



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 July 2011

held at Murwillumbah Cultural and Civic Centre
commencing at 3.30pm

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

Items for Consideration of Council:

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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 June 2011 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

DA No.	DA10/0626
Description of Development:	Two (2) lot subdivision
Property Address:	Lot 2 DP 231691 Tweed Valley Way, Burringbar
Date Granted:	23/6/2011
Development Standard to be Varied:	Clause 20(2)(a) - minimum lot size 40ha
Zoning:	1(a) Rural
Justification:	Subdivision of an allotment less than 40 hectares within 1(a) Rural zone
Extent:	Proposed allotment size is 11.97 hectares within 1(a) zone
Authority:	Director General of the Department of Planning and Infrastructure

DA No.	DA10/0636
Description of Development:	Residential flat building (6 units)
Property Address:	Lot 14 Section 5 DP 758571 No. 204 Marine Parade, Kingscliff
Date Granted:	24/6/2011
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(b) Medium Density Residential

Justification:	<p>The proposed development causes overshadowing of the adjacent 6(a) Open space land. The approximate area of overshadowing caused at 6.30pm December is 343.3m².</p> <p>The proposal does not result in adjacent open space being overshadowed before 3pm midwinter (standard time), but does cast shadow prior to 6.30pm midsummer (daylight saving time).</p> <p>The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the foreshore reserve.</p> <p>The area subject to overshadowing has no active recreation area or beach and is located adjacent to the at grade car parking within the Marine Parade Road reserve.</p> <p>The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve.</p> <p>The overshadowing is minor at 6.30pm midsummer and is non-existent at 3 pm midwinter.</p> <p>The proposal does not overshadow the beach.</p>
Extent:	343.2m ² of overshadowing at 6.30pm mid summer.
Authority:	Tweed Shire Council

DA No.	DA11/0254
Description of Development:	Shed
Property Address:	Lot 3 DP 211196 No. 385 Terranora Road, Terranora
Date Granted:	30/6/2011
Development Standard to be Varied:	Clause 24 - setbacks to designated roads
Zoning:	1(c) Rural Living
Justification:	Proposed garage and storage shed to encroach 20 metres into the setback from a designated road
Extent:	To vary the setback to Terranora Road being a Designated Road by 20 metres or 67% to accommodate a shed
Authority:	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

8 [PR-CM] Grant to Undertake the Aboriginal Cultural Heritage Study

ORIGIN:

Planning Reform

FILE NO: GT1/LEP/2010/Heritage/ACH

SUMMARY OF REPORT:

This report has been prepared to respond to the Notice of Motion arising at the Council meeting of 20 July 2010.

In addition to the enquiries arising, this report provides an update on the Community Based Heritage Study (CBHS) and the successful grant application in respect of preparing an Aboriginal Cultural Heritage Management Plan (ACHMP).

This report concludes with an acknowledgement of the importance of both these heritage policies as an essential component of the broader Tweed strategic planning framework.

RECOMMENDATION:

That:

- 1. The report on the Grant to Undertake the Aboriginal Cultural Heritage Study be received and noted; and**
- 2. Council endorses the acceptance of the successful NSW Heritage Office grant to undertake the preparation of an Aboriginal Cultural Heritage Management Plan for the Tweed Shire and votes the expenditure.**

REPORT:

At the Council meeting of 20 July 2010, a notice of motion was resolved that:

- "1. *The General Manager undertakes an investigation and reports back to Council, on a Shirewide Aboriginal Cultural Heritage Assessment, the report to give regard to:*
 - *the approximate time frame to undertake the assessment, any state and federal legislation applicable to Aboriginal Cultural Heritage that Council needs to take into consideration;*
 - *an overview of the due process steps and assessment procedures which would be undertaken in any assessment of Aboriginal Cultural Heritage;*
 - *any (possible) assistance that may be required by the Local Aboriginal Land Council;*
 - *any (possible) consultation of local Aboriginal people to assist with the assessment via oral historical information;*
 - *possible cost and policy implications thereafter along with any other relevant matters; and*
2. *Any confidential information from this report is to be contained in a separate confidential attachment to ensure protection of sensitive cultural heritage information."*

Ainsworth Heritage Pty Ltd was engaged in March 2011 to undertake the completion of the draft Community Based Heritage Study (CBHS) (2004). This will progress the study through its final stages to enable the updating of the Tweed LEP and will set up management plans and strategies to assist in the management of heritage in the local government area (LGA). It is anticipated a report on the CBHS will be submitted to Council in the latter part of the year.

The CBHS did not address or assess Aboriginal cultural heritage. In the interim period Council has applied for, and been successful, in obtaining a grant to also prepare an Aboriginal Cultural Heritage Management Plan, which will dovetail with the completion of the CBHS.

This report addresses Council's previous resolution and provides information on Council's successful Aboriginal Cultural Heritage Management Plan grant application.

What is Aboriginal cultural heritage?

Aboriginal cultural heritage is defined in the [former] Department of Environment, Climate Change and Water (DECCW) *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* as follow:

"Aboriginal cultural heritage consists of places and items that are of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs and history. It provides evidence of the lives and existence of Aboriginal people before European settlement through to the present."

Aboriginal cultural heritage is dynamic and may comprise physical (tangible) or non-physical (intangible) elements. It includes things made and used in traditional societies, such as stone tools, art sites and ceremonial or burial grounds. It also includes more contemporary and/or historical elements such as old mission buildings, massacre sites and cemeteries. Tangible heritage is situated in a broader cultural landscape and needs to be considered in that context and in a holistic manner.

Aboriginal cultural heritage also relates to the connection and sense of belonging that people have with the landscape and with each other. For Aboriginal people, cultural heritage and cultural practices are part of both the past and the present and that cultural heritage is kept alive and strong by being part of everyday life.

Cultural heritage is not confined to sites. It also includes peoples' memories, story-lines, ceremonies, language and 'ways of doing things' that continue to enrich local knowledge about the cultural landscape. It involves teaching and educating younger generations. It is also about learning and looking after cultural traditions and places, and passing on knowledge. It is enduring but also changing. It is ancient but also new.

Aboriginal cultural heritage provides crucial links between the past and present and therefore represents an essential part of the identities of Aboriginal people and all Australians."

Legislative requirements and planning context

National Parks and Wildlife Act, 1974 and Environmental Planning and Assessment Act, 1979

Aboriginal Cultural Heritage (ACH) is managed through the NSW National Parks and Wildlife Act, 1974 (NP&W Act). The NP&W Act provisions are administered through the Office of Environment and Heritage (former Department of Environment, Climate Change and Water). In addition, the Environmental Planning and Assessment Act, 1979 (EP&A Act) requires consideration of the potential impacts of development on Aboriginal heritage is an element of the environmental impact assessment process considerations.

Key to this process is the requirement for an Aboriginal Cultural Heritage Due Diligence Assessment, guided by the [former] DECCW *Due Diligence Code of Practice for the protection of Aboriginal Objects in New South Wales*, September 2010.

S68 of the NP&W Act sets out a number of offences about 'harm' to an Aboriginal object, which may be an act or omission that:

- destroys, defaces, or damages the object
- moves the object from the land on which it has been situated
- causes or permits the object to be harmed.

An activity which may 'harm' an Aboriginal object requires application for an Aboriginal Heritage Impact Permit (AHIP).

Offences for 'harming' and Aboriginal object may be:

- an offence of harming or desecrating an object which a person knows is an Aboriginal object (a 'knowing offense'), or

- an offense of harming an object whether or not that person knows it is an Aboriginal object (a 'strict liability offense')

In the context of protecting Aboriginal cultural heritage, due diligence involves taking 'reasonable and practicable measures' to determine whether actions will harm an Aboriginal object, and if so what measures can be taken to avoid 'harm'.

Due diligence provides a defence against prosecution for 'harm' if the process is followed.

The [former] Department of Environment, Climate Change and Water (DECCW) has prepared guidelines to assist in consultation required for the assessment and recording of Aboriginal cultural heritage. The document *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* sets out the consultation requirements.

Heritage Act, 1977

The Act as administered by the Heritage Branch (part of the Department of Premier and Cabinet), is mainly an act for the protection of non-Aboriginal heritage. However, items on the NSW Heritage Register can, and do, have significance to Aboriginal people in certain instances or can be land that was or is significant to local Aboriginal groups.

