian / cycleway connectivity is provided to Fraser Drive. A permanent pathway link from Road 5A to Fraser Drive, near to the Glen Ayr Drive intersection – somewhere in the NE area of Stage 1 is considered desirable.

### *Road Gradient*

Road gradients are illegible and cannot be verified whether compliant or not. Plans with improved clarity are required prior to further comment being made in this regard. All proposed allotments on grades greater than 15% should be required to demonstrate that practical vehicular access from a constructed street from both cut and fill sides can be provided.

### *Road Width Comments*

Road hierarchy establishment is inappropriate: the Transport Assessment Report by Bitzios is incompatible with the Preliminary Engineering Report by Bradlees regarding Neighbourhood Connector road width nominations.

Road 10 is nominated as a Neighbourhood Connector and should have an 11m carriageway, in lieu of the 7m carriageway shown in the Engineering Report.

The carriageway of Road 2 should be altered to 9m for the initial section coming off the existing end of market Parade, to align with the existing carriageway width – and only to the intersection with Road 3. No objections are raised however, to the 11m width for the remaining length of Road 2, for the intention of a future bus route over this section of road.

All other roads, excluding Broadwater Parkway, are shown as having 7m carriageways, which are not compliant with Council's standard Access Street width of 7.5m and should be widened accordingly.

### *Cut/Fill Balance*

As discussed elsewhere, the overall site regrading plans do not comply with D6, and are not supported in their current form.

### **Flooding**

The application fails to adequately address the impacts of the proposed filling of the watercourse through the centre of the site, and construction of the bypass channel. There is a significant upstream urban catchment (38 hectares) feeding into this channel, as well as surcharge flows from the future subdivision lots. The current gully line is wide, deep and vegetated, with variable grades, and includes dam storages. As an example, a cross-section between future lots 719-606 has an approximate existing gully width of 80m and a depth of 7m. The proposed works will reduce this channel to a trapezoidal cross section maximum 15m wide with 1:4 batter slopes and depths of less than 2m. This is a significant loss in potential flow area, and velocities must increase in order to maintain flow capacity. Available storage volumes and vegetation will also be removed, affecting times of concentration, channel roughness and peak discharge rates.

These works all point to a significant change in the hydraulic regime, with potential impacts on the receiving environment, increased flood risk to adjoining land, and risks to personal safety and property damage associated with the increased flow velocities. As the filling of the watercourse is also intended to support further residential development, there is also a risk associated with long term stability of this filled land, and scour and erosion problems.

### Key Outcomes

Accordingly, Council requests that all lots between Roads 2 and 5B be deleted, and fill be significantly reduced within the gully line.

Further information must detail hydraulic modelling that examines pre-development and post-development flow regimes, and a report that satisfactorily mitigates the potential adverse impacts of the subdivision.

### **Section 94**

On 3 March 2011 the Minister for Planning issued Section 94E Direction PS11-012, which confirms that Area E is subject to a \$30,000 per allotment cap on s94 developer contributions (Schedule 2(14)).

As identified within the application, existing s.94 Plans currently require \$21,355.90 per lot. This is expected to increase significantly with a pending review of the Tweed Road Contribution Plan (TRCP, CP No.4), unless Council resolves to delete or otherwise amend the Broadwater Parkway Local Area Contribution.

In February 2009 Darryl Anderson Consulting prepared a draft s.94 plan for Terranora Area E, on behalf of the Terranora Land Owners Group. This plan proposed new contributions for:

- Structured open space
- Casual public open space
- Wetland acquisition and rehabilitation
- Habitat acquisition and rehabilitation
- Community buildings
- Cycleway / walkways
- Stormwater management

The s.94 plan was proposed by the land owners group in order for the costs of provision of the above infrastructure and environmental works to be shared equitably between the separate land owners over the life of the development. Normal Shire Wide s.94 charges would still apply, specifically:

- CP No.4 TRCP
- CP No.11 Library Facilities
- CP No.13 Eviron Cemetery
- CP No.18 Council Admin Office and Support Facilities

- CP No.22 Cycleways
- CP No.26 Regional Open Space

The 2009 draft plan is presently being reviewed and modified by Council staff to comply with current practice (e.g. occupancy rates, admin charges). Pending a more detailed review of the works program and cost estimates for the various facilities, the following additional s94 charges (per lot) are proposed by the draft contribution plan:

Structured open space	= \$2,277
Casual open space	= \$3,072
Other facilities	= \$7,249
TOTAL	= \$12,598

These new charges, when added to existing charges, bring the total for s94 contributions to \$33,953.90 per lot, exceeding the cap imposed by DoP.

Any new s94 Plans are also required to be sent to DoP for concurrence prior to public exhibition (DoP Circular PS10-022, 16 September 2010). The Circular outlines a process whereby Council, with support of the developer, may make application to DoP to approve a higher contribution amount. This would need to be approved by the Minister before determination of the subject application; otherwise all required infrastructure and facilities cannot be provided for the development. All Area E landholders would need to be party to this agreement, not just limited to the subject developer.

### **Community Title Considerations:**

The Community Title scheme proposed for this development differs from the usual arrangement in that the developer is not including any infrastructure within the scheme other than the proposed community club.

Accordingly, all infrastructure and associated easements must be designed and provided as per the requirements established within Council's existing planning framework (predominately Tweed DCP 2008 - Section A5).

As discussed with the applicant during an on-site meeting, this form of Community Title subdivision is an untried 'hybrid' scheme. The likelihood of a separate Community Management Statement being required for each of the individual stages, culminating in (for example) all lots in Stage 11 being subject to and part of eleven different Community Management Statements, should be avoided if possible. Further information as to the mechanics proposed is requested.

### **Open Space**

#### Structured Open Space - Sportsfields:

The development proposes sportsfields be provided off site adjacent to an existing small playing field west of the Area E release area. Council Officers note that the EA states that Council Officers have agreed in principle to this location. This statement is not completely accurate as Council Officers have indicated that this site could only

be considered suitable if environmental and road access limitations had been addressed, and the site identified within the DCP for Area E.

As discussed earlier within this report, investigations regarding the provision of structured open space are ongoing within the DCP process and an agreed outcome or strategy is not yet finalised. Certainly, it is preferable that as much structured open space as possible be dedicated within the Area E release area. However, it is acknowledged that the topography of the land provides a significant impediment to providing such facilities without excessive landforming. Accordingly, it is not currently appropriate to rely upon the provision, via a developer contribution, of off-site structured open space. In this regard, the proposal should not proceed on this matter until the DCP process has been finalised. It is preferable that as much structured open space as possible be dedicated within the Area E release area.

#### Casual Open Space:

The applicant proposes to contribute 10,587m<sup>2</sup> as useable casual open space as follows:

- Lot 436 - a 7,046m<sup>2</sup> parcel made up primarily of a water storage surrounded by steeply sloping land.
- Lot 710 – a 3,541m<sup>2</sup> land parcel.

#### *Lot 436*

However, Council's investigations have identified that Lot 436 does not comply with established criteria for casual open space. Lot 436 should be considered environmental or drainage open space. Features that do not comply with Council casual open space requirements include:

- Around 50% of the area is the existing dam along a drainage line. Such water bodies do not comply with Casual Open Space requirements and cannot be considered.
- The balance of the land surrounding the dam slopes steeply. Much of it exceeds 25% and does not meet Councils landform criteria.
- Further clarification is required the plan nominates 'passive open space areas (Figure 4) and revegetation areas in the same location, seemingly creating a potential land use conflict.

As a result, the amount of acceptable casual open space proposed for contribution is not sufficient.

- Amount of Casual Open Space required for dedication - 9,311m<sup>2</sup>
- Acceptable Casual Open Space proposed for dedication – 3,541 m<sup>2</sup>
- Shortfall is 5,770m<sup>2</sup>

#### *Lot 710*

The 'playground park' (Lot 710) appears to meet the necessary criteria for Casual Open Space, however the following matters should be addressed by the applicant.



- Clarify slopes within the park. The slope analysis for the development is very broadly drawn and does not confirm that the slopes comply with the landform criteria, which states 80% of the area is to have slopes less than 8%. In particular areas designated as 'kick about' areas need to be reasonably level.
- The landscape proposal for this park will require further review. Matters to discuss include the amount of paths, design of the playground area, use of 'Gabion blade walls to mirror structure to opposite side of street' and interaction of the steep parts of the park with the road reserve adjoining the park.
- No 'entry statement' type structures are to be included in the park.

In addition, it is noted that within the Vegetation Management and Rehabilitation Plan, Lots 710 and 711 are incorrectly referred to as sportsfields. They are in fact proposed as a park and the 'community association property'. It also indicates Lot 630 as passive open space. (Reference Figure 4), where it is clearly referenced on the subdivision layout plans as a drainage reserve.

#### General open space comments

Comments on this masterplan have been kept at a general level as there are many conceptual issues to resolve before the detail of each landscape proposal can be considered. Some specific matters noted at this early stage include:

- Electricity substation locations should be determined at the planning stage with Council. Last minute requests to locate these in parks once the plans have been approved will not be accepted;
- Minimise the use of retaining walls on public land wherever possible. Any retaining walls separating public and private land must be located on the private land; and
- No 'entry statement' infrastructure is to be installed on public land.

#### **Threatened species**

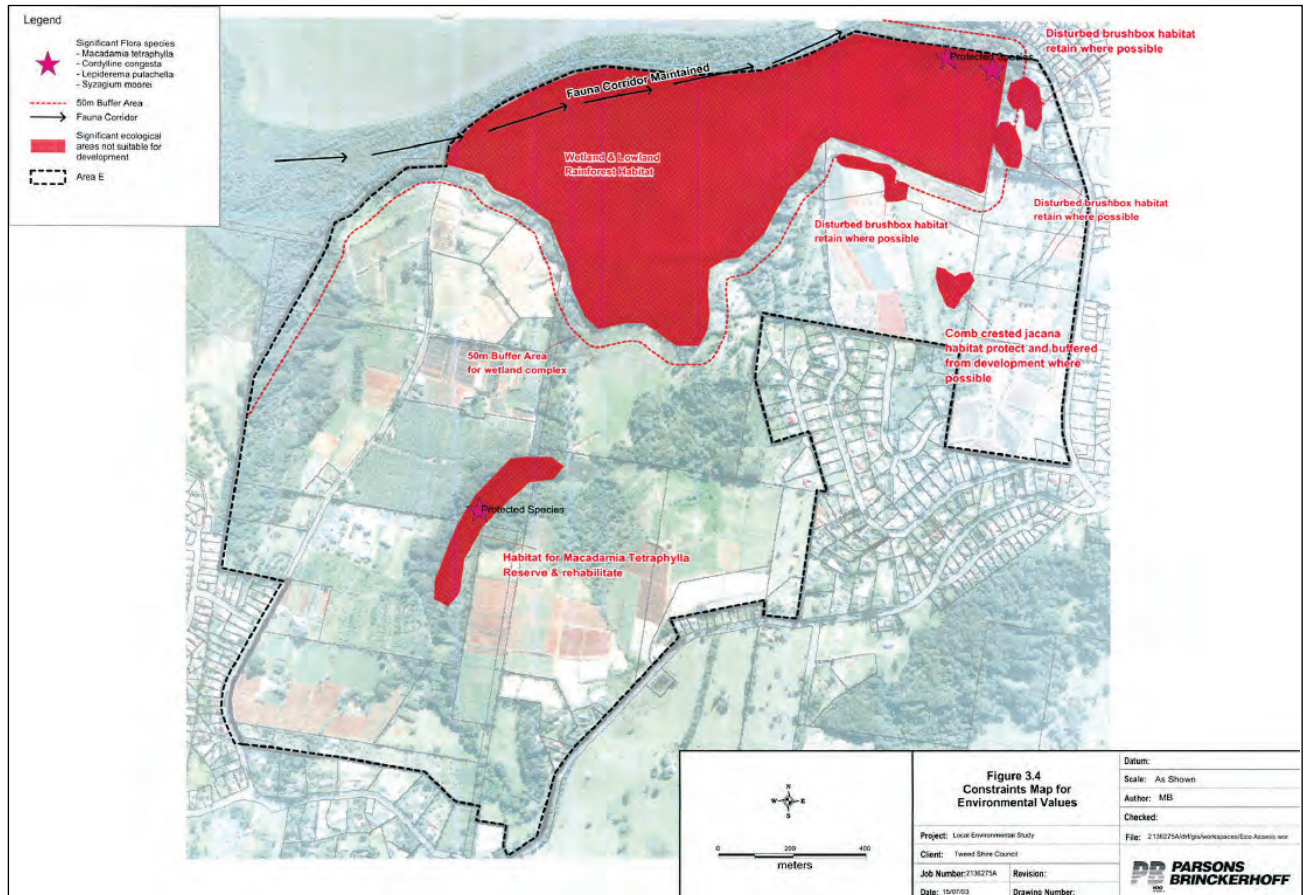
##### *Comb-crested Jacana*

Within the area subject to the current proposal, Figure 3.4 of the LES has identified an area of Comb-crested Jacana habitat (listed as Vulnerable under TSC Act) that should be protected and buffered from development where possible (refer to Figure 5 in this report). This habitat area is located along a natural watercourse comprising drainage lines and several small waterbodies surrounded by regrowth rainforest in the centre of the proposal site.

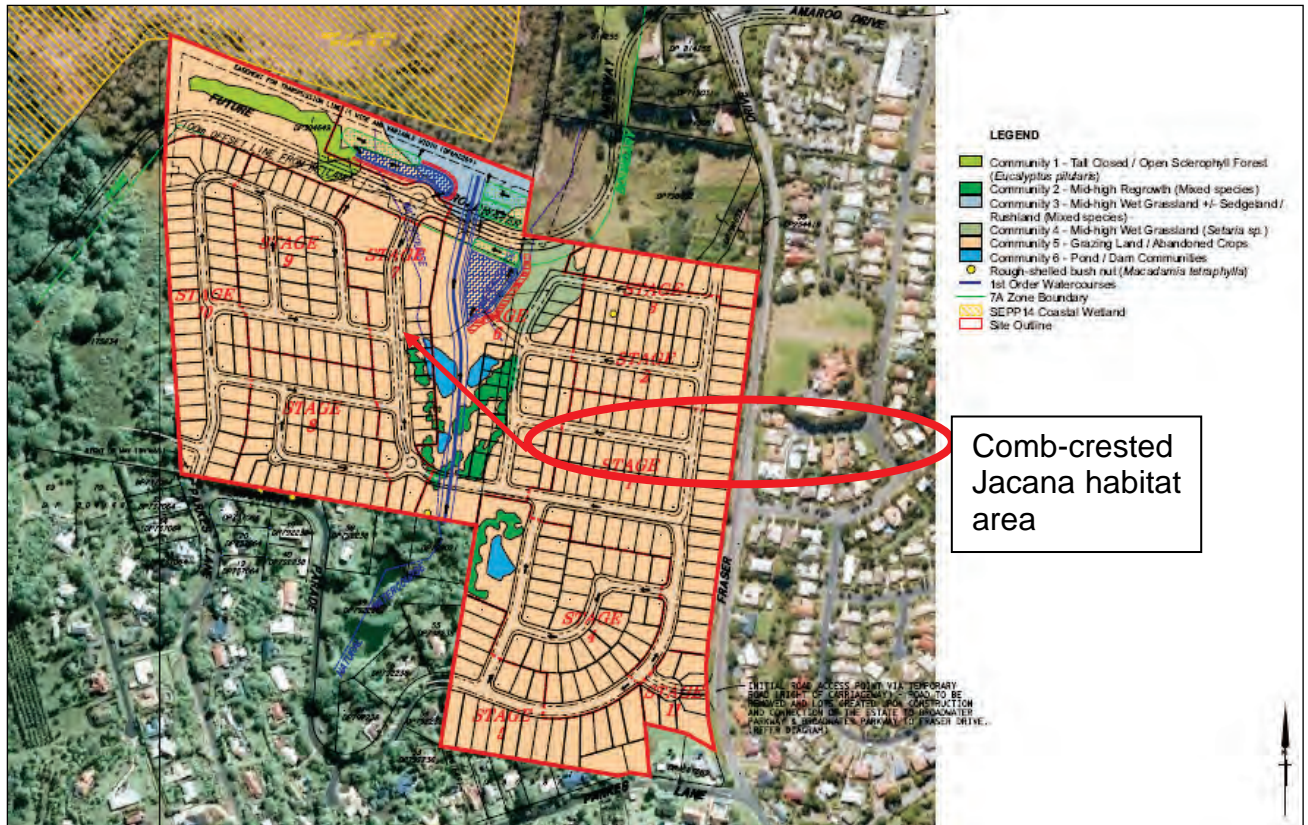
Whilst the drainage line has been incorporated into the stormwater conveyancing system for the proposal, the 3 waterbodies occurring in this area which were identified as providing habitat for the Comb-crested Jacana will be filled, with this area incorporated partly into a stormwater drainage reserve and partly into residential allotments (refer to Figure 6).

The Fauna Assessment (Appendix 3 of the Ecological Assessment), notes Comb-crested Jacana as being recorded within 10km of the site but then notes in the habitat assessment that suitable habitat does not occur on site with dams generally having poor vegetation cover and therefore this species was unlikely to occur.

Consistent with point 13.6 of the DGEAR habitat for the Comb-crested Jacana should be protected and buffered from development where possible within the development site. Waterbodies and buffering vegetation should be retained and incorporated into the Vegetation Management & Rehabilitation Plan area.



**Figure 5: Figure 3.4 of the LES - Constraints Map for Environmental Values of Area E.**



**Figure 6: Environmental features & proposed development (Fig 11 Ecological Assessment).**

### *Rough-shelled Bush Nut*

Five individuals of this species were recorded on the proposal site (refer Figure 11 of JWA Ecological Assessment November 2010). One of these occurs within a proposed residential allotment with translocation of this individual proposed. Whilst the LES did not pick up occurrences of Rough-shelled Bush Nut that occur on the development site, it is noted that occurrences of this species elsewhere within Area E were significant and states that buffering and habitat rehabilitation should be undertaken to protect occurrences of this species on site.

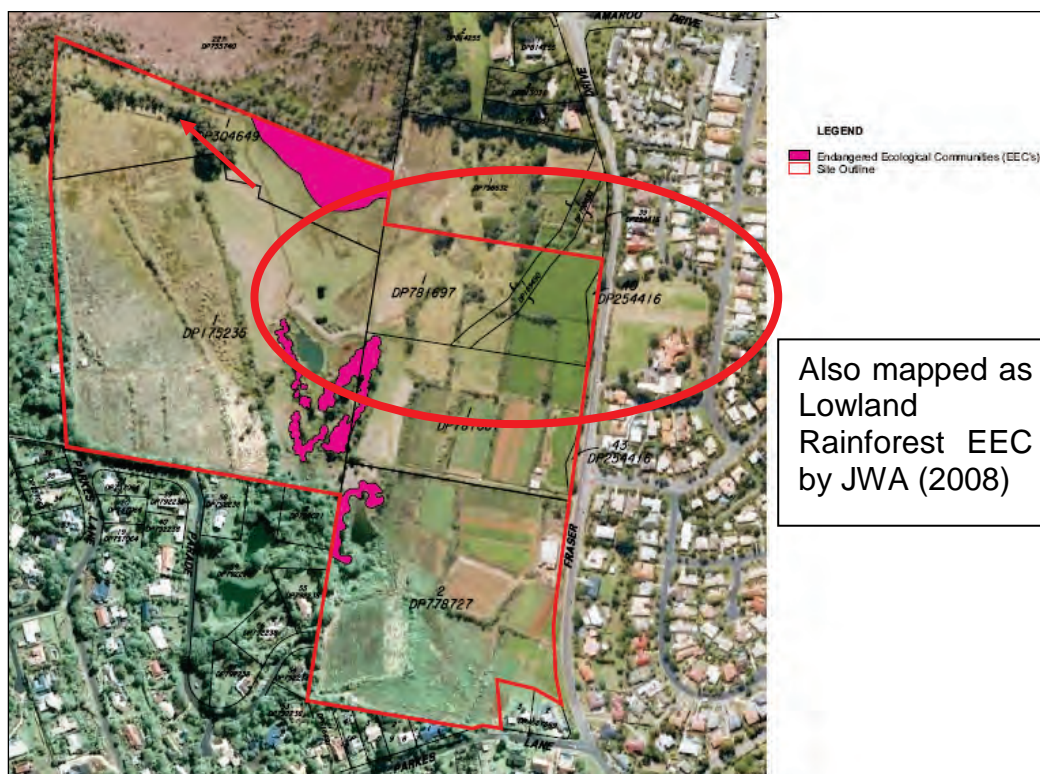
The Amended Ecological Assessment and the Vegetation Management & Rehabilitation Plan do not appear to provide detail on buffering or habitat rehabilitation of the remaining occurrences of Rough-shelled Bush Nut. The proponent needs to provide information on how occurrences of Rough-shelled Bush Nut will be protected, buffered from development and habitat rehabilitated to ensure long term survival, consistent with DGEAR 13.4.

### ***Endangered Ecological Communities (EECs)***

Two EECs were recorded by JWA on the proposal site being Freshwater Wetlands on Coastal Floodplains and Lowland Rainforest. This is relatively consistent with EEC mapping also provided by JWA (March 2008) in the proposed Wetland Restoration Plan Area E Terranora (submitted to Council with the Draft DCP for Area E). However an additional area of Lowland Rainforest EEC was identified on the



proposal site by JWA in 2008, located at the eastern extent of an area of Eucalypt forest (refer to Figure 7). Further investigation and clarification is sought in this regard.



**Figure 7: Mapped Lowland Rainforest EEC on the proposal site (JWA 2008 & 2010)**

#### *Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions*

The proposal notes a large portion of the Lowland Rainforest EEC will be cleared for residential allotments, internal roads and also the central stormwater drain. The significance assessment (7 part test) notes that whilst Lowland Rainforest will be cleared, loss of this EEC will be compensated for through the creation of this EEC along the riparian area of the constructed central drainage line. Creation of an EEC to compensate for EEC clearing is not supported due to the time lapse and level of risk involved in recreating an EEC. Avoidance of EEC clearing is always the preferred option. Creation of an EEC in an area that will have conflicting land uses (i.e. stormwater treatment and conveyance and passive open space) is also not supported. This area is not zoned Environmental Protection and the proposed uses for this area are stormwater management and passive recreation. Therefore the security of a planted Lowland Rainforest EEC can not be assured in the future.

Whilst it is noted in the Ecological Assessment that occurrences of this EEC are regrowth and disturbed, and it is also acknowledged that this area is quite fragmented, the species list of this community indicates high diversity including less common plant species and species that typically occur in more intact stands of rainforest. The species list also notes the occurrence of five Rare or Threatened Australian Plants (as per Briggs & Leigh 1996) including Silverleaf (*Argophyllum*

*nullemense*), Black Walnut (*Endiandra globosa*), Veiny Lace Flower (*Archidendron muellerianum*), Ardisia (*Ardisia bakeri*) and Long-leaved Tuckeroo (*Cupaniopsis newmanii*). No assessment has been undertaken on whether the development will impact on these ROTAPs.

*Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions*

The proposal notes that a portion of Freshwater Wetlands on Coastal Floodplains will be removed in order to create stormwater detention/treatment basins and a stormwater drain (refer to Figure 2). The significance assessment (7 part test) notes that whilst Freshwater Wetlands on Coastal Floodplains will be cleared, loss of this EEC will be compensated for through the creation of this EEC as part of the stormwater management infrastructure.

Creation of an EEC to compensate for EEC clearing is not supported due to the time lapse and level of risk involved in recreating an EEC. Avoidance of EEC clearing is always the preferred option. Creation of an EEC in an area that has the primary function of storing and treating stormwater prior to release into wetland areas is also not supported. Whilst this area is zoned Environmental Protection, future maintenance of stormwater detention basins will mean this recreated EEC (if successful) would be subjected to disturbance for maintenance. Therefore security and ecological function of a recreated Freshwater Wetland in this location can not be assured in the future.

Removal rather than the retention of areas of Lowland Rainforest and Freshwater Wetlands on Coastal Floodplains EECs on the proposal site is also inconsistent with DGEAR 13.4.

With reference to Figure 3.4 of the Area E LES and DGEAR 13.6, the proposal should also provide appropriate buffers and habitat protection measures for known significant ecological habitats. Lowland Rainforest areas occurring along the sites centrally located watercourse are not identified within Figure 3.4 of the LES. However the LES notes that waterway corridors (creek systems with associated vegetation stands) should be retained and integrated into a network of natural onsite stormwater mitigation measures. Whilst these areas are not included in Environmental Protection zoning, controls to protect from development were to be identified and implemented within a Development Control Plan for Area E. According to Figure 3.4 of the LES, the occurrence of Freshwater Wetlands on Coastal Floodplains on the development site is protected within the 50m buffer area of the wetland and lowland rainforest habitat significant ecological area. Clearing of an EEC to provide for urban stormwater management infrastructure in this 50m buffer is not consistent with DGEAR 13.6.

***Wetland rehabilitation and management of salt marsh mosquitoes***

The LES notes that the hydrology of wetland areas at the northern extent of the site and proposal area have been considerably disturbed through drainage construction and as a consequence these areas are now influenced to a greater degree by tidal influences. Prior to drainage construction this area was influenced more by

freshwater from the surrounding catchment. As a result of these disturbances to hydrology, the wetlands provide habitat for salt marsh mosquitoes which unless managed have the potential to impact upon residential development in the area. The LES recommends that the wetland area which has been previously modified will need to be rehabilitated to restore a freshwater regime and subsequently limit salt marsh mosquito breeding habitat. The LES also notes that given the benefit of mosquito management to the whole of Area E these restoration works should be addressed and funded by all developers within the area (inclusive of land included within the current Part 3A application).

The Vegetation Management & Rehabilitation Plan includes no provision to rehabilitate or restore freshwater flows to wetland areas adjacent Trutes Bay. The Vegetation Management & Rehabilitation Plan provides actions for revegetation and assisted regeneration only in the centrally located watercourse/drainage line and a narrow area at the northern extent of the proposal site and adjacent SEPP 14 Coastal Wetlands.

The Biting Insect Management Plan (HMC Environmental Consulting November 2010) notes that *“A Wetland Restoration Plan has been prepared by James Warren & Associates Pty Ltd to address removal of weeds and planting to restore the native vegetation to pre-clearing form within the bunded SEPP 14 wetland area. This restoration, together with the hydrological management via modified floodgates and existing levees is likely to reduce biting insect habitat.”* The Wetland Restoration Plan referred to above was submitted to Council with the Draft DCP for the Terranora Urban Release Area (Area E) but this document has not been approved, neither does there appear to be any commitment from the proponent of this Part 3A application to implement restoration within the large SEPP 14 wetland area in accordance with a Wetland Restoration Plan. Additionally, this Plan does not provide any detail on restoring previously modified hydrology in the area, including restoration of the levee in Area E to retain freshwater and prevent uncontrolled incursions of saltwater during higher tide events (see below).

Whilst it is noted that tidal flushing in this area has been improved through recent modifications to existing floodgates, which in turn increases predator complexes and reduce salt marsh mosquito numbers, the extent that tidal flushing in this area can control salt marsh mosquitoes is limited. There are large areas of freshwater wetlands and forested floodplain communities that occur within and adjacent the SEPP 14 wetland area that need to be protected from tidal inundation. Both the Cobaki and Terranora Broadwater Catchment and Estuary Management Plan (Australian Wetlands 2010) and Council's Entomologist have identified restoration of the bund in Area E to reduce mosquito habitat, with Council's Entomologist noting that levee maintenance as a management strategy would need to be included in any Wetland Restoration Plan.

### Key Outcomes

The area of Comb-crested Jacana habitat occurring along the centrally located drainage line and as noted in the constraints map in Figure 3.4 of the Tweed Area E Local Environment Study (Parsons Brinckerhoff, 2004) should be protected and buffered from the proposed residential development.

Retained occurrences of Rough-shelled Bush Nut should be protected, buffered from development and the surrounding habitat rehabilitated where possible to ensure long term survival.

Occurrences of the five ROTAP species should be retained and protected on the development site wherever possible.

Areas of Lowland Rainforest and Coastal Wetland on Floodplain Endangered Ecological Communities on the proposal site should be avoided, rehabilitated and protected in conservation areas where possible. Clearing of EECs is not supported to construct stormwater infrastructure, create residential allotments and internal roads. Creation of EECs to compensate for clearing is not supported, particularly when creation is proposed within areas not secure from future development and with conflicting land use requirements (stormwater treatment and conveyance and passive open space).

Revegetation of Rainforest and Wetland communities in the Vegetation Management and Rehabilitation Plan area is supported. However, creation of Lowland Rainforest and Coastal Wetland on Floodplain EECs within this area to compensate for clearing of these EECs on the proposal site is not supported. This area will largely be 'operational' land and therefore conservation outcomes conflict with other land use requirements i.e. recreation and stormwater management.

Some of the plant species included in the Landscape Master Plan are unsuitable as they are non-native, cultivars or not locally occurring. Suitable locally occurring native species should be substituted.

The Local Environment Study for Area E recommended restoration of the large northern wetland area which coincides with the 7(a) Environmental Protection zone. A Wetland Restoration Plan was submitted with the Draft Development Control Plan for the Area E site but the Wetland Restoration Plan has not been approved or adopted. Regardless of this, in order to control saltmarsh mosquitoes, and to ensure the wetland is resilient to the impacts of adjacent residential development, the Local Environment Study also notes that given the benefit to the whole of the area, wetland restoration actions should be addressed and funded by all developers within the Area E area. Therefore it is recommended a mechanism is developed to ensure that the development proponent is responsible for funding and implementing restoration within the 7(a) Environmental Protection zone of Area E in accordance with an approved Wetland Restoration Plan, proportional to the extent of the current proposal as part of the whole Area E land release area. The Wetland Restoration Plan must include actions and mechanisms to restore a freshwater regime to the wetland area and control saltmarsh mosquitoes, not just be restricted to actions of weed control and revegetation.

## **CONCLUSION:**

This report highlights some of the key challenges surrounding the development of Area E. It is highlighted that a holistic planning approach is preferred to ensure the most appropriate form of development at the site, in its entirety. Critically, the

progression of the Area E development revolves around the feasibility of a key infrastructure development at the site. To progress with the Part 3A application without finalising these issues is considered undesirable and as such, these concerns have been documented through an initial submission to the Department of Planning.

A holistic planning approach to the development of Area E is necessary to underpin and work through the key issues on site and for the wider community. This work is being undertaken by Council staff. In addition, it is therefore considered an imperative for Council officers to continue to liaise with both the NSW Department of Planning and Metricon and seek the deferral of consideration of the current Part 3A Major Projects application, until a Council endorsed position has been reached on a new Draft DCP and Section 94 Plan for the entire Area E site. The officers will continue to keep Council informed of the progress of this liaison.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

The redevelopment of Terranora Area E needs to be underpinned by comprehensive and sound planning and infrastructure principles. It is essential for Council to put into place a new Development Control Plan and Section 94 Plan for Area E, prior to any further advancement of major development proposals for the site.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Nil

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**12 [PR-CM] Land and Environment Court Judgement relating to Development Application DA08/1056 for Conversion of an Existing Farm Shed to Rural Workers Dwelling at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1056 Pt2**

**SUMMARY OF REPORT:**

This report is a summary of proceedings involved with the Class 1 Appeal against Council's determination in the NSW Land and Environment Court in relation to the refusal of the proposed conversion of an existing farm shed to rural workers dwelling at Lot 1 DP 803636, No. 9 Sanderson Place Dungay (DA08/1056).

A judgement has been handed down in relation to the court hearing, with the appeal being dismissed.

The Class 1 appeal against deemed refusal of the Building Certificate was considered simultaneously by the Court. The judgement included Directions for the applicant to action within set timeframes to the satisfaction of the Court prior to that appeal being finalised.

It should be noted that each party pays their own costs in regard to Class 1 appeals.

**RECOMMENDATION:**

**That the report on Land and Environment Court Judgement relating to Development Application DA08/1056 for the conversion of an existing farm shed to rural workers dwelling at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay be received and noted.**

## **REPORT:**

**Applicant:** J Griffis and P Griffis  
**Owner:** Mr J Griffis and Mrs PJ Griffis  
**Location:** Lot 1 DP 803636, No. 9 Sanderson Place, Dungay  
**Zoning:** 1(a) Rural  
**Cost:** \$70,000

## **BACKGROUND:**

A development application was lodged in 2008 for the conversion of an existing farm shed to rural workers dwelling located within a rural residential and agricultural area, four kilometres north of Murwillumbah. The structure was approved as a farm shed on 4 September 2006. In breach of Condition 26 of the development consent, the farm shed had been converted for use as a dwelling in 2008.

Alterations to the farm shed structure included:

- Alteration of internal walls and general fitout
- Plumbing work to, and increase in area of an existing kitchenette and bathroom
- Plumbing work to a proposed laundry and additional WC
- Installation of windows and doors
- Creation of a garage area.

The development standard within Clause 18(3) of the Tweed Local Environmental Plan 2000 that allows a rural worker's dwelling to be located within the 1(a) Rural Zone was varied up to 95%. Concurrence was not granted by the Director General and the rural worker's dwelling was not considered suitable for the location.

Council officers submitted a report to Council's meeting of 16 March 2010 recommending refusal of DA08/1056. At this meeting Council resolved to defer determination of the application.

The item was presented unchanged to the Council meeting of 18 May 2010 with Council resolving at that meeting to refuse the application.

Following Council's determination, the officers engaged the firm Sparke Helmore Lawyers to act upon Council's resolution to commence legal action (Class 4 proceedings) in respect of the unauthorised use of the shed.

Council was then served notice of a Class 1 Appeal against Council's determination in the NSW Land and Environment Court. At the meeting of 20 July 2010, Council resolved that in respect of its decision to refuse DA08/1056, Council suspend action on the original Council resolution to commence Class 4 proceedings and engage its solicitors to defend the Class 1 Appeal against refusal of the conversion of the farm shed to a rural workers dwelling.

The appeal hearing commenced on site on the morning of 4<sup>th</sup> November 2010. Senior Commissioner Moore (SC Moore) inspected the farm shed structure and

addressed questions to the Applicant, the Applicant's Barrister, Council Officers and Council's Solicitor.

After reconvening in the Murwillumbah Local Court, the matter was deliberated by SC Moore.

During the hearing, SC Moore advised that the Building Certificate application needed to be considered on its own merit, before, and without reference to the consent for the use.