Aboriginal Land Rights Act 1983

The Act sets out the role of the State and Local Aboriginal Land Councils as follows:

"(4) A local Aboriginal Land Council has the following functions in relation to Aboriginal culture and heritage:

- To take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law,*
- To promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area."*

Other Acts

The Native Title Act, 1993 (Commonwealth) provides the framework for the recognition and protection of native title, how it is to proceed and determine claims. The NSW Native Title Act, 1994 was introduced to ensure NSW and Commonwealth legislation are in accordance with each other.

The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and The Environmental Protection and Biodiversity Conservation Act 1999 (Commonwealth) may come into effect when state based legislation cannot protect a significant item or when the item is of national significance.

Tweed Local Environmental Plan (LEP) 2000

The Tweed LEP 2000 undertakes to conserve and ensure that any development does not adversely impact on the heritage of the Tweed LGA, as listed in Schedule 2.

Clause 44 of the Tweed LEP 2000 sets out the requirements for development assessment likely to impact a site or relic of Aboriginal cultural heritage significance.

Tweed Draft LEP 2010 and the Standard LEP Template

Similar requirements are carried over into the draft Tweed LEP 2010, however, under the State Government Standard Template (local environmental plans) Order 2006, this is now expanded to encourage the listing of ACH items within the Heritage Schedule (and mapping where appropriate) to ensure their protection.

To inform this process the Department of Planning issues Planning Practice Notes and Guidelines to guide the preparation of LEPs. With regard to heritage, a requirement of converting the LEP to the Standard LEP template, or preparing a planning proposal, is that under *PN11-001, Preparing LEPs using the Standard Instrument: standard clauses*, requires as compulsory:

The Heritage Schedule (5) “should be divided into 3 sections being heritage items, heritage conservation areas, and archaeological sites. Where agreement is reached with the Aboriginal community to list Aboriginal objects and/or Aboriginal places of heritage significance, the Schedule should also include separate parts listing any such object or place.

A Heritage Map may also show the location of all heritage items. Heritage conservation areas (if any) must be shown on the Heritage Map as well as being described in Schedule 5. The location and nature of ‘Aboriginal objects’ and ‘Aboriginal places of heritage significance’ described in Schedule 5 may be shown on the sheet of the Heritage Map marked ‘Aboriginal Heritage Map.’”

This is supported by NSW Planning Ministerial s117 Direction 2.3 Heritage Conservation, which requires:

A planning proposal [LEP] must contain provisions that facilitate the conservation of:

- (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,*
- (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and*
- (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*

Identifying and “mapping” of Aboriginal Cultural Heritage Items requires a sensitive and consultative approach with local Aboriginal interest groups in managing, recording and identifying this information as appropriate. Development of an Aboriginal Cultural Management Plan is the first step in this process.

Aboriginal Cultural Heritage Management Plan

In February 2011 a grant application was lodged for funding through the NSW Heritage Office Local Government Heritage Planning Study Projects funding.

The application sought funding of \$50,000 to undertake a Tweed Shire Aboriginal Cultural Heritage Management Plan with a dollar for dollar contribution from Council.

In June 2011 Council was notified that this application was successful. The funding offer, of up to \$50,000, acknowledges the significant time required to undertake such a plan, and requires:

1. The project to be completed by within 2 years (by 15 May 2013 with milestone reporting in August 2011, November 2011, May 2012, November 2012, and May 2013);
2. Compliance with the best practice heritage management guidelines; and
3. Use of the Heritage Office (Consultants) brief template.

In summary the Aboriginal Cultural Heritage Management Plan (ACHMP) aims to:

1. Assist Council to develop an effective working relationship with the local Aboriginal community groups and Land Councils.
2. To identify and assess the significance of known, and any potential, Aboriginal cultural heritage which may be located within the Tweed Shire LGA and potentially impacted by future development.
3. To ensure the input of the Aboriginal community is sought and recorded as part of this process to ensure appropriate outcomes for all groups are reached.
4. Provide the Aboriginal community and wider Tweed Shire community with a historical record of the Aboriginal people of the Shire.
5. To develop sound management guidelines and policies to assist in minimising any possible impact on Aboriginal Cultural Heritage (ACH) and implement those policies as part of the planning and development assessment processes.
6. Provide clarity and understanding for Aboriginal people, residents, Council staff and proponents of development seeking to:
 - a. Determine the presence of Aboriginal heritage
 - b. Submit a development application
 - c. Understand the legislative requirements the must be complied with
 - d. Understand what results may be expected from the process.
7. To develop ACH identification, appropriate and acceptable to the Aboriginal community for inclusion in the heritage schedule of the Tweed LEP.

Consultation with the Aboriginal community groups, stakeholders and Land Councils is a key component of the development of the Aboriginal Cultural Heritage Management Plan, undertaken in five stages. There are detailed steps in each of these stages, which are summarised as follows:

- Stage 1 – Consultation and protocols / Memorandum of Understanding (MOU) (to understand to wishes and expectations of Council and the Aboriginal groups and establish protocols)

- Stage 2 – Documentary research and cultural mapping (a comprehensive survey of Aboriginal known sites, knowledge, landscape and site data of Aboriginal living patterns and land uses)
- Stage 3 – Landform mapping and predictive modelling (synthesis of the above data to compile maps appropriate to and respecting Aboriginal group expectations)
- Stage 4 – Recommendations for land planning and management (determine the significance of ACH as a whole for the Tweed and develop management practices and procedures for the future protection of ACH)
- Stage 5 – final reports

It is anticipated that this project will require the full 2 year period to complete.

Staff will be preparing a brief, based on the requirements of the Heritage Office, for the engagement of consultants to undertake this work. The brief will be publicly tendered and assessed consistent with Council's Procurement (Contract for Services) Policy.

CONCLUSION:

The matters raised by way of this Notice of Motion have been addressed in this report. In addition, the report highlights the recent success in the grant funding application to undertake an Aboriginal Cultural Heritage Management Plan, and briefly outlines the aims and consultation requirements of that process.

The area of heritage law generally is complex and the process of identifying heritage (Aboriginal and European) subject matter is likewise complex and demanding of attention to detail, significant consultation, and resources.

The Planning Reform Unit, in consultation with the Community and Cultural Services Unit, is committed to improving heritage protection, awareness and education in the Tweed.

Both the CBHS and the ACHMP projects represent a significant commitment by Council to preserving the Tweed's heritage, which can be further underpinned by additional policies, such as a Landscape (Scenic Protection) Strategy, at a later time.

These projects are a fundamental component of a holistic strategic planning framework for the Tweed and will provide an excellent opportunity to engage the broader community and interest groups on matters of local and regional significance, and which add to the enrichment of the Tweed as a special place for residents and visitors alike.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The project will be funded by the Heritage Branch grant of up to \$50,000 with a dollar for dollar contribution from Council through the Aboriginal Community Development Program in the 7 year Infrastructure and Services Plan.

The project is likely to require the equivalent of one planning staff for an average of 4 days per month over the next 2 years.

POLICY IMPLICATIONS:

There are no immediate policy implications; however, the development of the Aboriginal Cultural Heritage Management Plan will develop a policy and planning framework, including consultation requirements and recommendations for amendment to the LEP, for the ongoing management of Aboriginal cultural heritage.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

9 [PR-CM] Planning Proposal PP10/0005 - Lot 1 DP 1046935 Old Lismore Road, Murwillumbah, known as Hundred Hills extension

ORIGIN:

Planning Reform

FILE NO: PP10/0005 Pt1

SUMMARY OF REPORT:

Council resolved, at the meeting of 19 October 2010, to proceed with a request to prepare a planning proposal to rezone Lot 1 DP 1046935 Old Lismore Road, Murwillumbah (PP10/0005) from the current 1(c) Rural Living to a low density residential zone.

This report brings to Council a request to include a minor portion of land, part Lot 279 DP 1145129 and currently zoned 2(c) Urban Expansion, in the adjacent planning proposal seeking rezoning of Lot 1 DP 1046935 Old Lismore Road, Murwillumbah (PP10/0005).

RECOMMENDATION:

That Planning Proposal PP10/0005 for Lot 1 DP 1046935 Old Lismore Road, Murwillumbah be amended to include that part of Lot 279 DP 1145129 currently zoned 1(c) Rural Living, as shown on Map 3 within this report.