The Applicant was called upon to give evidence. SC Moore was concerned that the arrangement for the rural worker did not involve payment of any wages and may not constitute employment.

Planning evidence was given concurrently. Issues such as 'public interest', 'impact upon rural character and amenity', 'multi-dwelling housing options' and 'land contamination' were discussed.

Submissions were then made for both parties and SC Moore reserved judgement.

The Court handed down judgment in these proceedings on 10 March 2011, as noted in the attached document. The judgement made the following Orders:

1. *The appeal is dismissed.*
2. *Development Application DA08/1056 for approval of the use as a rural worker's dwelling of part of the shed structure constructed pursuant to Development Consent DA06/0827 is determined by refusal of development consent; and*
3. *The exhibits, other than Exhibit 1, 2, A and B, are returned.*

In addition, the judgement made several Directions in relation to the Building Certificate appeal with specific timelines to be observed by the Applicant, as follows:

- External cladding of the building to render it vermin proof and internal lining in the bathroom is to be completed by 9 April 2011 (within 30 days)
- The Court and the Respondent are to be notified of such by 14 April 2011 (35 days)
- All outstanding certificates are to be filed and served by the Applicant by 24 April 2011 (45 days).

Should the Applicant comply with Directions, Orders may be made by the Court requesting Council to issue a Building Certificate within 28 days of those Orders.

Should the Applicant not comply with Directions as outlined in the judgement, the appeal will be dismissed without further reference to the parties.

Council will be advised of the progress of these proceedings in due course.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

As a result of both appeals, Council has incurred legal expenses in the order of \$23,311.12 (up to and including 10 November 2010). It should be noted that additional legal expenses will be incurred from Council's solicitors until the Building Certificate appeal is finalised.

**POLICY IMPLICATIONS:**

In the event that the Court makes an Order for Council to issue the Building Certificate, Council will not be able to take action (Class 4 proceedings), as originally intended, for the additional works to the farm shed to be removed and the structure returned to its approved form.

Under S149E of the Environmental Planning and Assessment Act 1979 (the EP&A Act), a building certificate will operate to prevent Council from making an order requiring the building to be repaired, demolished, altered, added to or rebuilt.

In addition, under S81A(1) of the EP&A Act, a development consent that enables the erection of a building authorises the use of the building for the purpose for which it is erected. Accordingly, the only approved use of the building following the judgement, is as a farm shed.

**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. Court Judgement (ECM 30814824)
-

**13 [PR-CM] Development Application D97/0175.02 for an Amendment to Development Consent D97/0175 for the Establishment of a Brothel/Escort Agency at Lot 6 DP 249122, No. 17 Morton Street, Chinderah**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF3560/60 Pt2**

**SUMMARY OF REPORT:**

The proposed development is for an amendment to an existing brothel within an existing unit of an approved industrial development. The proposal includes internal works on the ground floor which is currently existing and increasing the hours of operation to 24 hours a day, 7 days a week. Overall, the development will have 8 works rooms with associated bar area, reception area, staff room and car parking provisions.

The subject site has an area of 2,970m<sup>2</sup>, with frontage to Morton Street, Chinderah. The site incorporates a three unit factory development and associated car parking.

The proposed hours of operation for the development are 24 hours per day, seven days a week, which is not in strict compliance with Council's DCP 8 – Brothels Policy of 6pm to 6am, and the recently publicly exhibited Draft Brothel Code.

The application was advertised for a period of 14 days, during which time no submissions were received.

Having considered all issues raised by the submissions, in addition to the statutory assessment, the proposed development is recommended for conditional approval.

**RECOMMENDATION:**

**That Development Application D97/0175.02 for an amendment to Development Consent D97/0175 for the establishment of a brothel/escort agency at Lot 6 DP 249122, No. 17 Morton Street, Chinderah be approved and the consent be amended as follows:**

- 1. Delete Condition No. 3 and replace it with Condition No. 3A which reads as follows:**
  - 3A. Fourteen (14) car parking spaces are to be provided and marked out in accordance with the plan submitted with the application**

in accordance with Tweed Development Control Plan Section A2 - Site Access and Parking Code.

2. Delete Condition No. 5 and replace it with Condition No. 5A which reads as follows:

5A. The establishment shall operate 24 hours a day, 7 days a week.

3. Delete Condition No. 10 and replace it with Condition No. 10A which reads as follows:

**10A. Section 94 Contributions**

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Occupation 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, Tumbulgun Road, Murwillumbah and Brett Street, Tweed Heads.

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

40.9615 Trips @ \$861 per Trips \$35268

(\$782 base rate + \$79 indexation)

S94 Plan No. 4

Sector6\_4

**NOTE:** Previous Section 94 contributions have been received for the original development. A total of \$15,879.00 was received on 31/10/97 (receipt number 017139). As such the contributions in Condition 10A and 10B relate to the proposed additions.

4. **Addition of new Condition No. 11 as there are additional section 64 water and sewer charges applicable to the subject site with the additional Gross Floor Area and which reads as follows:**

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

**Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Occupation 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 DSP5:            2 ET @ \$11020 per ET                            \$22040**

**Sewer Kingscliff:    2.5 ET @ \$5295 per ET                            \$13237.50**

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

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

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

5. **Addition of new Condition No. 12 as there is new building work that currently exists which has not received approval and which reads as follows:**

12. **Prior to the issue of an occupation certificate a Building Certificate in respect of the unauthorized building works the subject of this Section 96 application is to be obtained from Council. Such Building Certificate application is to include;**

**i. Certification from an "accredited certifier" that the construction of the above mentioned works satisfies the requirements contained within Volume One of the Building Code of Australia 2010.**

**ii. A Structural Engineer's "Certificate of Adequacy" certifying that the above mentioned works are structurally**

**adequate in terms of resisting live and dead loads associated with its use.**

- iii. A fire safety certificate is to be submitted for all essential fire safety measures that are installed in the building inclusive of those contained in the additional building components the subject of this section 96 application. This certificate is to confirm that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.**



**REPORT:**

**Applicant:** Venus Lounge  
**Owner:** 17ms Pty Ltd  
**Location:** Lot 6 DP 249122, No. 17 Morton Street, Chinderah  
**Zoning:** 4(a) Industrial  
**Cost:** N/A

**BACKGROUND:**

Council is in receipt of an application to amend the hours of operation to 24 hours a day, 7 days a week and to make additions to an existing brothel at the subject site. The site is legally described a lot 6 DP 249122, located at 17 Morton St Chinderah. The subject land has an area of 2,970m<sup>2</sup> and is zoned 4(a) industrial. Existing development on site includes three factory buildings and associated car parking. The units not utilised for the brothel are approved industrial uses for the manufacturing of aluminium windows and doors and Tweed Coast Glass.

The brothel was approved via D97/0175 on 12/08/1997 and amended via D97/9175 on 21/11/1997. DA08/0895 involved extensions for the use of the building to produce aluminium windows and doors. The consent created an additional 438m<sup>2</sup>.

**REQUESTED AMENDMENTS:**

The proposed development is to amend the current conditions of consent. The following conditions are to be amended.

**Current Condition 3 is requested to be deleted as there are an additional 8 car parking spaces to be provided for the proposal. Therefore it is requested that the following condition be deleted:**

3. Six (6) car parking spaces to be provided and marked out in accordance with the Plan submitted with the application, prior to occupation of the premises for the approved use, with an amendment to the layout of the car parking to allow for a 1 metre wide pedestrian access between car spaces 2 and 3 for staff pedestrian access.

**Is recommended to be amended to:**

- 3A. Fourteen (14) car parking spaces are to be provided and marked out in accordance with the plan submitted with the application in accordance with Tweed Development Control Plan Section A2 - *Site Access and Parking Code*.

**Current Condition 5 is requested to be deleted as the applicant requests a 24 hour, 7 day a week operation. Therefore it is requested that the following condition be deleted:**

5. The establishment shall only operate between the hours of 6.00pm and 6.00am.

**Is recommended to be amended to:**

5A. The establishment shall operate 24 hours a day, 7 days a week.

**Current Condition 10 is requested to be deleted as there are additional charges applicable to the subject site with the additional Gross Floor Area. Therefore it is requested that the following condition be deleted:**

10. Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan prior to the release of the linen plan of subdivision or approved building plans/certificates. These charges will remain fixed for a period of 12 months from the date of this approval and thereafter in accordance with the rates applicable in the relevant section 94 current at the time of payment.

a. Tweed Road Contribution Plan: S94 Plan No 4 (Version 4.0) \$15,879

This payment can be paid in full or over a period of 3 years consisting of an initial payment of 3,969.75 (in cash) and three subsequent payments of \$3,969.75 (in cash) every 12 months together with a bank guarantee as security in the amount of \$11,909.25 to accompany the first cash payment.

**Is recommended to be amended to:**

10A. **Section 94 Contributions**

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Occupation 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:

40.9615 Trips @ \$861 per Trips	\$35,268
(\$782 base rate + \$79 indexation)	

S94 Plan No. 4

Sector6\_4

NOTE: Previous Section 94 contributions have been received for the original development. A total of **\$15,879.00** was received on 31/10/97 (receipt number 01 7139). As such the contributions in the condition 10A, and 10B relate to the proposed additions.

**A new condition shall be inserted as there are additional section 64 water and sewer charges applicable to the subject site with the additional Gross Floor Area**

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Occupation 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 DSP5:	2 ET @ \$11020 per ET	\$22,040
Sewer Kingscliff:	2.5 ET @ \$5295 per ET	\$13,237.50

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

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

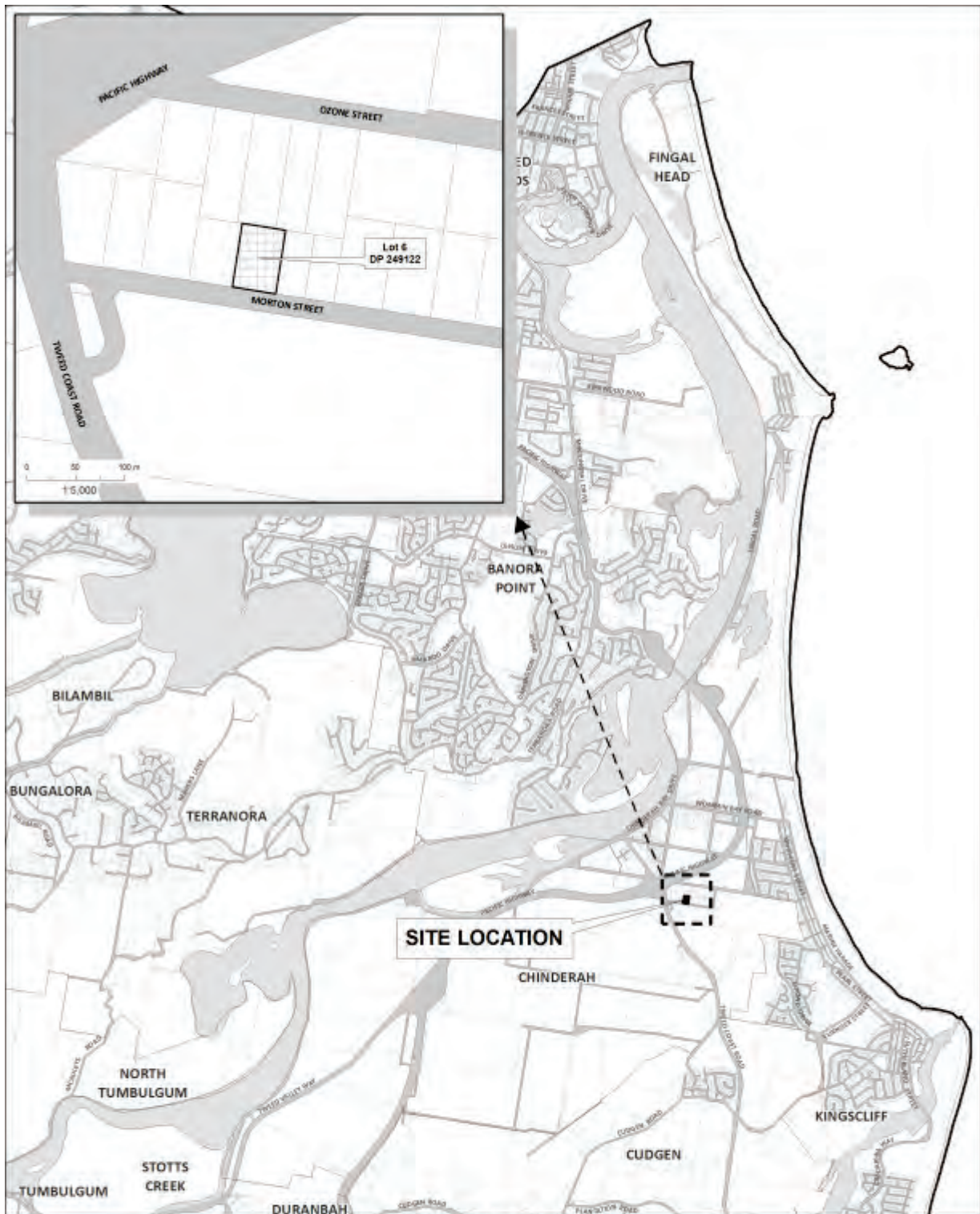
Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

**A new condition shall be inserted as there is new building work that currently exists which has not received approval.**

12. Prior to the issue of an occupation certificate a Building Certificate in respect of the unauthorized building works the subject of this Section 96 application is to be obtained from Council. Such Building Certificate application is to include;
- Certification from an "accredited certifier" that the construction of the above mentioned works satisfies the requirements contained within Volume One of the Building Code of Australia 2010.

- ii. A Structural Engineer's "Certificate of Adequacy" certifying that the above mentioned works are structurally adequate in terms of resisting live and dead loads associated with its use.
- iii. A fire safety certificate is to be submitted for all essential fire safety measures that are installed in the building inclusive of those contained in the additional building components the subject of this section 96 application. This certificate is to confirm that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

**SITE DIAGRAM:**



**Locality Plan**

Lot 6 DP 249122  
No. 17 Morton Street, Chinderah

Disclaimer: While every care is taken to ensure the accuracy of this Site, 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 actions or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for surveys or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

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Boundaries shown should be considered approximate only.

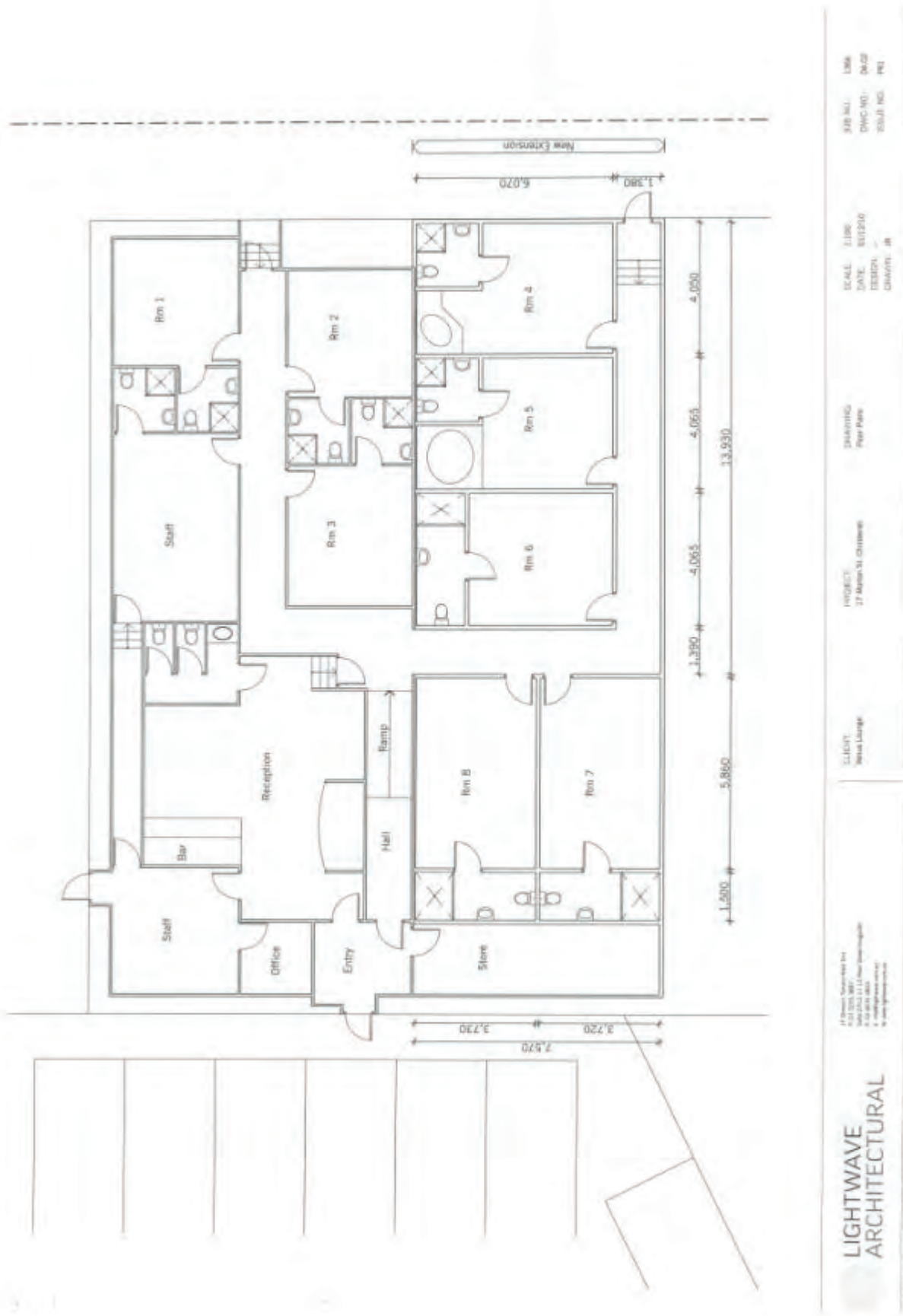


Civic and Cultural Centre  
3 Tumbulgum Road  
Murumbidgee NSW 2484  
PO Box 816  
Murumbidgee NSW 2484  
T (02) 6670 2400 | 1300 292 672  
F (02) 6670 2429  
W www.tweed.nsw.gov.au  
E planningreform@tweed.nsw.gov.au



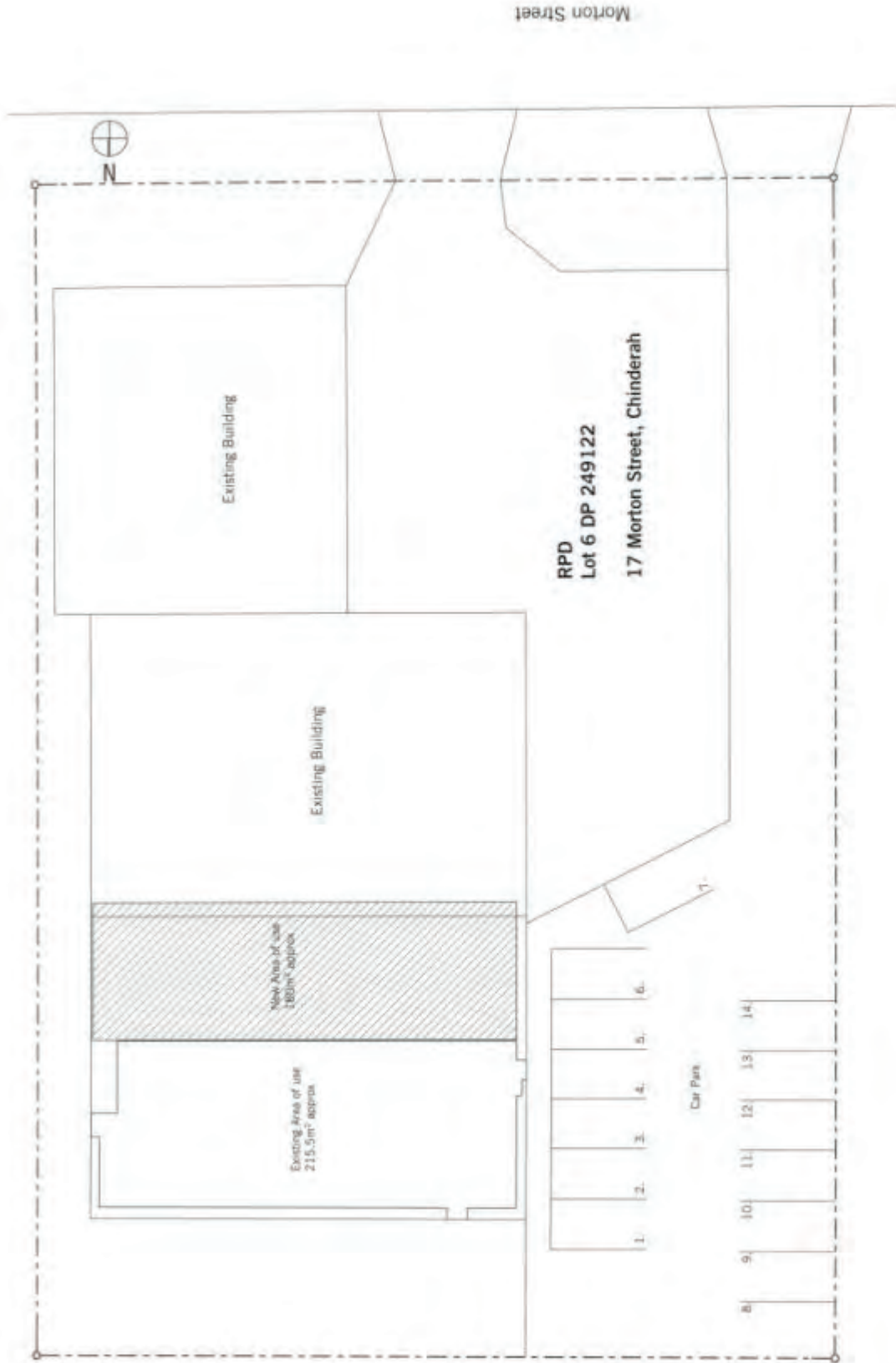


**DEVELOPMENT PLANS:**









**LIGHTWAVE ARCHITECTURAL**

14 Avenue, Mudgee NSW 2878  
 Ph: 02 3555 2881 Fax: 02 3555 2882  
 Email: info@lightwave.com.au  
 www.lightwave.com.au

CLIENT: Miss Louisa

PROJECT: 17 Morton St, Chinderah

DRAWING: Site Plan

SCALE: 1:200  
DATE: 01/03/11  
DESIGNER: [Signature]  
DRAWN: [Signature]

JOB NO.: 3348  
DWG NO.: 34.01  
ISSUE NO.: 001

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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*.

Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

The proposed development is considered to meet the provisions of Clause 4 by way of maximising the use of the property whilst being compatible with the existing and future streetscape and amenity of the area.

**Clause 5 - Ecologically Sustainable Development**

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

Appropriate conditions of consent have been applied, which will ensure that the proposed development will not significantly impact upon the surrounding residences or locality. As such, the proposed development is considered to meet the provisions of Clause 5 of the LEP.

**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.*

As noted below, the proposed development is considered to meet one of the primary objectives of the zone. The proposal generally complies with Clause 8(a).

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 proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

#### Clause 11 - Zone objectives

The subject site is zoned 4(a) Industrial under the provisions of the LEP. The objectives of this zone are:

##### *Primary objectives*

- *to provide land primarily for industrial development.*
- *to facilitate economic activity and employment generation.*

##### *Secondary objective*

- *to allow non-industrial development which either provides a direct service to industrial activities and their work force, or which, due to its type, nature or scale, is inappropriate to be located in another zone.*

The proposed development is defined as a 'brothel' under the provisions of the LEP, which is permissible with consent and is considered to be consistent with the second primary objective and the secondary zone objective.

#### Clause 15 - Essential Services

All essential services are currently available to the site.

#### Clause 16 - Height of Building

The height of the building will not change as a result of this application.

#### Clause 17 - Social Impact Assessment

It is considered that a Social Impact Assessment is not required for the proposed development as it is currently existing and the change in hours of operation are considered minor.

#### Clause 34 - Flooding

The proposal is consistent with the requirements of Clause 34 of the Tweed LEP 2000 as there is no additional building being created.

#### Clause 35 - Acid Sulfate Soils

The subject property is identified as having Class 3 Acid Sulfate Soils. As there is no external building work proposed it is considered that there will be no disturbance to the Acid Sulfate Soils.

#### Other Specific Clauses

There are no other clauses applicable to the development

### **State Environmental Planning Policies**

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

##### Clause 32B: Coastal Lands

This Clause requires the consideration of the NSW Coastal Policy, Coastline Management Manual and the North Coast Design Guidelines for proposals on coastal lands; and also contains provisions relating to public access to the foreshore.

The proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy and the Coastline Management Manual. The development is not sited near any foreshore or beach. Accordingly, the proposal fully complies with this clause of the REP.

##### SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration, subject to appropriate conditions of consent. Specifically the proposed development is considered compatible with the intent for the development of the locality.

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

##### Draft Tweed LEP 2010

Under the Draft LEP 2010, the subject site is zoned IN1 – General Industrial. The proposed development would be defined as a “Sex Services Premises”. A sex services premises is permissible with consent within the IN1 General Industrial zone.

Clause 7.10 of the Draft LEP 2010 the consent authority to be satisfied that there will be no unacceptable impacts on adjoining land uses. Based

on the assessment undertaken for this application, the proposal meets the provisions of the Draft LEP.

### Draft Tweed Brothel Code Section A8 - Tweed DCP 2008

Council resolved on 14 December 2010 to publicly exhibit the Draft Tweed Brothel Code, Part A8 of the Tweed DCP. The Draft DCP has been reported separately to Council's April 2011 meeting for adoption. The provisions within the Plan are designed to ensure minimal impact on the broader community by regulating a variety of key criterion relating to building form and location. It is considered that as the brothel is currently approved and this application is for amendments to an approved brothel the majority of the objectives have been complied with.

Part D, Section 11 relates to Hours of Operation. Part D, Section 11 relates to Hours of Operation. Control a) states *a brothels' hours of operation is 6pm to 6am, with no public services provided between 6am to 6pm.* The hours of operation has been discussed further in this report below.

It is therefore considered that the proposed development is generally consistent with Draft DCP Section A8.

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

### Tweed Development Control Plan

#### **A2 - Site Access and Parking Code**

The original approval (for the existing building under D97/175) provided for 3 working rooms and 6 car spaces. The proposed modifications for the building incorporate an additional 5 working rooms and 8 car spaces which have been existing for a number of years. The car parking rate is 1 space per 40m<sup>2</sup> of Gross Floor Area. The building will have a total area of 395.5m<sup>2</sup> which requires a total of 9.8 spaces. The applicant has provided a total of 14 car parking spaces which is in excess of the required. It is therefore considered that the proposal complies with the car parking code.

#### **A8-Brothels Policy**

##### **A8.3 - Planning Matters to be considered in Assessing a Brothel Application**

The policy specifies that the following matters be considered by Council when assessing an application for a brothel:

- *The distance between the premises and churches, schools, community facilities, hospitals, medical centres and any place regularly frequented by children for recreational or cultural activities;*

None of the above are within close proximity to the site or have direct line of sight to the subject site. All churches, schools and playing fields range between 517.6m and 2323.7m from the site. It is considered that the brothel will not impact upon any of the abovementioned facilities or activities.

- *Whether the operation of the brothel could affect the character of the neighbourhood when taking into account other brothels operating in the neighbourhood;*

The Venus Lounge is located within one (1) of three (3) tenancies at 17 Morton Street, Chinderah (an industrial estate). Of the three tenancies the Venus Lounge is located at the rear of the site behind Tweed Coast Glass and Wintec Aluminium. The only element visible from the street is the existing signage and access driveway. The Brothel has no adverse effect on surrounding uses.

- *Whether sufficient off-street parking has been provided if appropriate in the circumstances;*

Overall the site proposes 14 off street car spaces allocated to the brothel. As a result, the proposal meets the requirements of Council's DCP A2 – Site Access and Parking.

- *Whether suitable access has been provided to the brothel;*

There is no change to the access provided to the brothel. The doors are not viewable from the public road.

- *Whether the operation of the brothel could cause a disturbance in the neighbourhood because of its size, operating hours, and the number of employees and/or clients and the proximity of other brothels;*

The proposed development has requested 24 hour trading hours, as opposed to the DCP's recommended 6pm to 6am hours of operation. The majority of the surrounding land uses do not open late at night and are therefore unlikely to conflict with the proposal during these times.

Whilst it is acknowledged that the proposal does not comply with the provisions of the DCP in terms of hours of operation during the day, the brothel is not considered likely to cause a disturbance in the neighbourhood as a result. That is: the proposal has 8 work rooms which limits the number of clients at any one time; the setback entry point from the street results in visitors to the premises being inconspicuous; and the surrounding land use is predominantly industrial.

- *Whether the operation of the brothel could interfere with the amenity of the neighbourhood;*

With regard to amenity of the neighbourhood, the proposed brothel is considered to be acceptable. The front of the building is low key in that it simply appears as part of the overall factory unit development and the

building is set well back from the road reserve. No new signage is proposed that would alert a passer-by to the fact that a brothel is located in that location.

- *The types of advertising signs and structures.*

No change is proposed to the existing approved signage. The existing sign is limited to business name. The proposal remains consistent with Clause 47 of the TLEP and Section A4 of the TDCP 2008.

Based on the above assessment, the proposed development is considered to be acceptable, subject to conditions of consent.

#### **A8.4 – Specific Planning Requirements for Brothels**

The following table compares the level of compliance of the proposal with the specific requirements provided in Section 8.4 of Council’s adopted Development Control Plan A8 – Brothels Policy:-

<b>DEVELOPMENT STANDARD</b>	<b>DCP A8 REQUIREMENTS</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIES</b>
Parking	1 space per 40m <sup>2</sup> GFA @ 395.5 m <sup>2</sup> = 10 spaces	14 spaces	Yes
Signage	non-interference with amenity of neighbourhood	not considered likely to interfere with existing amenity	Yes
Location	- not in a shopfront situation in a shopping street	the site is not located in a shopping street	Yes
	- not where conflict or adverse impacts exist with surrounding uses	not considered likely given the setback from the street (>38m) and the fact that development across the street does not face Morton Street.	Yes
	- no points of public access to be located near or within direct view of a church, school, children’s recreational play area or the like	the nearest children’s recreational area is approx 500m away from the subject site, with no direct view of the proposal.	Yes
	- no points of access to be located directly opposite, adjacent to or within 50m of a bus stop	the nearest bus stop is approx 200m walking distance (on Tweed Coast Road) from the brothel and visibility is obscured by other existing development	Yes
Hours of Operation	6pm to 6am	the proposal seeks 24hr operating hours	No (see comment)
Initial Limits on Development Consents	12 months	The brothel has been in operation for numerous years	No (see comment)

The variations sought to the DCP are addressed below:

### **Hours of Operation**

Section 8.4 of DCP A8 states:

*“Hours of operation are to be limited to those of between 6pm and 6am. That is, no trading will be permitted from 6am to 6pm daily.”*

In this regard the applicant has sought a variation to the stated requirements based on the following justification:

*“The hours of operation are proposed at 24hrs a day, 7 days a week. The 6am to 6pm operating hours contained within the DCP and as a condition of the existing development consent are clearly unjustified in this particular circumstance given the extent of compliance with all location requirements of the DCP.*

*Of particular note in assessing the proposed modification to the Venus Lounge operating hours is the decision of the Land & Environment Court in the matter of Mavrik Pty Ltd vs. Tweed Shire Council (Appeal No.0275/2002, Commissioner Hussey – 23 December 2002). The decision upheld an appeal with respect to the establishment of a Brothel on industrial zoned land at Ourimbah Road, Tweed Heads.*

*In upholding the appeal the commissioner considered the question of a condition limiting operating hours to 6am to 6pm as included within the requirements of DCP31 (now Section A8). The commissioner refused to impose a condition on the operating hours, making the following comments in the judgement:*

*'51. Condition 54; this proposal is for the use of the premises on the basis of 24 hours a day, for 7 days a week. This does not comply with the provisions of DCP31, which restricts the use from 6pm to 6am. In addition to the applicant's evidence, I have considered the comments of the council officers report who said that, "it is necessary to consider the broader implications of limiting the operating hours of the proposal. As such, the limiting of operating hours to preclude those times when a significant portion of business is likely to occur may have a detrimental impact on the economic viability of the business. By comparison the viability of the brothel in terms of operating hours is not dissimilar to many fast food outlets, service stations and restaurants, which are generally permitted to operate beyond the stated hours of operation and within the same 4(a) industrial zone. Whilst these land uses activities may not attract the same intensity of moral objection they do nonetheless provide similar impacts to that likely to occur as a result of the proposal".*



*'52. Therefore I consider the proposed 24-hour operation of the brothels satisfactory and consistent with the zone objectives'.*

*Operation on a 24 hour basis would increase the number of personnel (sex workers, cleaners, reception etc) able to be employed by the business. One of the two (2) primary objectives of the 4(a) industrial zone is:*

*"To facilitate economic activity and employment generation".*

*Approval of the application would improve the economic outcome of the business and directly accomplish that objective.*

*In addition to the above judgment, the Land & Environment Court of New South Wales has established a planning principle 'Location of Brothels' (refer *Martyn v Hornsby Shire Council* [2004] NSt4/ LEC 614). The criteria for locating brothels are as follows:*

- Brothels are a legal land use that benefits some sections of the community but offends others. Most people believe that the exposure of impressionable groups like children and adolescents to the existence of brothels is undesirable. The aim should therefore be to locate brothels where they are least likely to offend. However, criteria for locating brothels should not be so onerous as to exclude them from all areas of a municipality.*
- Brothels should be located to minimise adverse physical impact, such as noise disturbance and overlooking. In this aspect they are no different from other /and uses.*
- There is no evidence that brothels in general are associated with crime or drug use. Where crime or drugs are in contention in relation to a particular brothel application, this should be supported by evidence.*
- Brothels should not adjoin areas that are zoned residential, or be clearly visible from them. Visibility is sometimes a function of distance, but not always.*
- Brothels should not adjoin, or be clearly visible from schools, educational institutions for young people or places where children and adolescents regularly gather. this does not mean, however, that brothels should be excluded from every street on which children may walk.*
- The relationship of brothels to places of worship (which are likely to attract people who are offended by brothels) is a sensitive one. The existence of a brothel should not be clearly visible from places where worshippers regularly gather.*
- There is no need to exclude brothels from every stop on a public transport route. However, it would not be*

*appropriate to locate a brothel next to a bus stop regularly used by school buses.*

- *Where a brothel is proposed in proximity to several others, it should be considered in the context that a concentration is likely to change the character of the street or area. In some cases this may be consistent with the desired future character, in others not.*
- *The access to brothels should be discreet and discourage clients gathering or waiting on the street. Apart from areas where brothels, sex shop and strip clubs predominate, signage should be restricted to the address and telephone number.*

*The proposal meets all of the location criteria established by this planning principle; particularly reference is made to the co-location of brothels. A second Brothel is located at No.33 Morton Street Chinderah. The two Brothels have been operating in the area for a considerable period and are now an established part of the area. The proposed extension to operating hours will see no change to the streetscape or impact on the desired future character.*

*Given the proposal meets the location criteria established in Tweed DCP Section A8, meets the criteria established by the Land & Environment Court; and is consistent with the zone objectives there is no planning grounds on which to continue to restrict the hours of operation. Council support for the proposed amendment to the operating hours is respectfully requested.*

**Comment:**

In respect of the above it is considered that several of the applicant's arguments have merit. Therefore, to adequately assess the appropriateness of the proposed variation in the context of the proposed development, consideration must be given to: the Tweed Local Environmental Plan 2000 - zone objectives; and the Land and Environment Court Judgement - Mavrik Pty Ltd v Tweed Shire Council.