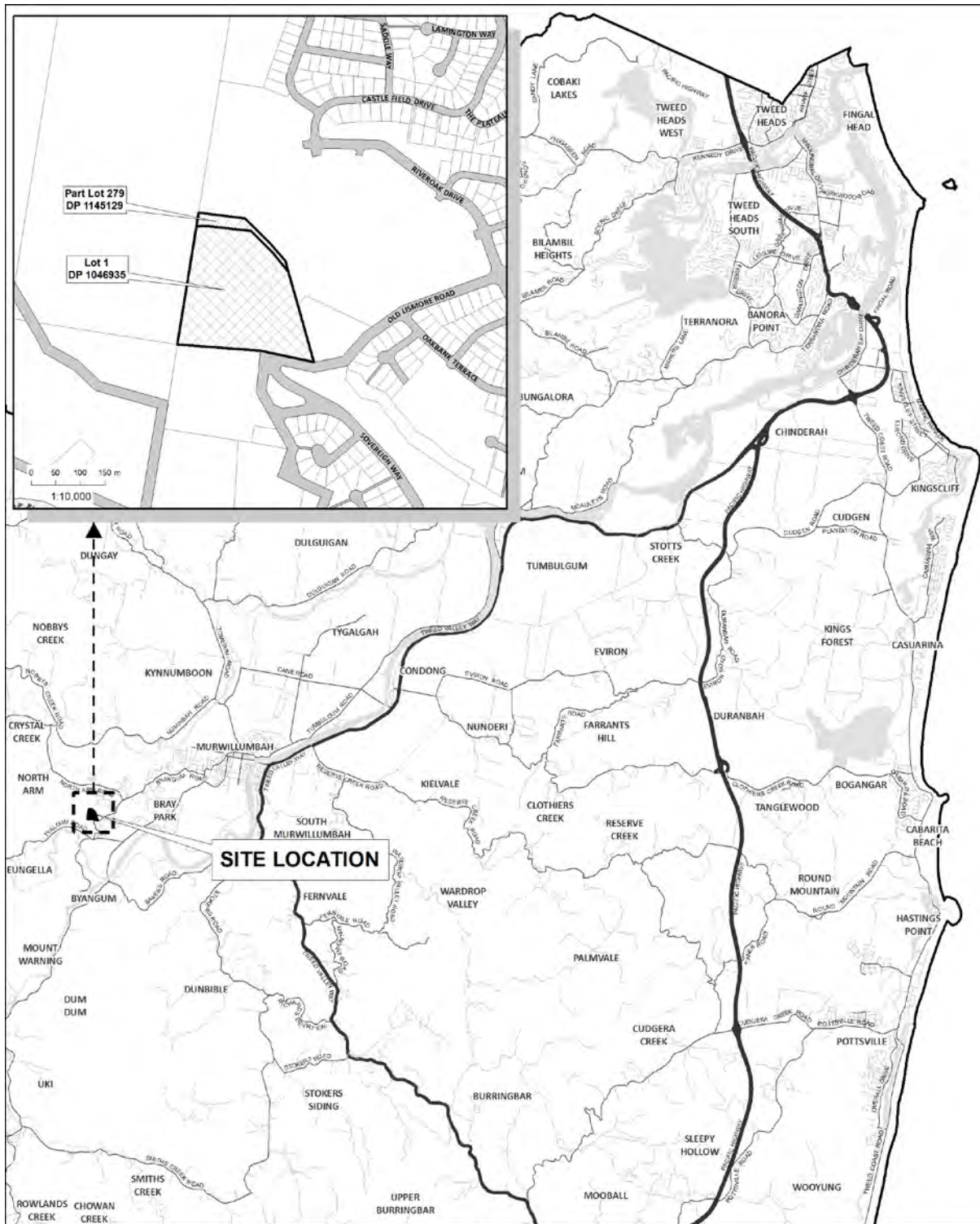
REPORT:

At the Council meeting of 19 October 2010, Council resolved to prepare a planning proposal for Lot 1 DP 1046935 Old Lismore Road, Murwillumbah, within the locality as shown on Map 1 (see next page), and to enter into a dialogue with the land owner regarding relevant supporting documentation and technical assessment to satisfy subsequent lodgement of a planning proposal with the Department of Planning for a Gateway determination.

In the months that followed a Memorandum of Understanding (MOU) has been drafted between Council and the land owner to outline the additional studies and technical assessments required to support this proposal.

Council staff has outlined the relevant terms of reference, scope, methodology and report outcomes for each of the studies to ensure the outcomes deliver the information required to be confident of the suitability of the proposal. The studies will be undertaken by the landowner at their cost.

Map 1 – Locality of the Planning Proposal for Lot 1 DP 1046935 Old Lismore Road, Murwillumbah