In terms of the 4(a) Industrial zone primary objectives (*to facilitate economic activity and employment generation*), the proposed development is anticipated to provide additional employment positions and is likely to contribute to the economic diversity of the Shire. However, to achieve a level of viability and sustainability the operating environment must, as with any other business activity, be tailored to the proposed development. In this regard the variation sought in respect of the hours of operation is not considered contrary to the primary objective of the zone for the following reasons:

- extending operating times will have no effect on the land-use zoning in facilitating further economic activity;

- extending the operating times will assist in securing the sustainability and viability of the business, which in turn secures employment positions; and
- extending the operating times of the proposed development is not likely to have an impact on the employment generation capability of other businesses in the locality or on the land-use zoning.

Council has determined, via the adoption of prohibitive exclusion in other zones as provided by TLEP 2000, that brothels are only suited to the 4(a) Industrial zoned lands.

In light of the above, it is concluded that the variation being sought to the operating hours of the proposed development is not contrary to the stated objectives of the Tweed LEP 2000. In this regard it must be noted that unnecessarily restricting the operating hours would act as a further prohibition to the development and which may undermine the zoning objectives.

With regard to the NSW Land and Environment Court in the matter of Mavrik Pty Ltd v Tweed Shire Council with regard to limiting the hours of operation from 6pm to 6am, the Court provided:

*“The limiting of operating hours to preclude those times when a significant portion of business is likely to occur may have a detrimental impact on the economic viability of the business. By comparison the viability of the brothel in terms of operating hours is not dissimilar to many fast food outlets, service stations and restaurants, which are generally permitted to operate beyond the stated hours of operation and within the same 4(a) Industrial zone. Whilst these land uses activities may not attract the same intensity of moral objection they do nonetheless provide similar impacts to that likely to occur as a result of the proposal.*

*Therefore I consider the proposed 24-hour operation of the brothel is satisfactory and consistent with the zone objectives”.*

It is considered that the proposed location of the premise is relatively discreet and is not largely exposed to the general public. This is not to say that providing unrestricted operating hours will not be without undesirable behaviour, as suggested in the public submissions. Based on the information held in previous Council's records; there exists no significant evidence to suggest that unruly or detrimental activities will occur as a result of extending operating hours to include ordinary business hours.

Having considered the applicant's justification for the proposed variation and having considered the merits of the case it is concluded that the hours of operation provided in the DCP are both unnecessary and unreasonable in this instance. In this regard it is proposed that the hours

of operation be extended to include the hours between 6.00am and 6.00pm.

### **Initial Limits on Development Consents**

Section 8.4 of DCP A8 states:

*“Development consents granted to brothel applications may be initially limited to a period of twelve (12) months. At the completion of this period, Council will re-evaluate the proposal in terms of any complaints received regarding the approval operations, and compliance with any conditions of development consent.”*

The brothel currently exists. As such it is considered that this section is not applicable to the proposal.

### **A13 - Socio-Economic Impact Assessment**

DCP A13 identifies a brothel as requiring a Socio-Economic Impact Assessment. As the brothel has been existing on the subject site for over a decade it is considered that a socio-economic impact statement is not required.

Given the discrete location and relatively minor scale and context (in the industrial estate), the proposed development is considered to be acceptable in terms of socio-economic impact upon the local community. Potential social issues have been addressed previously and overlap with the DCP A8 – Brothel Policy assessment.

### **CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

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

### **Likely Environmental Impact**

An extensive assessment has been undertaken with regard to the proposed modifications to the approved brothel, as noted in the 79C assessment above.

In conclusion, the proposed amendments are not considered to result in any significant environmental impact, subject to appropriate conditions of consent.

### **Substantially the Same Development**

The submission put forward by the applicant with regard to the proposed modifications being substantially the same development as that originally approved is concurred with. The proposed increase in hours of operation and the proposed extensions are considered minor in nature and will not create an adverse affect in the community.

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

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

The subject site is located within the Coastal Zone and as such the provisions of the Coastal Policy apply to the site. The proposed development is consistent with the objectives of the Coastal Policy.

##### Clause 94 Buildings to be upgraded

Council's Building Services Unit has assessed the proposed development against the relevant provisions of the Building Code of Australia. They have provided no comments.

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

The proposed development is located in a building that currently exists. There is not considered to be any impacts upon any coastal management zone as a result of this application.

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

There are not considered to be any other likely impacts as a result of the application. The proposal is minor in nature.

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

##### Surrounding Landuses/Development

The brothel has been existing in its current location since 1997. The site is situated within an industrial zone surrounded by industrial uses. It is therefore considered that the subject site is suited to the proposed use and there will be no additional impacts on the surrounding locality.

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

The proposed development was an exhibition for 14 days from Monday 18 October 2010 to Monday 1 November 2010. During this time, no submissions received.

NSW Police

A copy of the proposed development was forwarded to the NSW Police for comment. No objections were raised by the Local Area Command.

**(e) Public interest**

Subject to the proposed amendments to the conditions of consent, the proposal generally complies with all the applicable provisions and is considered to be in accordance with the public interest, with no significant impacts anticipated for the future adjoining landowners.

**OPTIONS:**

1. Approve the application with appropriate amended conditions of consent.
2. Refuse the application and provide grounds for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should Council resolve to refuse the application the applicant may lodge an appeal with the NSW Land & Environment Court.

**POLICY IMPLICATIONS:**

The proposed development has been entirely assessed on its merits and for that reason the development does not generate a policy implication for Council.

**CONCLUSION:**

In summary, the proposal has attracted no submissions and has raised no objections with the NSW Police. It is considered that the development will generally be compatible with the existing industrial development and local environment.

It is considered that to refuse the proposal on purely moral these grounds would be difficult to sustain should the matter be pursued in the Land and Environment Court.

On balance it is considered that the proposal is suitable for conditional approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**14 [PR-CM] Development Application DA10/0480 for the Demolition of Existing Dwellings and Construction of a Refreshment Room and Ancillary Function Centre at Lots 9 and 10 Section 4 DP 2974 Nos. 9-11 River Street, South Murwillumbah and Road 5190 Stafford S**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0480 Pt2**

**SUMMARY OF REPORT:**

Development Application DA10/0480 is for a proposed refreshment room and ancillary function centre to be located at 9 - 11 River Street, South Murwillumbah. The Centre is proposed to be a two storey development consisting of ground level parking and entry, and upper floor Refreshment Room/Function Areas incorporating a commercial kitchen, bar, dining areas, office, associated facilities and storage. The application is being reported to Council at the request of Councillor Youngblutt.

There has been some confusion throughout this DA process as to the intended use of the new building. However, it was qualified within the Amended Acoustic Report, dated 17 January 2011, which accompanies the most recent amended plans, that the building will be used as a "refreshment room with ancillary function area".

The applicant proposes to provide twenty-one (21) car parking spaces on site.

The proposed hours of operation for the development are:

- Monday – Thursday 9.30am – 9.30pm
- Friday 9.30 am – 11.00pm
- Saturday 8.00am – 12.00am (midnight to allow for functions)
- Sunday 8.00am – 9.30pm

Council at its meeting held on 14 December 2010 resolved to defer the application so that amended plans can be reported, at a future Council meeting. The applicant provided additional information and amended plans on 21 December 2010 and 8 February 2011 which this report relates to.

It is considered that the proposed function centre arrangement will unreasonably impact upon the amenity of the adjoining residential dwellings and cannot adequately provide on-site car parking to cater for the proposal, and it is therefore recommended that the application be refused.

**RECOMMENDATION:**

**That Development Application DA10/0480 for the demolition of existing dwellings and construction of a refreshment and ancillary function centre at Lots 9 and 10 Section 4 DP 2974; Nos. 9-11 River Street, South Murwillumbah and Road 5190 Stafford Street, South Murwillumbah be refused for the following reasons:**

- 1. The application has failed to satisfy Clause 8(1) of the Tweed LEP 2000 specifically Clause 8(1)(c). The development will have an adverse cumulative impact in the shire created by lack of car parking spaces.**
- 2. The application is not considered satisfactory with regard to parking and access. Adequate car parking has not been provided in accordance with Tweed Shire Council Development Control Plan Section A2 - Site Access and Parking Code.**

**REPORT:**

**Applicant:** Mr C Dudgeon  
**Owner:** Mr CI Dudgeon and Mrs RJ Dudgeon  
**Location:** Lots 9 and 10 Section 4 DP 2974, Nos. 9-11 River Street, South Murwillumbah and Road 5190 Stafford Street, South Murwillumbah  
**Zoning:** 3(c) Commerce and Trade  
**Cost:** \$960,000

**BACKGROUND:**

The original DA for a function centre was submitted to Council on 20 July 2010 with sections of the report also referring to partial and possible dual use of the building as a restaurant. The application submitted proposed a building of two storeys consisting of ground level parking and entry, and upper floor Function Areas/restaurant incorporating a commercial kitchen, bar, dining areas, office, associated facilities and storage.

The proposal was submitted to the December Council meeting with a recommendation for refusal. Council resolved at the meeting to defer the decision in order for the applicant to amend the plans to resolve the areas of concern.

The building contains large timber decks orientated to the River at the rear and to the River Street frontage.

The building is to be constructed using a variety of building materials – including a rendered painted block work, decorative stonework, weatherboard and metal roofing.

The applicant provided additional information and amended plans on 21 December 2010 and 8 February 2011, for which this report relates to. It was also clarified within these submissions that the proposal involves a "refreshment room with an ancillary function room" use.

The applicant amended the function centre component of the development to cater for 79 seats and 5 staff. As such the development requires a total of 26.2 car parking spaces to cater for the Function Centre component of the proposed. With a 20% reduction for ESD reduction the total number required for the function centre component is 21 car parking spaces.

The applicant submits that there is 100.48m<sup>2</sup> of dining area and 5 staff for the refreshment room which would result in a requirement of 19.3. With a 20% ESD reduction, the total number required for the refreshment room component is 16 car parking spaces.

The applicant has proposed 21 on site car parking spaces.

After discussions with internal sections within Council and the applicant it was considered that there are still issues surrounding calculations of the car parking. The plans have not been amended in regards to the Gross Floor Area of the

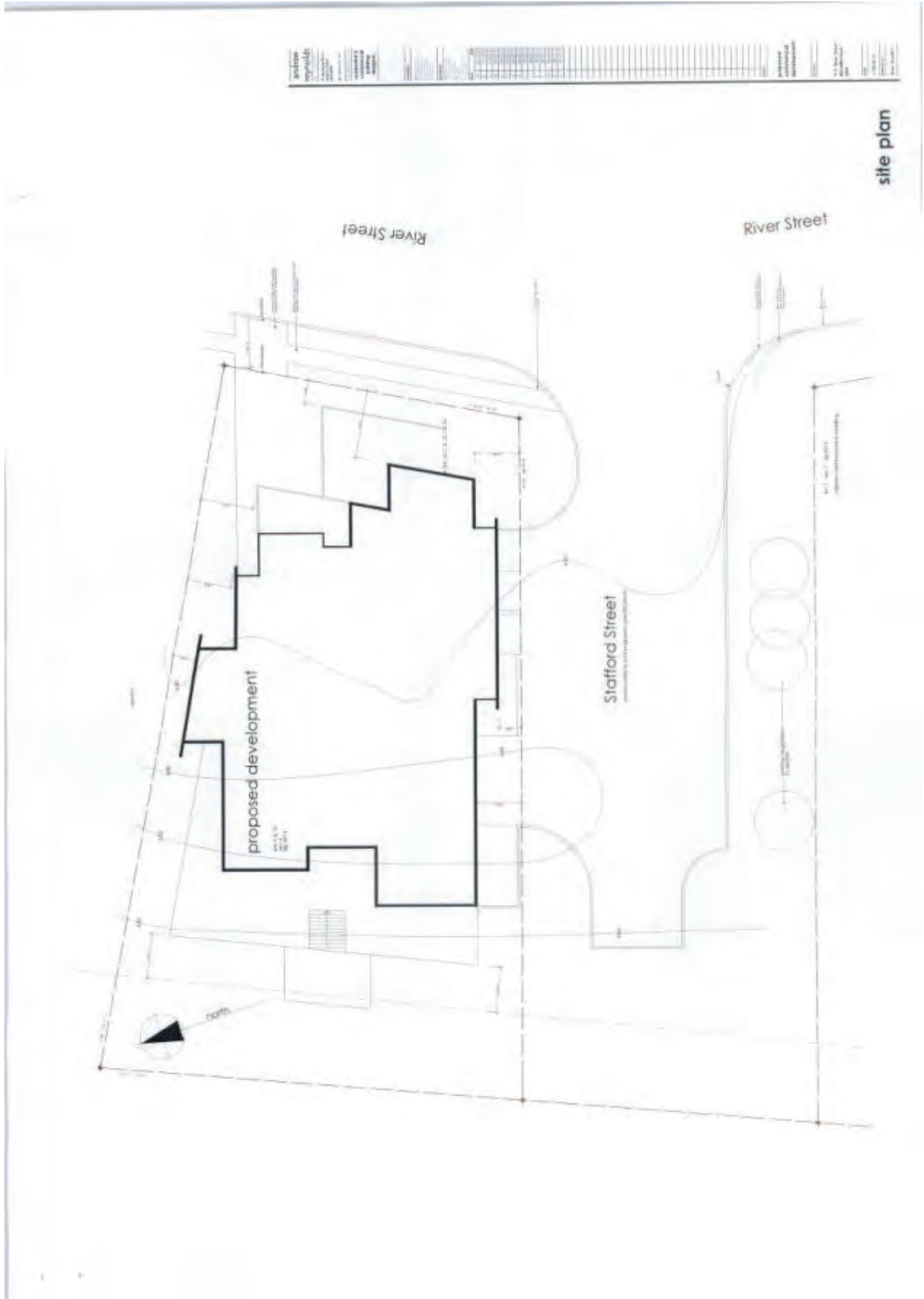
development. It is considered that the applicant's calculations of the number of seats for the function centre and the selection of the dining area have been reduced to fit the number of car parking spaces provided on site. As such it is still considered that there are car parking issues for the development.

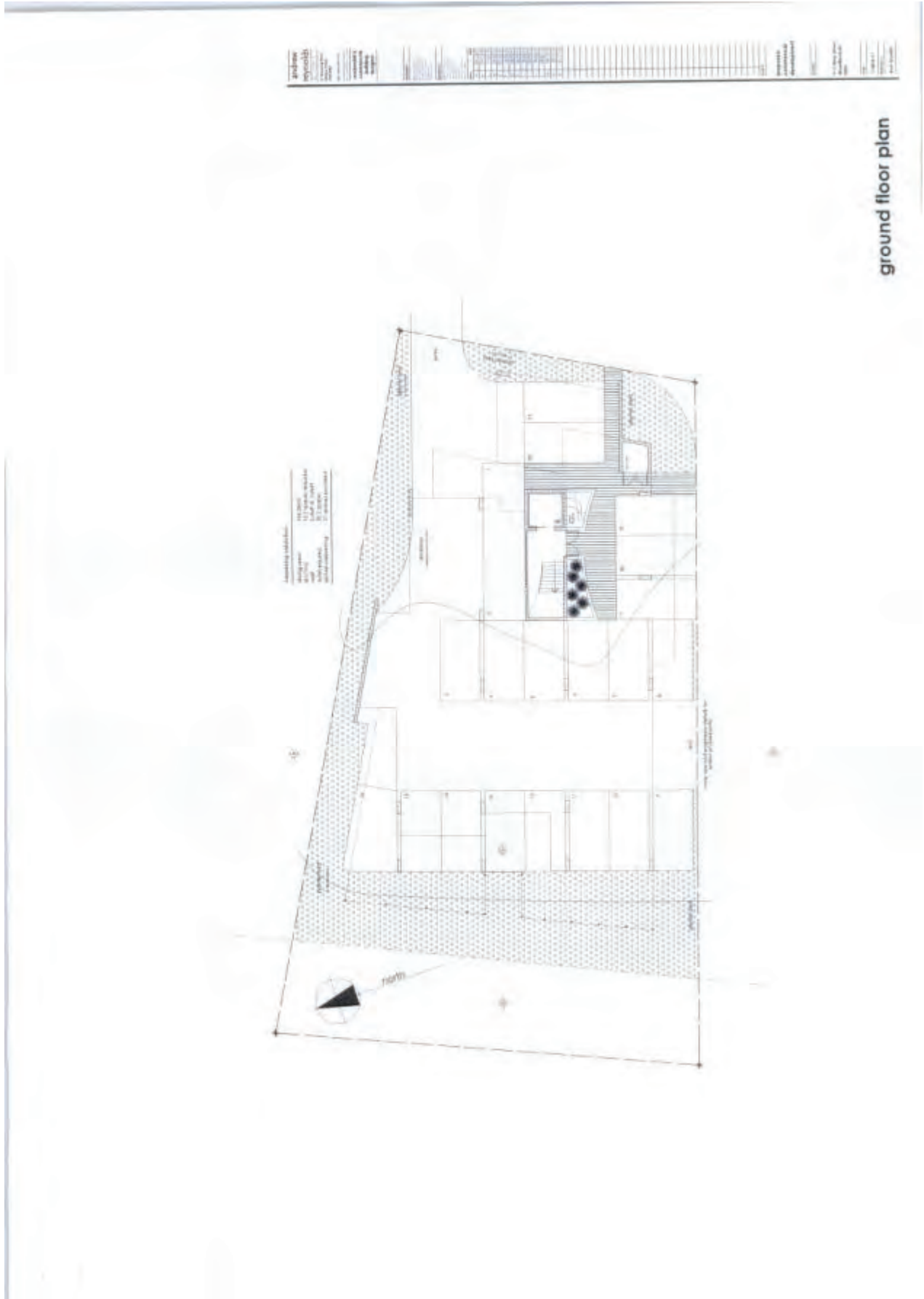
It has been calculated that there is approximately 228m<sup>2</sup> of dining area and with the new number of 5 staff at peak times the development requires 37.6 spaces to be fully compliant. With a 20% reduction for ESD reduction the total number required for the refreshment room component is 31 car parking spaces. It is therefore considered that the proposal still has a shortfall of 10 car parking spaces.





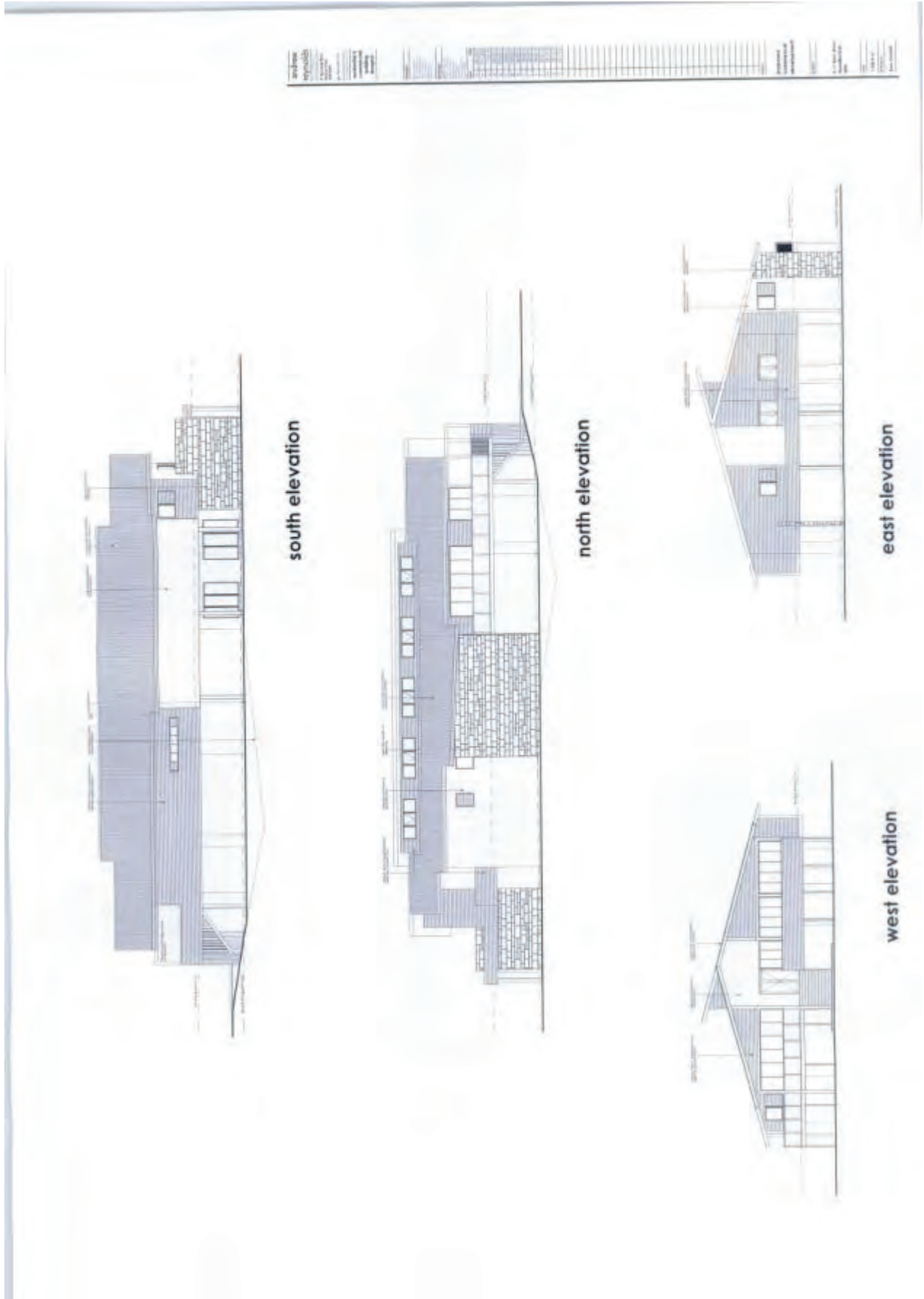
**DEVELOPMENT PLANS:**



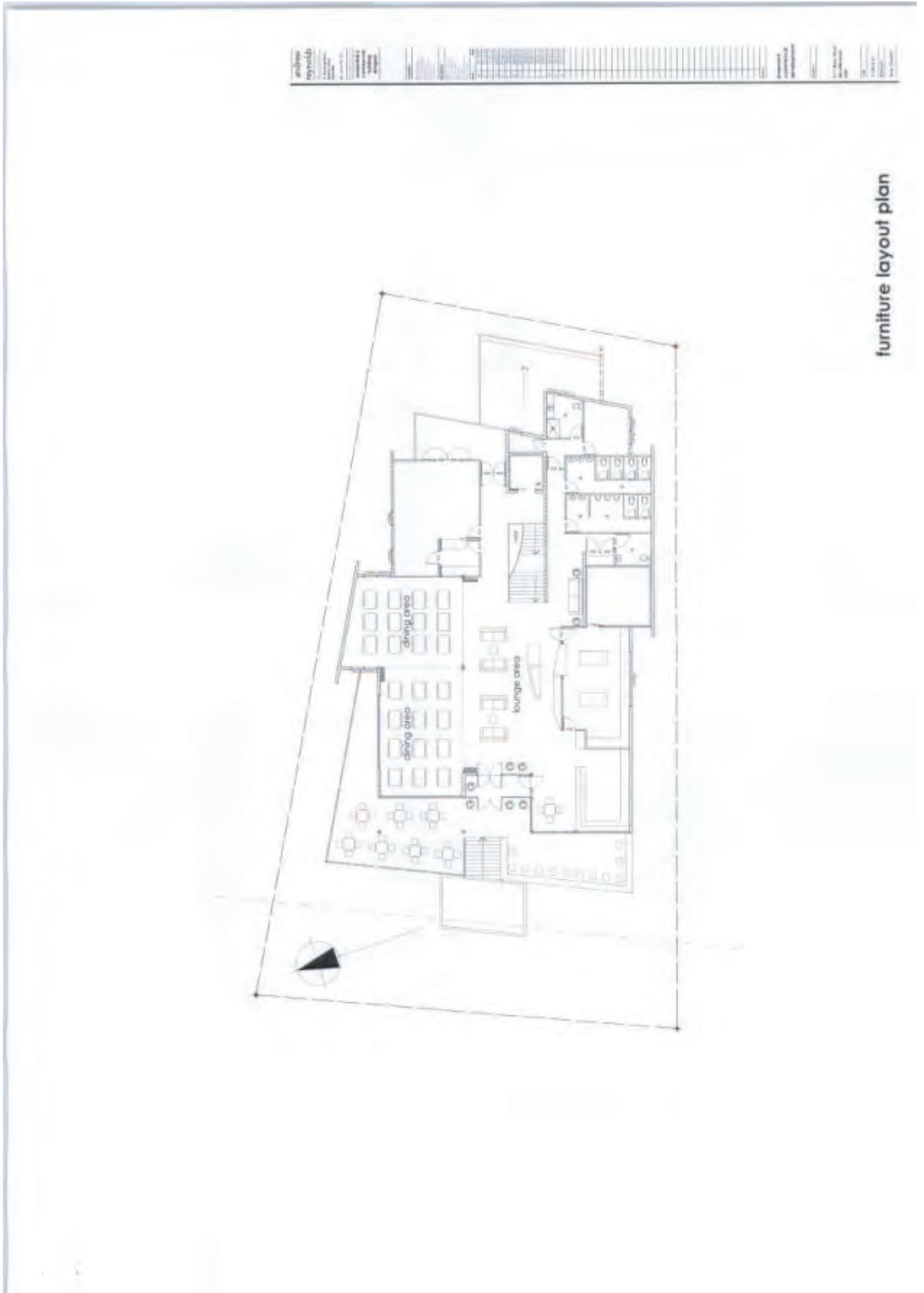












furniture layout plan

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed development is considered not to be consistent with the aims of the Tweed Local Environmental Plan (Tweed LEP). The proposed development is not considered to be consistent with the vision of the shire *“to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.”* The proposed development is for a refreshment room/function centre development in a commercial zone which adjoins residential land. It is considered that the proposed is not compatible with the area’s residential amenity qualities and as such does not comply with the development standards contained within the Tweed LEP.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the Tweed LEP relates to ecologically sustainable development. The Tweed LEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.*

The proposal is consistent with the aims and the ecological sustainable development principles outlined within the plan.

Clause 8 (1) - Consent consideration

Clause 8 (1) 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.*

Clause 8(1)(c) Cumulative Impact: The proposed development if approved would be considered to create an adverse cumulative impact in the Shire.

The Tweed Shire currently has a sufficient number of properties which is of a more appropriate size that is zoned for commercial purposes that would accommodate this type of development. By approving this application would encourage other non conforming applications to be lodged. Therefore, the proposed development if approved would establish an adverse cumulative impact in the Shire.

#### Clause 11 - Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 3(c) Commerce and Trade under the provisions of the LEP. The primary objective is to:

- *to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres*

Secondary objectives:

- *to provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.*
- *to allow for other development that is compatible with the primary function of the zone.*

The subject site is zoned 3(c) Commerce and Trade and refreshment rooms and function centres are permissible in the zone with consent.

The proposed development is considered to be generally consistent with the primary and secondary objectives of the zone.

#### Clause 13 - Development of Uncoloured Land on the Zone Maps

The Stafford Street Road Reserve is unzoned. The refreshment room/function centre is permissible within the 3(c) zone, and hence is compatible with development permissible in the adjacent zone. It is therefore considered that the proposed complies with this clause.

#### Clause 15 - Essential Services

The subject site is currently serviced by way of existing stormwater management, electricity, sewer and water connections.

#### Clause 16 - Height of Building

The subject site currently has a statutory height limit of three (3) storeys. The proposal incorporates a two (2) storey development. Therefore the proposed height is in accordance with the provisions of Clause 16 of the Tweed LEP.

### Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The applicant has provided an assessment in this regard. The applicant concludes that there will be positive impacts through the creation of employment. It is however considered that the proposal will reduce the existing residential amenity. It is therefore considered that there will be negative social impacts in the locality and it is therefore recommended that the proposal be refused.

### Clause 34 - Flooding

The design flood level of the site is 7.1m AHD. The proposed finished floor level of the function centre is 7.1m AHD.

According to the Flooding DCP the proposed ground floor use is compliant with the Flood Policy as it is not for a habitable use. Building materials and electrical wiring below the floor level would need to be designed to withstand possible submergence in water, in accordance with Council's standard requirements.

### Clause 35 - Acid Sulfate Soils

The site is nominated as containing Class 4 Acid Sulfate Soils according to Council's Acid Sulfate Soils maps. Class 4 soils indicate that Acid Sulfate Soils may be disturbed if works extend greater than 2.0m below natural ground level.

The development is generally located at existing ground level, and above (filling required). The only works required below the existing ground level are footings, drainage and service provision. Works are not anticipated to extend beyond 2.0m below the existing ground level and hence are not anticipated to disturb acid sulfate soils.

### Other Specific Clauses

There are no other applicable clauses.

### **State Environmental Planning Policies**

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

There are no particular matters for consideration under the North Coast Regional Environmental Plan relating to the construction of a function centre within the Murwillumbah township.

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

This Policy provides that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development. The applicant has provided an assessment against section 3.4.1 of the Policy which outlines that the site is unlikely to be contaminated. It is therefore considered that the proposal complies with the provisions of SEPP No. 55.

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

The Tweed Local Environmental Plan 2010 was on public exhibition from 27th January 2010 until 30 April 2010. In this Draft LEP the site is within the B5 – Business Development Zone. Within the B5 zone a Function Centre is prohibited. It is therefore considered that the Draft LEP 2010 envisages that a function centre within the Business Development Zone is not an appropriate use of the site.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Council's DCP Section A2 contains different requirements for car parking dependent upon the proposed use within a development. The applicant has identified that he wants the proposal to operate as a Refreshment Room and Ancillary Function Room. The DCP contains varying requirements for car parking for these uses.

For a function centre the following rates apply:

Customer Car Parking	Car	Staff Car Parking	Car	Delivery, Service Vehicle parking	Bicycle parking
0.3 spaces to each seat		0.5/staff		1 HRV	1/20 seats up to a maximum of 10 spaces

The applicant states that for the function centre component there will be 79 seats and 5 staff. As such the development requires a total of 21 car parking spaces to cater for the Function Centre component of the proposed including a 20% ESD reduction.

The plan provided by the applicant, WD10, provides a furniture layout plan which has 128 seats shown. Based on this it is considered that the proposed function centre component can cater for a much larger number of seats than what the applicant has proposed. If Council imposes a



condition to cap the number of people for a function centre from a compliance perspective it will be very difficult to ensure that there will be a maximum of 79 seats. This can lead to numerous compliance issues if there are complaints in the future. It appears that the applicant has configured the calculations of the number of seats to ensure that car parking requirements are met with what car parking is proposed on site.

The proposed development is for a Refreshment Room and Ancillary Function Centre. As such, the following rates apply for a refreshment room:

Customer Car Parking	Car	Staff Car Parking	Car	Delivery, Service Vehicle parking	Bicycle parking
1/7m <sup>2</sup> area	dining	1/staff at peak operating time	at	1 HRV	1/5 car park

The applicant submits that there is 100.48m<sup>2</sup> of dining area and 5 staff for the refreshment room which would result in a requirement of 19.3 spaces for the refreshment room component of the proposed. With a 20% reduction for ESD reduction the total number required for the refreshment room component is 16 car parking spaces.

However, it has been calculated that there is approximately 228m<sup>2</sup> of dining area and 5 staff at peak times. The applicant has created a dining area that is unreasonably undersized for the size of the proposed Gross Floor Area and only incorporates small sections of the floor area. If Council were to approve the proposal with this dining area it would be very difficult to ensure that the area nominated as 'dining area' will be the only area used.

Therefore it is considered that the development requires 31 car parking spaces for a refreshment room component including the 20% reduction for ESD.

There is also a Multi-Purpose room which has not been identified as being utilised for either the Function Centre or the Refreshment Room. It is considered that a number of seats for the function centre component could potentially be increased or the dining area for the function centre could be increased creating a larger number of car parking spaces required.

The applicant has provided a total of 21 onsite car parking spaces which will be provided on-site at Ground Level.

Vehicular access to the proposed ground level undercover car parking will be via an entry-only driveway in River Street and an exit-only driveway in Stafford Street.

The information provided was assessed by Council Engineer's who indicated that the applicant was required to provide all car parking spaces on the subject site or provide adequate arguments for alternate solutions. The applicant provided amended plans on 21 December 2010 with the provision of 21 on site car parking spaces and the removal of the Stafford Street parking option. Council officers determined that the proposed Function Centre and Refreshment Room is still out of scale for the size of the site. The amended plans have not reduced the overall size of the building rather the calculations have manipulated to comply with the number of car parking spaces provided on site. It is considered that the number of car parking spaces required to cater for the proposal is 31 spaces. With this calculation there is still a car parking shortfall of 10 spaces.

As a result of the car parking shortfall and the options being submitted to Council not being appropriate for the proposal, the proposed development is being recommended for refusal based on the lack of car parking to cater for the proposal.

#### A3-Development of Flood Liable Land

Council's DCP Section A3 nominates that the Design Flood Level for the site is 7.1 metres AHD. The development will have a floor level of 7.1m which is equal to the 1 in 100 year flood level. According to the DCP the proposed ground floor use is compliant with the Flood Policy as it is not for a habitable use. Building materials and electrical wiring below the floor level would be designed to withstand possible submergence in water, in accordance with Council's standard requirements.