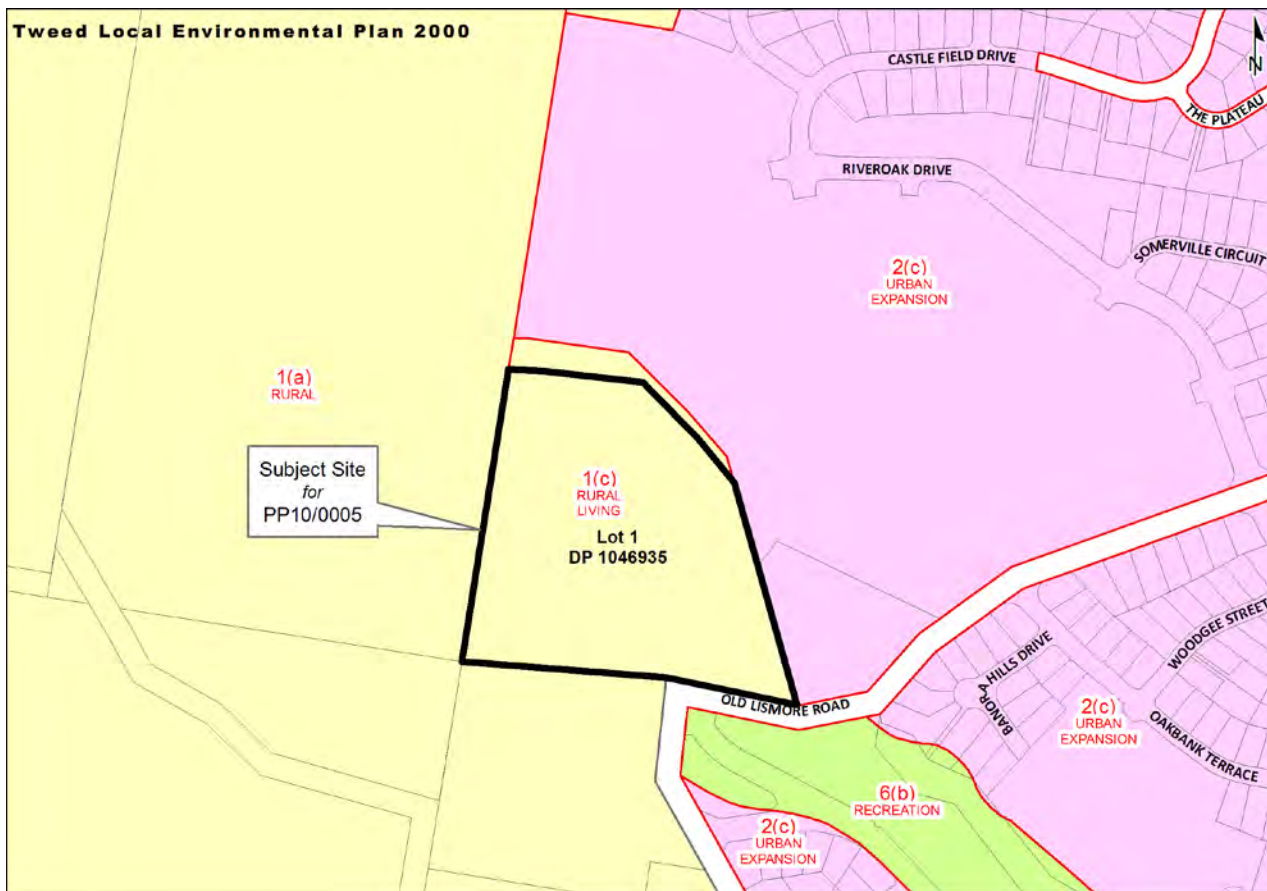


Locality Plan

Lot 1 DP 1046935 and Part Lot 279 DP 1145129
Old Lismore Road, Murwillumbah

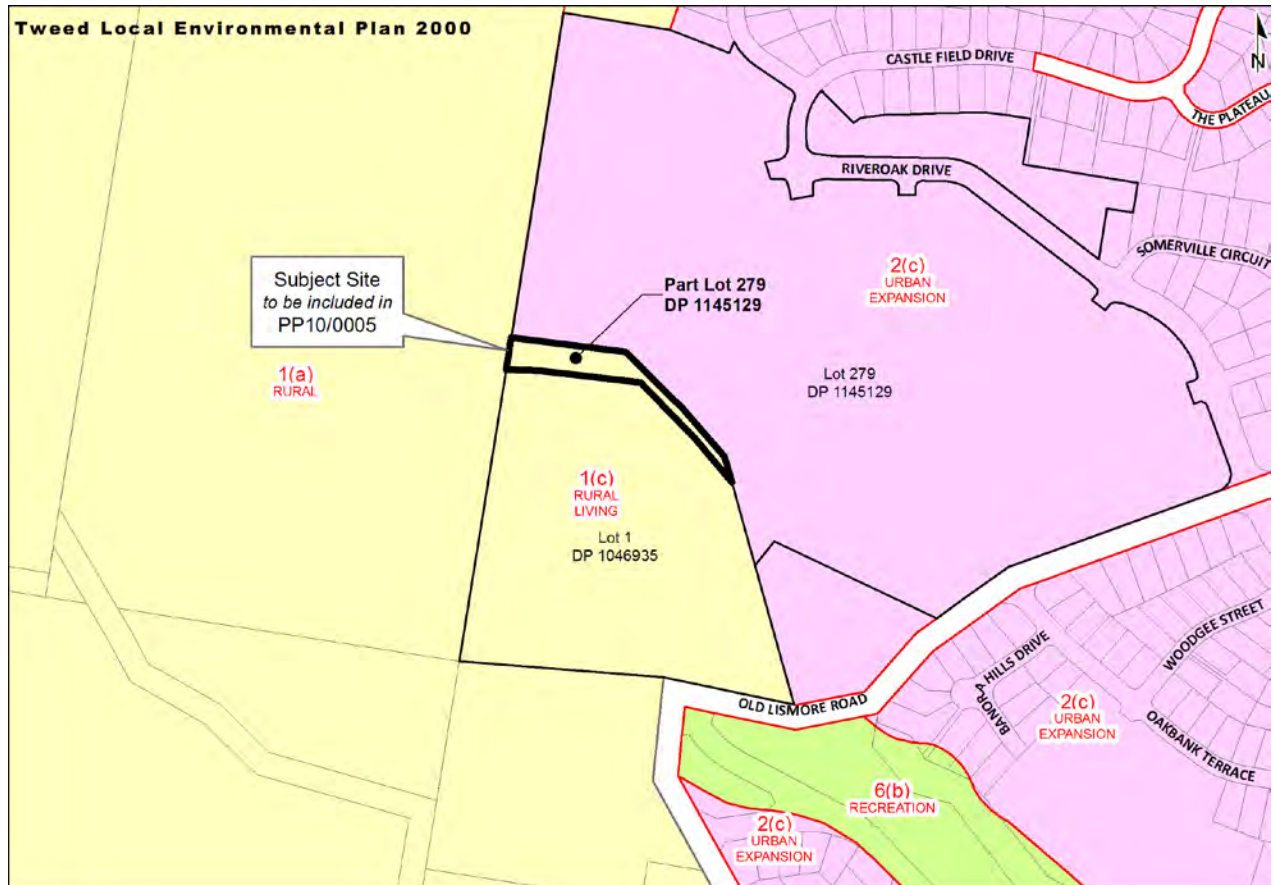
<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dig before you dig" enquiry must be made by calling 5100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastre: 23 June, 2011 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 1 2 3 Km 1:125,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Horizontal datum: Geocentric datum of Australia 1984 Grid: Map Grid of Australia, Zone 56</p>	<p>Civic and Cultural Centre 3 Tumbulghum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	<p>TWEED SHIRE COUNCIL</p>
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The planning proposal seeks the rezoning of Lot 1 DP1046935 Old Lismore Road from the current 1(c) Rural Living zone to a low density residential zone, consistent with the surrounding residential zoned land, as shown on the following Map 2.



Map 2 – Site of the subject PP10/0005

As part of the review it has been noted that whilst the majority of the adjoining Lot 279 DP 1145129 is currently zoned 2(c) Urban Expansion, a minor portion of land along the southern boundary, adjoining Lot 1 DP1046935 is currently zoned 1(c) Rural Living, that is, the zoning boundary does not match the property boundary, as shown on the following Map 3.



Map 3 – That part of the adjoining site Lot 279 DP 1145129, requested to be included in the PP10/0005

On 3 June 2011, Council received a written request from the landowner (of both Lot 1 DP1046935 and Lot 279 DP 1145129) to include that part of Lot 279 DP 1145129 that is currently zoned 1(c) Rural Living in the planning proposal together with Lot 1 DP 1046935 Old Lismore Road, Murwillumbah (PP10/0005) to be rezoned for low density residential uses.

This is considered to be an appropriate request as:

- Omitting that part of Lot 279 DP 1145129 will, in the event of the planning proposal rezoning request being made, leave a minor portion of land of unusable rural living zoned land between two parcels of urban zoned land;
- It will not increase any potential impact of the planning proposal as a whole; and
- Both properties are in the same ownership.

Should Council be of a mind to support this request, the planning proposal would be amended to include that Part of Lot 279 DP 1145129 currently zoned 1(c) Rural Living, as shown on Map 3, and the file would be amended to reflect the proposal applies to both lots.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Written request from RPS to include Part Lot 279 DP 1145129 in PP10/0005 (ECM 35353969)
 2. Owners consent from Stockland Developments (ECM 35353969)
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- 10 **[PR-CM] Planning Proposal PP11/0004 - Stage 1 of Planning Proposal for Tweed City Shopping Centre at Lot 22 DP 23659; No. 24 Kirkwood Road; Lot 21 DP 23659; No. 26 Kirkwood Road; Lot 20 DP 23659; No. 28 Kirkwood Road; Lot 19 DP 23659; No. 30 Kirkwood Roa**

ORIGIN:

Planning Reforms

FILE NO: PP11/0004 Pt1

SUMMARY OF REPORT:

A request to prepare a planning proposal has been received from Urbis Pty Ltd on behalf of Dexus Property Group ("the Group"), who is the site Manager of the Tweed City Shopping Centre.

A desktop strategic (planning) analysis indicates that the expansion of the site incorporating their recent property acquisitions and their use for expanding on the existing centre is a logical one and represents a coordinated response to the consolidation and rationalisation of the properties and their zoning.

The future development of the Tweed City Shopping Centre site is also consistent with the urban consolidation objectives of Council's adopted Retail Policy and Community Strategic Plan.

The proposal is not identified in the Planning Reform Unit's work program and there is no resource presently available to progress it to a detailed planning proposal suitable for a Gateway Determination. There are also several other requests that have been made ahead of this one and that are pending and competing for any available resource.

However, given the strategic merit of the proposal, it is considered appropriate to retain this request in abeyance for the immediate time frame, and to reconsider the proposal in the preparation of the 2012/2013 Planning Reform Unit Work Program.

RECOMMENDATION:

That:

- 1. Council does not support Planning Proposal PP11/0004 Stage 1 of Planning Proposal for the Tweed City Shopping Centre in the immediate time frame, and**
- 2. The request be held in abeyance and be reconsidered in the preparation of the 2012/2013 Planning Reform Unit Work Program.**

REPORT:

A request to prepare a planning proposal has been received from Urbis Pty Ltd on behalf of Dexus Property Group ("the Group"), who is the site Manager of the Tweed City Shopping Centre.

The Group has acquired several adjoining properties in recent times with the view to expanding the services of the centre to match the demand of the growing population. The properties are however inappropriately zoned to accommodate their intended future purpose and arguably their full potential. Several properties are zoned for residential housing whereas there are also part commercial, business and open space zonings over other parcels.

A desktop strategic (planning) analysis indicates that the expansion of the site incorporating their recent property acquisitions and their use for expanding on the existing centre is a logical one and represents a coordinated response to the consolidation and rationalisation of the properties and their zoning. It would assist in reinforcing the precinct's primary objective as a major commercial retail hub consistent with the Draft Tweed City Centres Development Control Plan, which also applies to this locality.

Whether the technical and policy aspects of the proposal likewise support the proposal is very unclear at this stage. The proposal is not identified in the Planning Reform Unit's work program and there is no resource presently available to progress it to a detailed planning proposal suitable for a Gateway Determination. There are also several other requests that have been made ahead of this one and that are pending the availability of resources. These proposals should be evaluated in toto to ascertain their level of priority and where available resources should be directed to in the first instance.