#### A4-Advertising Signs Code

The subject application does not seek approval for any specific advertising signage. A 'Building Identification Sign' will be erected on the eastern facade of the development and a smaller sign 'building identification sign' will be erected on the western facade. This can be conditioned should the application be approved.

#### A11-Public Notification of Development Proposals

The notification and advertising of Development Proposals is determined by Council's DCP Section A11. The original plans for the proposed development were notified for a period of 14 days from 9 August to 23 August 2010. From this period, there were three submissions received, being 2 objections to the proposal and 1 in favour of the submission. The main points of the objections were car parking which would be adjoining the residential allotment on Stafford Street and noise generated from the proposed use. The support for the proposal was that it would help revitalise the area. There was no readvertising or renotification of the amended plans and information received in January/February 2011.

Further consideration of the submissions received is outlined later in this report.

#### A13-Socio Economic Impact Assessment

The applicant has provided an assessment in this regard. The applicant concludes that there will be positive impacts through the creation of employment. It is however considered that the proposal will reduce the existing residential amenity. It is therefore considered that there will be negative social impacts in the locality and it is therefore recommended that the proposal be refused.

#### B22 - Murwillumbah Town Centre

DCP Section B22 applies to the Murwillumbah Town Centre, which includes the subject site. The DCP was adopted by Tweed Shire Council on 13 May 2008 and came into effect on 04 June 2008. However, the section of the DCP that relates to the subject site has been deferred at this stage. As such, the provisions of the DCP which relate to the subject site are not applicable to the development proposal.

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

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

Not applicable.

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

The applicant supplied a demolition works plan. Council's Building Services Unit has provided Conditions of consent should the application be approved.

#### Clause 93 Fire Safety Considerations

Not applicable.

#### Clause 94 Buildings to be upgraded

Not applicable.

### **(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 amended proposal was assessed by Council's Environmental Health Services Unit who has provided the following assessment in regards to

the acoustic issues, contaminated land, Acid Sulfate Soils, Demolition and Food Safety with the subject proposal in the locality.

*“Noise – An amended Environmental Noise Impact Report (ENIR) has been prepared by CRG Traffic & Acoustics Pty Ltd dated 17 January 2010 (crgref:10163a). The report indicates that potential noise impacts from patron activity, amplified music and mechanical plant can be appropriately managed with the implementation of noise mitigation measures. These mitigation measures will be appropriately conditioned.*

*In accordance with the ‘Planning for Entertainment Guidelines 2009’ a restriction in operating hours will be conditioned as a **‘REVIEWABLE CONDITION’**. This will give Council the opportunity to review the operating hours of the proposal in light of any reasonable noise complaints.*

*The ENIR indicates that patrons utilising the western and eastern decks are predicted to have minor noise impacts if boisterous behaviour is observed during evening and night time periods. This is most likely to occur during functions on Saturday nights. To mitigate noise from the small eastern deck it is proposed to exclude patrons during evening and night time periods. It is proposed to mitigate noise from the larger western deck by controlling patron behaviour. Correspondence from CRG Traffic & Acoustics Pty Ltd dated 12 October 2010 indicates that noise impacts from boisterous behaviour will be managed by complying with conditions of the required liquor licence.*

*The EINR indicates that amplified music will be below the adopted noise criteria assuming that this activity is undertaken within the function areas with all windows and doors closed. The amended plans have replaced the bi-fold doors leading out to the western deck with fixed glass and a sound lock door. This amendment is considered adequate to reduce potential noise impacts from amplified music.*

*The ENIR does not consider potential noise impacts from off-site car parking and patron behaviour leaving the premises which is considered particularly important due to limited on-site parking compared to the potential patron capacity of the proposal for weddings. This will required further consideration in the event off-site car parking is required by the Development Assessment Unit to meet minimum car parking requirements.*

*Contaminated Land - No indication of contaminating activities from aerial photography (1962, 2000, 2004, 2007 & 2009). Aerial photography indicates residential style structures located on the sites since 1962. Council’s Enlighten shows that there are no dip sites within 200m of the subject property. A site inspection undertaken on the 14/09/10 indicates that the southern building has been used for*

*commercial purposes (swimming pool supplies). A statement has been provided by the previous business owner dated 11 March 2011 indicating that packaged pool chemicals were only stored internal to the building. No further considerations required.*

*ASS – Councils Enlighten indicates the subject site is Class 4 Acid Sulfate Soil. The submitted plans indicate that excavations will not extend below 2m of the ground surface level and therefore ASS are not anticipated to be intercepted. No further considerations required.*

*Demolition – It is proposed to demolish the existing dwellings. No slab on ground was evident during inspection undertaken on the 14 September 2010 and therefore pre-demolition testing is not required. In the event that the application is recommended for approval conditions will be applied relating to the appropriate management and disposal of asbestos.*

*Food Safety – Limited details have been provided relating to the construction of the food premises. Further details would be required prior to issue of a construction certificate in the event the proposal was recommended for approval.”*

Considering the above information the development application is conditionally supported by Council’s Environmental Health Unit.

#### Access, Transport and Traffic

Access, transport and traffic have been discussed under the Development Control Plan Section A2 above. Due to the lack of sufficient car parking to cater for the proposed development the proposal is recommended for refusal.

#### Stormwater

An information request was sent out on 18 October 2010 with 13 items relating to the stormwater issues on site. The proposed building straddles a drainage flow path where the toe of the flood levee meets the natural surface and a pipe connects this runoff to Council’s drainage system in Stafford St at the side boundary of No 11 River St. The DAP minutes for this development recognise and state that “Any proposal to alter the gully would need to be supported by an engineering design”. No such design was provided as negotiations between Council and the applicant resulted in no clear stormwater management that could be implemented.

Amended plans were submitted on 11 February 2011.

Council’s Development Engineer has indicated that the information provided still has issues however these issues can be overcome with the provision of an on-site detention basin. Council’s engineer has provided the following comments:

### ***“Stormwater Issues***

*It is recommended that a condition requiring on-site mitigation of the development's stormwater be applied, such that stormwater works through the levee can be avoided.*

### ***Flooding Issues***

*A revised detail for the proposed landing area onto the levee has been provided. This shows a removable platform supported on the landward side by a structural staircase. There are no footings required within the levee crest, although the platform would bear onto the embankment.*

*This is generally acceptable, and a consent condition is recommended to specify engineering details needed for the construction certificate.”*

It is therefore considered that the proposed stormwater issues can be overcome with the provision of conditions.

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

### Surrounding Landuses/Development

As stated previously it is considered that the scale and type of development will create negative impacts on the surrounding residential amenity. The issues relating to car parking, acoustics and stormwater cannot be overcome with the development in its current form. It is therefore recommended that the application be refused.

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

### Integrated Referrals

The development application was referred to the Department of Environment, Climate Change and Water as the proposal includes works within 40m of a waterway. The Department responded on 2 September 2010 with no further assessment by the NSW Office of Water is necessary. It is therefore considered that the proposed development is consistent with the Water Management Act 2000.

### Public Submission

The original plans for the application were placed on exhibition for fourteen (14) days commencing Monday 9 August 2010. From this period there were two (2) submissions against the proposal and one (1) in support of the application. The amended plans and information received in January/February 2011 were not readvertised or renotified. The

officers' response to the issues raised in the submissions to the original proposal are provided below:

<b>Issue</b>	<b>Comment</b>	<b>Assessment</b>
Car Parking along Stafford Street	<i>The proposed function room/convention centre would not only reduce access to the rear of my property but will in effect bring the car park to within 3-4 metres of my home with cars parking all along the northern border of my home and all headlights leaving the premises will be directly shone at my home up until 12.30am on weekends.</i>	It was considered that the proposed car parking along Stafford Street was unacceptable as it would result in a negative impact on the residential amenity of the adjoining dwelling. The applicant has provided an amended proposal which removed the car parking along Stafford Street. As such this is no longer an issue and does not warrant refusal.
Noise from people leaving	<i>The noise of people leaving and car doors slamming into the early hours would make my home neither liveable or rentable.</i>	It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. Council's Health Services unit have provided conditions of approval and as such this issue does not warrant refusal.
Noise from the use	<i>Great care has been taken to supply noise assessment reports but these reports while stating some current noise levels in the area fail to give any definite facts as to noise generated by the proposal and in fact state that no car park survey has been undertaken, they then go on to say the main onus of noise control will be on the staff to maintain customers boisterous activity.</i>  <i>Noise from DJ's and performers emanating from the premises will not and cannot be controlled so as not to interfere with the surrounding residents peace.</i>	It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. Council's Health Services unit have provided conditions of approval and as such this issue does not warrant refusal.
Stafford Street car park	<i>We believe that the development of that part of Stafford St as a car park will block or at least restrict access to our property and also impede access of emergency vehicles should the need arise. There is no</i>	This issue should not be taken into consideration as access to the site is maintained from the River Street Frontage. Access to the rear of the site is not a town planning issue and as such does not warrant refusal.

Issue	Comment	Assessment
	<i>access for repairs and maintenance to be carried out on the rear of several of the buildings to the south of the development other than via the levee bank.</i>	
Car Parking	<i>The capacity of the restaurant/function centre is greater than the number of car spaces provided in the proposal. Despite the observations of the Traffic Report that there is ample on street parking, during significant events such as church services, funerals, building an maintenance in the vicinity, residents currently have difficulty with parking outside their homes. This situation will only be exacerbated by the development.</i>	It is considered that the number of car parking spaces provided for the proposal is not sufficient to cater for the development. As such the proposed development is recommended for refusal.
Noise	<p><i>In the Acoustic Report that noise from amplified music is "a prediction only and will need to be tested onsite at construction completion." By the time construction is completed it may well be too late to modify the sound impacts.</i></p> <p><i>We are also concerned about boisterous and antisocial behaviour of patrons. The levee bank gives unrestricted access to dwellings to the south and intoxicated persons are not going to know or care that this is private property where residents want to go about their lives in peace. Staff at the venue may be able to influence patrons while they are on the premises but once they leave there are no controls.</i></p>	It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. Council's Health Services unit have provided conditions of approval and as such this issue does not warrant refusal.

**(e) Public interest**

This application is not considered to be in the public interest. Approval of this development would undermine the importance of the South Murwillumbah area, create a dangerous precedent for Clause 8(1) of the Tweed LEP 2000 and not result in a good planning outcome. For these reasons the application is recommended for refusal.



**OPTIONS:**

1. Refuse this application.
2. Grant in-principle approval and require a further report to Council providing recommended conditions of development consent.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination by Council the applicant has a right to appeal to the NSW Land & Environment Court.

**POLICY IMPLICATIONS:**

It is the officers view that should this application be approved, it will set an unreasonable precedent for interpretation of Clause 8(1) of the Tweed LEP 2000. Additionally any approval that does not provide adequate car parking spaces to cater for the proposal would compromise the integrity of Council's Development Control Plan Section A2.

**CONCLUSION:**

The proposal before Council is not considered to be a satisfactory use for the site. The site constraints and zoning of the land make it imperative that whatever development occurs on the site will create an attractive design that will function efficiently and obviously be economically successful. The proposed design does not address these constraints effectively despite Council's requests for further information. The proposed use and design is not considered satisfactory thus warranting refusal of the application.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**15 [PR-CM] Development Application DA11/0107 for Dwelling Additions at Lot 18 DP 838549, No. 768 Terranora Road, Terranora**

**ORIGIN:**

**Building and Environmental Health**

**FILE NO: DA11/0107 Pt1**

**SUMMARY OF REPORT:**

An application has been lodged to carry out alterations and additions to an existing dwelling house on the subject allotment.

The additions will stand 10m from Terranora Road at its closest point.

The allotment is zoned 1(c) and fronts Terranora Road which is a designated road requiring a thirty metre building alignment under the provisions of part 5, clause 24 of the Tweed Local Environment Plan (LEP) 2000.

The Applicant has submitted an objection under the provisions of State Environmental Planning Policy (SEPP) 1 to permit the dwelling house additions to observe a minimum building alignment of 10m to Terranora Road.

The existing dwelling house observes a minimum building alignment of 7m to Terranora Road.

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

The SEPP 1 objection is considered to be worthy of support.

**RECOMMENDATION:**

**That:**

- 1. State Environmental Planning Policy No. 1 objection to Clause 24 of Tweed Local Environmental Plan 2000 regarding setbacks to designated roads be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- 2. Development Application DA11/0107 for dwelling additions at Lot 18 DP 838549, No. 768 Terranora Road, Terranora 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 10 5635 sheets 01-05 prepared by JR's Design & Drafting Services dated Dec 2010 and site plan , 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]

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

3. **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.**

[PCC0945]

4. **A construction certificate application for works that involve any of the following:-**

- **connection of a private stormwater drain to a public stormwater drain**
- **installation of stormwater quality control devices**
- **erosion and sediment control works**

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

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

[PCC1145]

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

5. **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]

6. 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]

7. 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,
- (i) 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]

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.

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

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

[PCW0985]

#### **DURING CONSTRUCTION**

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

[DUR0005]

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

[DUR0245]

12. 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]

13. 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]

14. 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]

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

[DUR0445]

16. 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]

17. 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]

18. 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]

19. 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]

**20. 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]

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

[DUR2515]

**22. 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]

**23. 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]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

**24. 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]

**25. 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]

**26. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.**

[POC1035]



- 27. Prior to the issue of an occupation certificate or occupation of the additions, smoke detectors shall be installed in the existing dwelling, as well as the additions, in accordance with the provisions of part 3.7.2 of the Building Code of Australia and Australian Standard AS 3786.**

[POCNS01]

**REPORT:**

**Applicant:** Mr GM Strong and Mrs DA Strong  
**Owner:** Mr GM Strong and Mrs DA Strong  
**Location:** Lot 18 DP 838549 No. 768 Terranora Road, Terranora  
**Zoning:** 1(c) Rural Living  
**Cost:** \$70,000

**BACKGROUND:**

A development application has been received to construct alterations and additions to an existing dwelling house on the subject allotment.

The land is zoned 1(c) Rural Living, is located on the western side of Terranora Road and contains an existing single story timber framed dwelling house and several large sheds.

The allotment has an area of 4052m<sup>2</sup> has a moderate slope downhill to the north and apart from isolated trees is generally cleared.

The proposed building works include the construction of an additional bedroom, walk-in robe, study, gymnasium/games room, store-room and covered verandahs.

The additions will be constructed at the same floor level and type of construction as the existing dwelling house.

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

The existing dwelling house is aligned at an angle to Terranora Road and at its closest point observes a building set back of 7m. The additions will observe the same orientation to Terranora and will observe a building set back of between 10m and 12m.

The location of the proposed additions is appropriate to the function of the dwelling house and it would be unreasonable to expect additions to a dwelling house to be located remote to the main dwelling house.

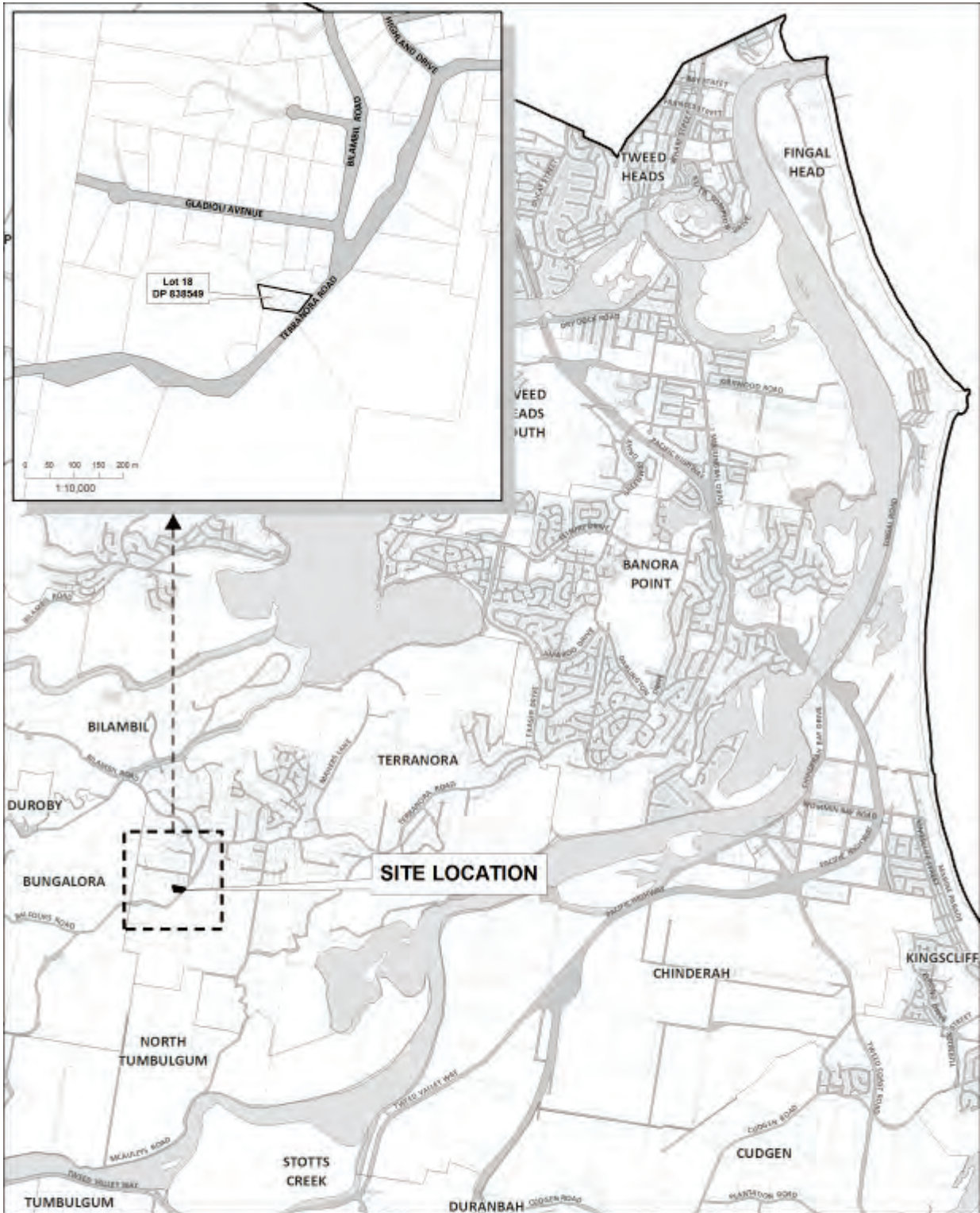
The Applicant has lodged an application to vary the thirty metre setback requirement under the provisions of State Environmental Planning Policy No. 1 (SEPP) to permit the additions to be constructed at a reduced building alignment of 10m to Terranora Road.