Given that the proposal provides a direct benefit through the provision of a diverse range of services, which would increase with an expansion of the centre, and given that the proposal could demonstrate a strong community net benefit, which is used as one test for determining the level of priority that should be given to a particular project, it is concluded that the request should not be rejected in its entirety.

Based on the strategic advantages of a coordinated response to the site and the locality generally the preferred option would be to defer the making of a planning proposal and ultimately an amending LEP for the time being.

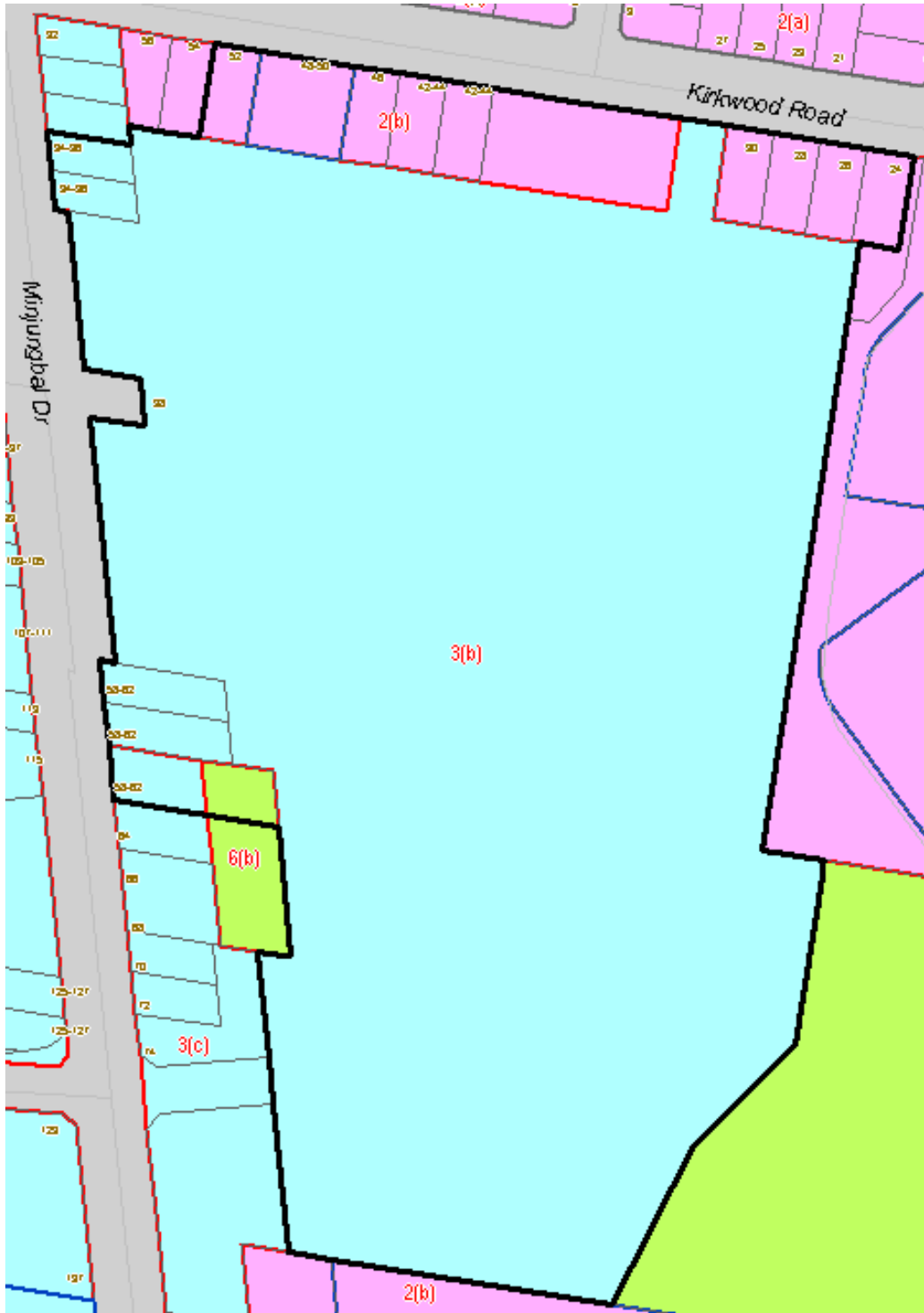
Council officers are currently in the process of evaluating procurement processes and expressions of interest for the contracting out of town planning services. Expectations are that a small number of planning proposals could be contracted out, although it is unclear at this stage how successful this process will be and ultimately what the resourcing impact might be. In particular, while the practice may reduce resourcing impacts on the Planning and Regulation Division it will not alter the substantial commitment required by other areas of the Council, and utilising external consultancies for environmental, engineering and like services has not been contemplated at this stage.

Given that the proponent of any planning proposal has to make significant commercial decisions and funding commitments it would not be reasonable to advance any further proposal on this basis until the practice can be sufficiently tested and evaluated.

Planning Controls (Zoning)

The site is currently zoned 3(b) General Business, 3(c) Commerce and Trade, 6(b) Private Recreation and 2(b) Medium Density Residential.

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



Tweed LEP 2000

CONCLUSION:

Based on the circumstances detailed in this report it is concluded that the request has an observable level of strategic justification but lacks both the technical detail and resourcing to progress it further at this time.

It is recommended that the request be held in abeyance pending the allocation of further resourcing.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Undertaking a planning proposal based on the current level of resources would significantly impact on the cross Divisional resourcing of existing work commitments and priorities, and may lead to financial implications.

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 (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. Tweed City Shopping Centre Site: Stage 1 - Request to Prepare a Planning Proposal JUNE 2011 prepared by Urbis (ECM35601540)
-

11 [PR-CM] Planning Proposal PP11/0001 - 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 refer the planning proposal (PP11/0001), Black Rocks Estate, under s 59 of the Environmental Planning and Assessment Act 1979 ("the Act") to the Minister for the making of the local environmental plan.

Council resolved at its meeting of 19 April 2011 to prepare a planning proposal for a change in land-use zone classification and to refer it to the Minister under s 56 of the Act for a 'Gateway Determination', which was received with the Minister's conditions on 17 June.

In summary, the conditions are; that no public, State or Commonwealth agency consultation is required; a public hearing is not required, and the timeframe for completing the LEP is 3 months.

As detailed in the Council report of 19 April 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, the planning proposal and consequent LEP is suitable for referral to the Minister to be made.

RECOMMENDATION:

That the Planning Proposal PP11/0001 (Local Environmental Plan amendment) for Lot 378 DP 1148511 Overall Drive, Pottsville, be referred to the Minister under Section 59 of the *Environmental Planning and Assessment Act 1979*, for the plan to be made.

REPORT:

Council resolved at its meeting of 19 April 2011 to prepare a planning proposal for a change in land-use zone classification over Part Lot 378 DP 1148511 Overall Drive, Pottsville, and to refer it to the Minister under s 56 of the Act for a 'Gateway Determination.'

On the 17 June the Minister's conditions for preparing the LEP were received; they are:



**Planning &
Infrastructure**

Gateway Determination

Planning Proposal (Department Ref: PP_2011_TWEED_001_00): to rezone land being Lot 378 DP 1148511, Overall Drive, Pottsville from part 2(a) Low Density Residential and part 7(1) Environmental Protection (Habitat) to 2(a) Low density Residential across the whole of the site

I, the Deputy Director General, Plan Making & Urban Renewal as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Tweed Local Environmental Plan 2000 to rezone land being Lot 378 DP 1148511, Overall Drive, Pottsville from part 2(a) Low Density Residential and part 7(1) Environmental Protection (Habitat) to 2(a) Low density Residential across the whole of the site should proceed subject to the following conditions:

1. No community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act").
2. No consultation is required with State and Commonwealth public authorities under Section 56(2)(d) of the EP&A Act:
3. No public hearing is to be held into the matter under section 56(2)(e) of the EP&A Act.
4. The timeframe for completing the LEP is to be **3 months** from the week following the date of the Gateway determination.

Dated 9th day of June 2011.

A handwritten signature in blue ink, appearing to read 'Tom Gellibrand', written over a horizontal line.

**Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal
Delegate of the Minister for Planning and
Infrastructure**

The future use and rezoning for residential purposes was seemingly contemplated as part of the land dedication trade-off (public open space and environmental protection) that formed the basis of a subsequent deed of agreement, and it is recognised by both the lawful construction of the allotment to a residential standard, as well as, the zoning amendment proposed, and publicly exhibited, under the Draft Tweed LEP 2010, which is the same as that now sought under the planning proposal.

As detailed in the Council report of the 19 April (attached) 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.

The April report also discussed an important element of the proposal relating to the current environmental protection zoning and noted that the land was identified as having no environmental significance. This occurred prior to the lawful construction of the site and the rehabilitation of the adjacent estuarine terrestrial reserve, which formed part of the land dedication agreement. The proposed realignment of the environmental boundary is consistent with the prevailing natural and built environment.

CONCLUSION:

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.

The expedient nature in which the proposal has progressed through both the Council's and Department of Planning and Infrastructure's processes is indicative of both the long-term intended outcomes for the land and is reflective of the fully constructed nature of the site and the absence of any unforeseen or planned impact.

It is extremely rare for a rezoning proposal to succeed through the system in such a short period of time given the veracity of the procedural and assessment processes associated with plan making under the Act. The ability for this proposal to proceed so quickly is testament to Council's long-term planning and assessment processes.

On that basis, the planning proposal and consequent LEP is suitable for referral to the Minister to be made.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There are no known adverse implications associated with the making of the LEP.

POLICY IMPLICATIONS:

The making of the LEP is a proactive planning policy reflecting Council's long-term vision for the use of the land for residential purposes.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Planning Proposal (Draft LEP Amendment 88) "Final" v.3 (ECM35556761)
 2. Council report of 19 April 2011 (see Attachment 1 of the Planning Proposal (Draft LEP Amendment 88) "Final" v.3 which is Attachment 1 to this report) (ECM 35556761)
-

12 [PR-CM] Development Application DA11/0062 for a Boundary Adjustment - Five (5) Lots into Three (3) at Lot 246, 230 DP 755701; Lot 1 DP 358918; Lot 3, 4 DP 1072659, Cudgera Creek Road, Cudgera Creek

ORIGIN:

Development Assessment

FILE NO: DA11/0062 Pt1

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 95%. However, the three proposed lots have the following areas: 45.7, 46.9 and 43.9 hectares.

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

Each proposed lot contains an area of 1(a) zoned land that is less than 40 hectares. In addition, proposed Lot 3 contains an area of 1(b2) zoned land that is less than 40 hectares.

Resulting variation to the 40 hectare minimum standard for the 1(a) zoned land is as follows:

Lot 1	5ha	87.5%
Lot 2	2ha	95%
Lot 3	29.5ha	26.25%

Resulting variation to the 40 hectare minimum standard for the 1(b2) zoned land is as follows:

Lot 3	14.4ha	64%
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The current allotment configuration (5 lots in the same ownership) is composed of only one (1) allotment with an area greater than 40 hectares. Four (4) of these allotments are split-zoned and undersized. An existing maximum 99.9% variation to the abovementioned development standard currently relates to the site.

The applicant seeks consent for a three (3) lot rural residential subdivision, including a proposed Right of Carriageway over an existing access track and nomination of two dwelling sites on proposed Lot 1 and Lot 2. An existing dwelling is located on proposed Lot 3.

The objective of the proposal is to achieve viable and sustainable agricultural units which are capable of efficient and effective operational management.

Following consideration of the application, concurrence was granted by the Director General in this instance for the following reasons:

- The existing agricultural use of the land designated as Regionally Significant Farmland is unlikely to be adversely affected by the proposed subdivision; and
- The proposal is consistent with the intent of the development standard and the objectives of the 1(a) Rural and 1(b2) Agricultural Protection zones.

As such, the proposal results in the creation of three (3) allotments that, although split-zoned, each have a total area of over 40 hectares.

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

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

RECOMMENDATION:

That Development Application DA11/0062 for a boundary adjustment - five (5) lots into three (3) at Lot 246, 230 DP 755701; Lot 1 DP 358918; Lot 3, 4 DP 1072659, Cudgera Creek Road Cudgera Creek be approved subject to the following conditions:

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and:**
 - **Plan No 18151 Revision C (Proposed Subdivision) prepared by B & P Surveys Consulting Surveyors and dated 11 May 2011,**
except where varied by the conditions of this consent.

[GEN0005]
2. **The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.**

[GEN0125]
3. **This development consent does not approve the nominated dwelling site on Lot 2 DP 1072659 as shown in the following reports contained as Annexures to the Statement of Environmental Effects:**
 - **HMC Onsite Sewerage Management Design Report dated November 2010**
 - **Preliminary Site Contamination Investigation Report dated December 2010**
 - **Civil Engineering Assessment Report dated 22 November 2010, and**
 - **Acid Sulphate Soils Preliminary Investigation dated 9 December 2010.**

[GENNS01]
4. **Both proposed dwelling sites on proposed Lots 1 and 2 are to be located a minimum of 30m from the alignment of Cudgera Creek Road.**

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0985]

DURING CONSTRUCTION

7. 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]

8. 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]

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

[DUR1025]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

10. **Section 94 Contributions**

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

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

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

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

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

(a) Tweed Road Contribution Plan:

13 Trips @ \$1125 per Trips **\$14,625**

(\$1022 base rate + \$103 indexation)

S94 Plan No. 4

Sector8_4

(b) Open Space (Casual):

2 ET @ \$526 per ET **\$1,052**

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

S94 Plan No. 5

(c) Open Space (Structured):

2 ET @ \$602 per ET **\$1,204**

(\$575 base rate + \$27 indexation)

S94 Plan No. 5

(d) Shirewide Library Facilities:

2 ET @ \$792 per ET **\$1,584**

(\$792 base rate + \$0 indexation)

S94 Plan No. 11

(e) Eviron Cemetery:

2 ET @ \$120 per ET **\$240**

(\$101 base rate + \$19 indexation)

S94 Plan No. 13

-
- (f) **Community Facilities (Tweed Coast - North)**
2 ET @ \$1305.6 per ET \$2,611
((\$1305.6 base rate + \$0 indexation)
S94 Plan No. 15
 - (g) **Extensions to Council Administration Offices
& Technical Support Facilities**
2 ET @ \$1759.9 per ET \$3,519.80
((\$1759.9 base rate + \$0 indexation)
S94 Plan No. 18
 - (h) **Regional Open Space (Casual)**
2 ET @ \$1031 per ET \$2,062
((\$1031 base rate + \$0 indexation)
S94 Plan No. 26
 - (i) **Regional Open Space (Structured):**
2 ET @ \$3619 per ET \$7,238
((\$3619 base rate + \$0 indexation)
S94 Plan No. 26

[PSC0175]

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

[PSC0825]

12. **The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:**
- (a) **Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.**
 - (b) **Identify all allotments to be created as dual occupancies.**
 - (c) **The creation of a 4.6 metre wide Right of Carriageway in favour of proposed Lot 1 and burdening Lot 2.**

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

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

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

[PSC0835]

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

[PSC0845]

14. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

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

[PSC1165]

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

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

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

[PSC1175]

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

1. A 10 metre APZ shall be maintained around the existing dwelling.

The APZ shall be managed as an inner protection area (IPA) as outlined within Appendices 2 and 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

2. Landscaping within the APZ shall comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: Mrs EG Hardy and Mr RA Hardy
Owner: Mrs Elaine G Hardy & Mr Ross A Hardy
Location: Lot 246, 230 DP 755701; Lot 1 DP 358918; Lot 3, 4 DP 1072659, Cudgera Creek Road Cudgera Creek
Zoning: 1(a) Rural & 1(b2) Agricultural Protection
Cost: Nil

BACKGROUND:

History

On 16 April 2010 a proposal based on seven (7) existing lots being subdivided into five (5) lots was discussed with the Development Assessment Panel. Having regard to the Panel's advice and following further investigations and consideration of the various issues, the proposal is now for the subdivision of five (5) lots into three (3) by way of boundary adjustments.

The land to which this application relates includes two original Parish Portions (230 and 246), a 26.62 hectare parcel being Lot 1 DP 358918 and Lots 3 and 4 DP 1072659 being residue land following acquisition of part of the original parcels by the Roads and Traffic Authority for the widening of Cudgera Creek Road in 2004.

The result of a search of the Land and Property Information – Historic Parish Maps was included in application documentation. Parish maps 1913 to 1969 were reviewed. It indicated that no change in lot boundaries occurred during this period. The site was shown within the larger (82 acres) portion 50 that included the proposed dwelling site locations and extended south of Cudgera Creek Road.