The SEPP 1 variation is considered below in this report.

Council has historically granted SEPP 1 objections to the thirty metre building alignment for new residential dwelling houses and additions to existing residential dwelling houses along Terranora Road where it considered that compliance with this building setback is unnecessary and/or unreasonable.



**SITE DIAGRAM:**



**Locality Plan**

Lot 18 DP 838549  
No. 768 Terranora Road, Terranora

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Cadastral: 05 April, 2011  
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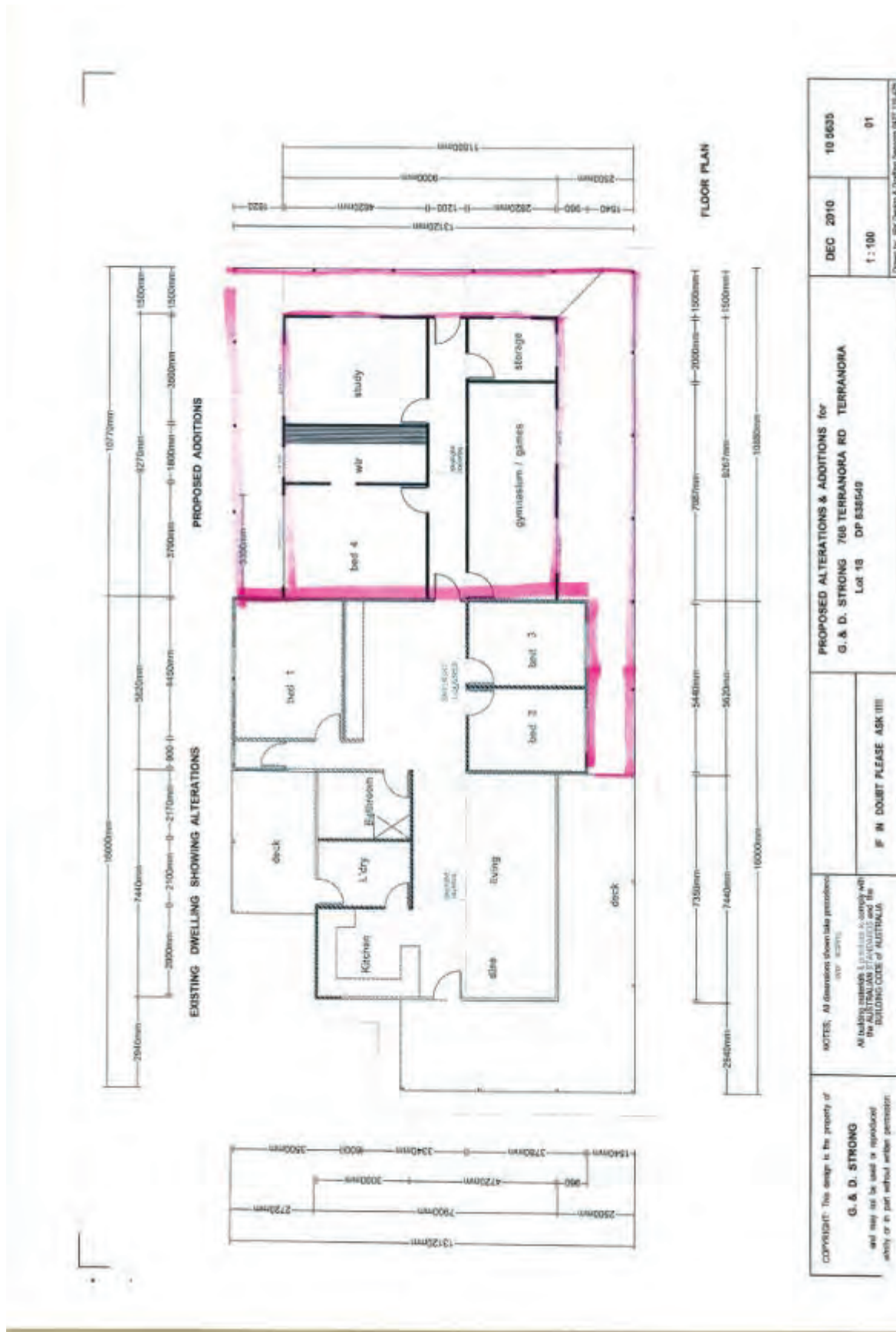


Civic and Cultural Centre  
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Murumbidgee NSW 2884  
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Murumbidgee NSW 2884  
T (02) 6670 2400 | 1300 292 872  
F (02) 6670 2428  
W www.tweed.nsw.gov.au  
E planning@tweed.nsw.gov.au



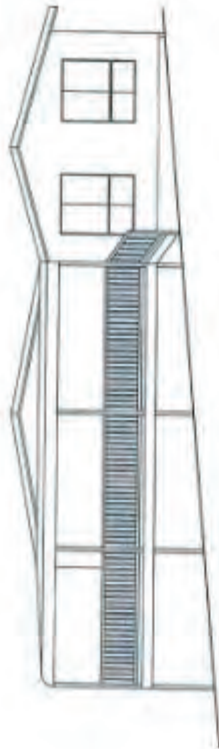


**DEVELOPMENT PLANS:**





EXISTING ELEVATIONS



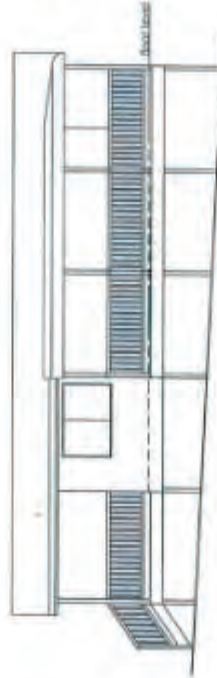
NORTH WEST ELEVATION



SOUTH WEST ELEVATION



SOUTH EAST ELEVATION



NORTH EAST ELEVATION

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NOTES: All dimensions shown shall be in millimetres  
 unless otherwise stated.  
 All building services & junctions to comply with  
 the AUSTRALIAN STANDARDS ACT for  
 BUILDING CODES OF PRACTICE.

IF IN DOUBT PLEASE ASK!!!!

PROPOSED ALTERATIONS & ADDITIONS for  
**G. & D. STRONG 768 TERRANORA RD TERRANORA**  
**LOT 1B DP 839549**

DEC 2010	10 5635
1:100	02

Drawn by: JDC/Chapman & Chapman Architects (Pty) Ltd. (CMA)

**PROPOSED ELEVATIONS SHOWING ADDITIONS**

**NORTH WEST ELEVATION**

**SOUTH WEST ELEVATION**

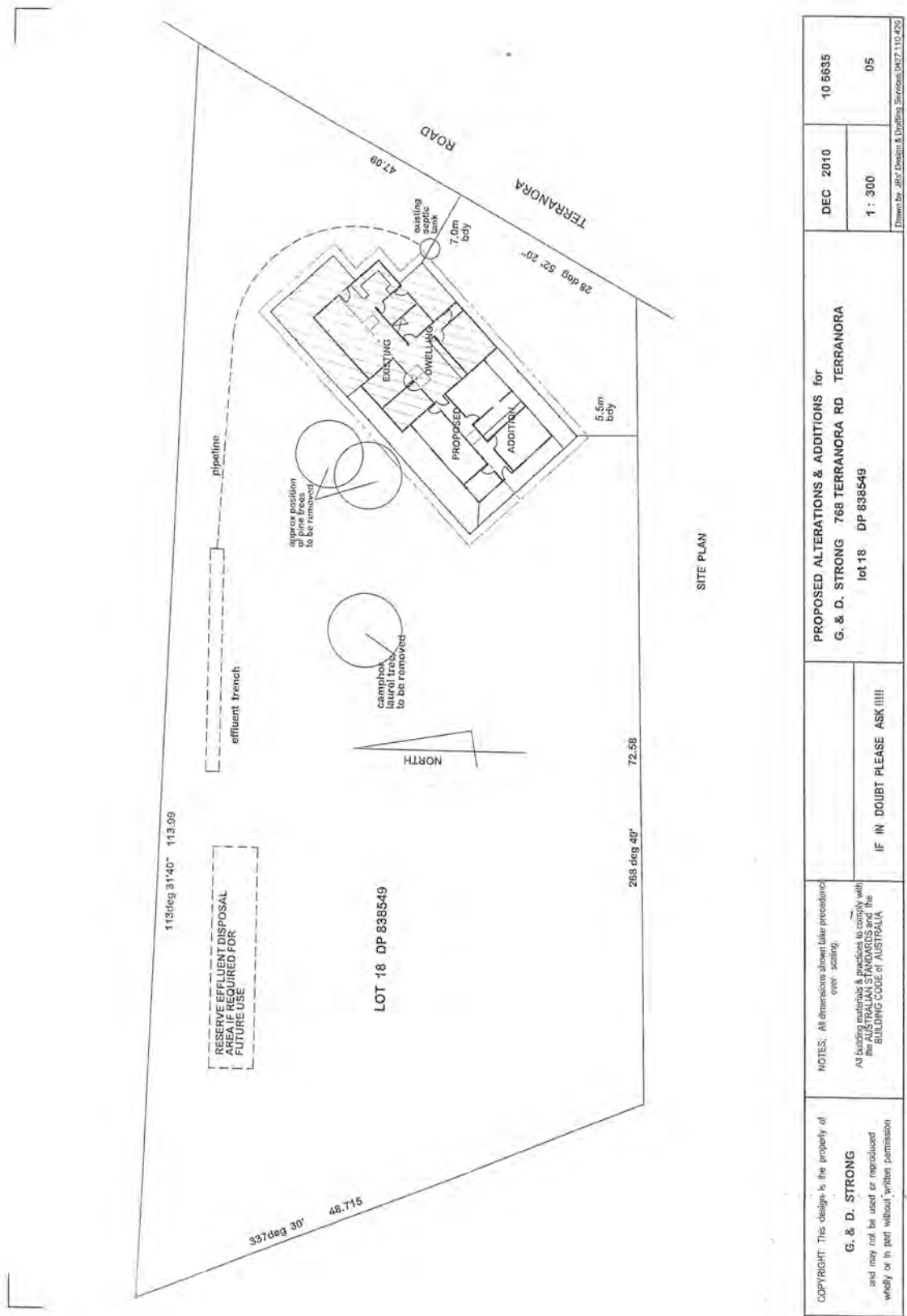
**NORTH EAST ELEVATION**

**SOUTH EAST ELEVATION**

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	1 : 100		03	Drawn by: 200 Design & Drafting Services 0827 112 000	







COPYRIGHT: This design is the property of <b>G. &amp; D. STRONG</b> and may not be used or reproduced wholly or in part without written permission	NOTES: All dimensions shown take precedence over scaling. All building materials & practices to comply with the AUSTRALIAN STANDARDS and the BUILDING CODE OF AUSTRALIA	PROPOSED ALTERATIONS & ADDITIONS for <b>G. &amp; D. STRONG 768 TERRANORA RD TERRANORA</b> lot 18 DP 838549		DEC 2010	10 5635
		IF IN DOUBT PLEASE ASK!!!!		1 : 300	05

Drawn by JBC Design & Drafting Services Pty Ltd 07 110 4202



**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 will satisfy the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is in keeping with ecologically sustainable development principles and is in line with community expectations for the site having regard to the zoning provisions, development control plan provisions and the limitations of the site.

Clause 8 - Zone objectives

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

Clause 15 - Essential Services

All required essential services are available and adequate.

Clause 16 - Height of Building

The dwelling house additions will be single storey and will satisfy the height limitations of DCP A1 – 'Residential & Tourist Development Code.'

Clause 17 - Social Impact Assessment

Approval of the proposal is considered unlikely to result in any adverse social impacts.

Clause 24 – Designated Roads

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

The SEPP 1 objection is supported and is discussed below.

Clause 35 - Acid Sulfate Soils

The allotment is identified as being subject to class 5 acid sulphate soils. The proposed additions will cause no adverse impact in relation to acid sulphate soils.

Other Specific Clauses

N/A

**State Environmental Planning Policies**

SEPP No. 1 - Development Standards

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

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

- *“the existing dwelling has a setback of 7.0m only, and the proposed additions are to be setback a minimum of 10m from Terranora Road.*
- *The development, being an addition to the existing dwelling, cannot be setback over 30m from the road way. The additions must be attached to the existing dwelling, which is located within the 30m setback area. Hence, it is not possible to comply with the setback requirement.*
- *The site of the dwelling additions is elevated above the alignment of Terranora Road, and will not be visually obtrusive when viewed from the roadway.*

*For the above reasons, the 30m setback requirement contained within Clause 24 of the Tweed Local Environmental Plan is considered to be unreasonable and unnecessary in this instance.*

*Council’s support is requested to the Objection under State Environmental Planning Policy No. 1”*

The existing dwelling house observes a setback of only 7 metres which has not resulted in any adverse impact on the streetscape. The dwelling house is elevated above Terranora Road and is partly screened by existing fencing and landscaping.

The proposed additions will observe the same orientation to Terranora Road as the existing dwelling house and therefore will be located further from this road than the existing dwelling.

The additions will be more effectively screened by the fencing and landscaping.

Council has approved other variations to the thirty metre building alignment to Terranora Road where it was demonstrated that the setback requirement was considered to be unnecessary and /or unreasonable.

The objectives of part 5 (Roads) clauses 22, 23 & 24 of the Tweed LEP 2000 and a response to each item is as follows:

**Clause 22 – Development near designated roads**

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

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

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

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

This subdivision was approved to permit the construction of single dwellings in a semi rural setting and due to the physical limitations of the allotment ie the location of the existing dwelling house it is impractical to enforce a thirty metre building alignment to Terranora Road.

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

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

**Response** - the dwelling house additions will be set back a minimum of 10 metres from Terranora Road with a roofed verandah, bedroom and study being the closest part of the dwelling house to the roadway.

The existing dwelling house has bedrooms closer to Terranora Road than the proposed additions however the presence of fencing and landscaping will reduce road noise.

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

**Clause 23 – Control of access**

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

**Response** – no change to the existing vehicular access is proposed.

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

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

**Response** - the allotment is located in an area which is zoned for rural residential use and in a subdivision which was specifically created for residential dwellings in a semi rural theme.

The proposal is considered to be consistent with the objectives of the zoning of the area.

The dwelling house & proposed additions are consistent with the style of dwellings in this area.

#### SEPP No 71 – Coastal Protection

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

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

A Basix certificate has been supplied in support of the application.

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

The draft Tweed Local Environmental Plan (LEP) 2010 was considered in the assessment of this application.

The proposal is not inconsistent with the aims & objectives of this instrument.

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

##### Tweed Development Control Plan

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

The proposal satisfies the controls of the Development Control Plan

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

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

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

Clause 92(b) Applications for demolition

There is no demolition is proposed.

Clause 93 Fire Safety Considerations

This clause is not applicable to the proposed development.

Clause 94 Buildings to be upgraded

No upgrading is of the development is required.

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

Context and Setting

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

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

Access, Transport and Traffic

Vehicular access to the allotment from Terranora Road is existing and will remain unchanged.

Flora and Fauna

The site does not contain any flora or fauna of any significance and it is unlikely that any existing flora & fauna will be impacted by the proposed works.

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

Surrounding Land uses/Development

The allotment is surrounded by similar residential allotments to the north whilst larger rural allotments adjoin to the west, south & east.

Flora and Fauna

See above.

Topography

The allotment slopes moderately downhill from south to north.



The slope of the land raises no geotechnical issues nor would it provide any impediment to the proposed development.

Site Orientation

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

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

The proposal was not notified due to the relatively minor nature of the proposal and the consistency of the proposal with the existing streetscape in relation to bulk, scale privacy issues etc.

No submissions were made in relation to this application.

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

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

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

**CONCLUSION:**

Under the circumstances it is considered that the proposal to construct alterations and additions to an existing dwelling house with a minimum building line of 10 metres to Terranora Road is reasonable for conditional approval.

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

**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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