The land has generally been used for cattle grazing and dairying from 1923 until 1980 when sugar cane production commenced.

The objective of this application is to rationalise the existing lot configuration such that all land north of Cudgera Creek Road which is used for sugar cane production is contained within two discrete lots and the whole of the land south of Cudgera Creek Road which is used for grazing is contained within one lot.

The boundary rationalisation will assist with improved management efficiency and operational arrangements for stock watering and will enable all 1(b2) zoned land north of Cudgera Creek Road to be contained in compliant 40 hectare parcels.

The 1(b2) zoned land south of Cudgera Creek Road is not used for sugar cane production. Because of its fragmentation by the Creek and soil types, poor drainage and accessibility, it is not suitable for cane production notwithstanding the 1(b2) zoning.

Aerial imagery (below) indicates that the current land use of the site dates back to 1970 including use of the existing dwelling and agricultural use of the balance of the land north and south. The applicant has clarified that his grandfather settled the land in the early 1900's and that the original homestead was built in the 1920's. The current dwelling was built in 1946 following sale of the original homestead to an adjoining land owner.



1970 imagery - existing dwelling located south of roadway (circled)

The Subject Site

The site is situated at Cudgera Creek approximately three (3) kilometres west of Pottsville in an area of rural residential farm land holdings.

The subject land is described as Lot 1 DP 358918, Lots 230 and 246 DP 755701 and Lots 3 and 4 DP 1072659, Cudgera Creek Road, Cudgera. The land has an extensive frontage to Cudgera Creek Road and Cudgera Creek itself runs through proposed Lot 3 on the southern side of Cudgera Creek Road.

The land has a total area of 136.5 hectares with the land north of Cudgera Creek Road being used for cane production and the area south of Cudgera Creek Road being used for grazing. A dwelling house exists on that part of the land south of Cudgera Creek Road. Surrounding land is used for agriculture and grazing purposes.

The site is generally clear of vegetation north of Cudgera Creek Road with scattered remnant vegetation south of Cudgera Creek Road. This vegetation is protected by the 2004 and 2011 Tree Preservation Orders. A small dam associated with grazing activities is located on proposed Lot 3, south-east of the dwelling.

Land zoned 1(b2) is considered to be regionally significant farmland. However, no referral in relation to this status was required.

The Proposed Development

The applicant seeks consent for a three (3) lot rural residential subdivision, including the creation of a Right of Carriageway over an existing access track on proposed Lot 2. Land areas of the proposed lots are as follows:

- Lot 1 = 45.7ha [split zone 1(a) = 5ha; 1(b2) = 40.7ha]
- Lot 2 = 46.9ha [split zone 1(a) = 2ha; 1(b2) = 44.9ha]
- Lot 3 = 43.9ha [split zone 1(a) = 29.5ha; 1(b2) = 14.4ha]

The proposal includes:

- Subdivision of the site from 5 into 3 rural residential lots (Torrens Title)
- Additional provision of 4.6m wide Right of Carriageway over the existing access track burdening proposed Lot 2 and benefiting proposed Lot 1
- Nomination of suitable dwelling sites on proposed Lot 1 and Lot 2, and
- Retention of the continuing use of the existing dwelling on proposed Lot 3.

The original subdivision plan as lodged and reports within the Statement of Environmental Effects (SEE) make reference to a proposed dwelling site on adjoining Lot 2 DP 1072659 to the west of the subject site. The proposed dwelling site and Lot 2 DP 1072659 do not form part of this application. The subdivision plan has been amended to this effect and assessment of the SEE takes this anomaly into account.

The dwelling sites are well removed from Cudgera Creek and there is no proposed land use change to the subject site (agricultural cane production and cattle grazing to continue). No changes are proposed to the existing dwelling on proposed Lot 3. Unreasonable impacts on Cudgera Creek are not anticipated.

The creation of individual allotments does not require any earthworks and therefore no geotechnical concerns are raised.

Dwelling Entitlements

Proposed Lots 1 and 2 both contain an area of land zoned 1(b2) that exceeds 40 hectares. As such, these allotments, once created, are granted a dwelling entitlement.

Proposed Lot 3 contains the existing dwelling, which as a farmhouse, dates back prior to the 1970's to the first agricultural use of the surrounding land. The existing dwelling is currently located on Lot 3 DP1072659, intersected by Cudgera Creek Road and with a total area of 57.09 hectares, this lot enjoys a dwelling entitlement.

Council undertook preliminary investigations to determine how many dwelling entitlements were enjoyed over the existing five (5) subject lots. The outcome of the investigations indicated that existing Lot 3 DP 1072659 was the only allotment that enjoyed a dwelling entitlement.

As part of a request from the Department of Planning in relation to concurrence issues, further information was required of the applicant in March 2011 to determine the current, accurate configuration of dwelling entitlements over the land. In summary, the applicant was required to undertake historical title searches of adjoining land parcels as part of Council's investigation process that would indicate whether any additional dwelling entitlements were enjoyed.

The applicant chose not to undertake the historical searches and the Department of Planning was satisfied that the additional two dwelling entitlements would be created over proposed Lots 1 and 2. As such, concurrence was granted.

The application proposes to locate the existing dwelling on proposed Lot 3. Although proposed Lot 3 has a total area of over 40 hectares (at 43.9ha), it is split-zoned. It contains 29.5 hectares of 1(a) zoned land and 14.4 hectares of 1(b2) zoned land. Neither of the zone areas meets the requirement for a dwelling entitlement or for the location of a dwelling as per Clause 11. As such, the original dwelling entitlement associated with the existing dwelling is forfeited.

The location of a dwelling on proposed Lot 3 is prohibited under the Tweed LEP 2000. Ongoing use of the existing dwelling relies on existing use rights and associated restrictions in accordance with Sections 106, 107 and 108 of the Environmental Planning and Assessment Act 1979. According to the land owner, the existing dwelling was built in 1946 after the original homestead, located to the east on the hillside, was sold. This was some time before consent was required to be obtained for such structures under Shire of Tweed's Interim Development Order No. 1 which came into force 29 May 1964.

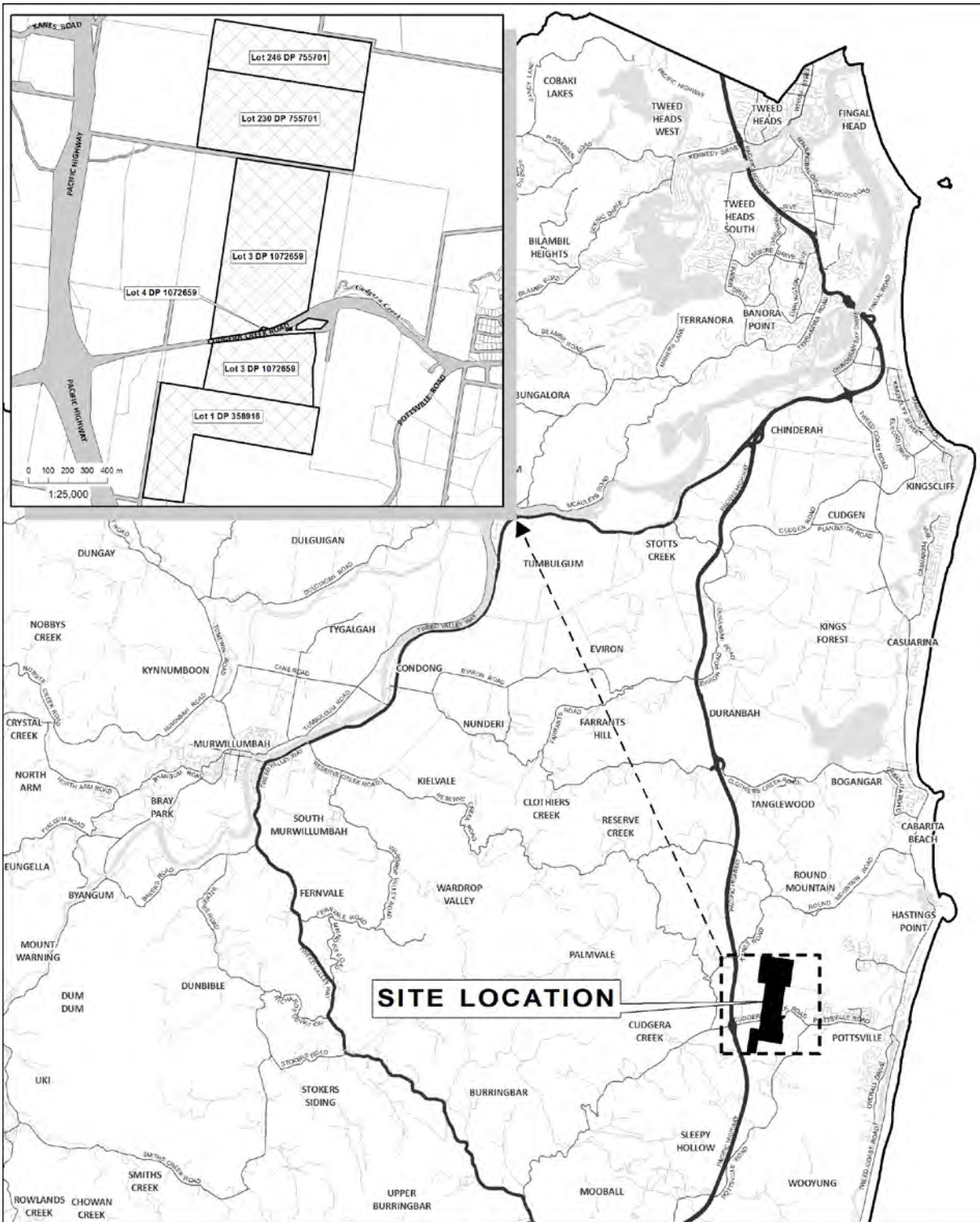
It is possible that further investigation by way of historical title searches may have indicated that the subject land enjoyed more than one existing dwelling entitlement. It should be noted that dwelling entitlements cannot be transferred from one land parcel to another.

Subsequently, in accordance with standard subdivision assessment process and in the absence of additional identified dwelling entitlements, Section 94 contributions have been levied on proposed Lots 1 and 2. Section 64 contributions do not apply to this land as no reticulated water or sewer services are available.

Summary

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

SITE DIAGRAM:



SITE LOCATION

Locality Plan
 Lot 230 and 246 DP 755701; Lot 1 DP 358918; Lot 3 and 4 DP 1072659;
 Cudgera Creek Road, Cudgera Creek

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 30 June, 2011
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 Boundaries shown should be considered approximate only.



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Zone objectives

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

1(a) Rural Zone

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

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

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

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

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

- the proposal enables the consolidation of undersized allotments in order to increase the viability of the ongoing agricultural use of the land. The proposed development does not interfere with surrounding land that is utilised for agricultural purposes

- the proposal does not detract from the rural character or amenity of the locality.

1(b2) Agricultural Protection Zone

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

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

Proposed Lots 1 and 2 contain more than 40 hectares of land zoned 1(b2) and therefore, enjoy dwelling entitlements. Dwelling houses are permissible with consent on an allotment of at least 40 hectares in this zoning. Therefore, the proposed dwelling pads represent a future lawful use of the proposed allotments should development applications be lodged for associated dwellings.

The proposed subdivision consolidates agricultural land and makes minor alterations to the original zoning configuration of the subject site that reduces the degree of variation to development controls. It does not impact upon the historical grazing and sugar cane production activities on the southern and northern sides (respectively) of Cudgen Creek Road.

The proposed lot configuration retains the existing dwelling on an allotment of more than 40 hectares. The continuing land use of the site is considered compatible with the zone objectives.

Clause 15 - Essential Services

Council's reticulated water supply and piped effluent disposal infrastructure are not available within the area.

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

It is proposed that rainwater tanks will be used to provide a potable water supply and for other domestic purposes in respect of any future dwelling to be erected on proposed Lots 1 and 2. This will be assessed at the time of lodgement of the dwelling applications along with the provision of on-site effluent treatment and disposal systems.

Clause 16 - Height of Building

There are no buildings proposed as part of the development application.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

Council's Enlighten indicates that the site is generally covered by Class 3 Acid Sulfate Soils with a small portion of proposed Lot 3 exhibiting Class 5 Acid Sulfate Soils.

No physical work is required as the construction of the driveway for proposed Lot 1 from the Right of Carriageway to the dwelling pad location will take be constructed as the same time as the future dwelling. As such, Acid Sulphate Soils are unlikely to be exposed or disturbed. Standard restrictive conditions have been applied.

Other Specific Clauses

Clause 34 – Flooding

The design flood level for the proposed site is RL 6.7m AHD and the floor level for any future dwelling house shall be RL 7.2m AHD. Flooding matters will be addressed when the future dwelling applications are lodged for assessment.

Specific Clauses

Clause 19 – Subdivision (General)

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

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

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

Clause 20 provides for the subdivision in 1(a) or 1(b2) zoned land if the area of each zone within each allotment created is at least 40 hectares. This application reduces the current degree of zone fragmentation within the original five (5) lots by increasing the overall size of each lot and consolidating the agricultural land into three (3) lots.

There is no change of use to land zoned 1(a) or 1(b2). No new development is proposed on land zoned 1(a) or 1(b2) apart from designation of potential dwelling sites that will be the subject of separate development applications.

However, areas of land zoned 1(a) and 1(b2) still fall short of the required 40 hectares despite the total area of each lot created being greater than 40 hectares.

It is therefore the subject of a SEPP 1 Variation Report which has received the concurrence of the Director General and is discussed in full at a later stage within this report.

Clause 22 – Development near Designated Roads

Cudgera Creek Road is a Council Designated Road. The objectives of this clause are to protect and improve the operation of designated roads and prevent development being unsuitably located near a noisy designated road, or prevent development spoiling the scenic attractiveness of such a road.

Existing access to the existing dwelling on the subject site is from Cudgera Creek Road. Similarly, the existing access track north of the designated road is accessed directly.

Dwelling pads have been nominated in this subdivision application for proposed Lots 1 and 2. However, access issues will be assessed by way of future development applications for associated dwellings.

Therefore, existing access will not be changed as a part of this application and the nomination of dwelling pads on proposed Lots 1 and 2 does not compromise the objectives of this clause.

Therefore, the objectives of this clause are considered to be satisfied.

Clause 24 – Setbacks to Designated Roads

As discussed above, dwelling pads have been nominated for proposed Lots 1 and 2. The dwelling pads are located no closer than 30m from the designated road. This complies with the desired 30m setback set out in this clause.

Clause 39 – Remediation of Contaminated Land

A Preliminary Site Contamination Investigation, HMC December 2010 was submitted for consideration. A detailed site and land use history was established. Soil sampling was undertaken at the location of the two proposed dwelling pads. Eight (8) samples were taken at each site and combined into composite samples.

Test results for the relevant potential contaminants indicate levels to be above background levels but below the 'Health Investigation Level' for Residential A occupancy. The report indicates that the dwelling pad locations on proposed Lots 1 & 2 are suitable for the future use.

The Investigation was prepared substantially in accordance with the relevant Department Environment, Climate Change and Water NSW contaminated land policies.

Clause 39A – Bushfire Protection

The objective of Clause 39A is:

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

The development application was forwarded to the NSW Rural Fire Service on 10 March 2011 for consideration and comment, as the southern portion of subject

site is bushfire prone land. A response was received 12 May 2011. The Service recommended two conditions be attached to the development consent, should it be granted.

The conditions relate to Asset Protection Zones and Landscaping.

Clause 54 – Tree Preservation Order

The area following Cudgera Creek on the southern side of Cudgera Creek Road is affected by the 2004 Tree Preservation Order. The whole of the site is affected by the 2011 Tree Preservation Order. However, there will be no removal of vegetation in association with the proposed subdivision or the proposed dwelling sites.

Maintenance of the 10m Asset Protection Zone around the existing dwelling on proposed Lot 3 also does not require removal of vegetation.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

The history of the use of the site for the past 50 years constitutes grazing and sugar cane production with rural residential use.

Adjoining and surrounding land is similarly utilised.

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

Clause 15: Rivers, Streams and Wetlands

This clause requires the consent authority to take into account the likely impact of the proposal on rivers, streams and wetlands. Cudgera Creek is located immediately south of Cudgera Creek Road and goes through part of proposed Lot 3.

No change in land use or physical works are required or proposed as a result of this subdivision. Therefore, no impacts on Cudgera Creek are expected and the proposal is consistent with the objectives of this clause.

Clause 43: Residential development

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

Dwelling pad locations have been proposed. Site erosion will be minimised as there are no actual works proposed. The density of the proposed development has been maximised to cater for the 40 hectare minimum standard. The proposed density does not adversely affect the environmental / agricultural features of the land.

SEPP No. 1 - Development Standards

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

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

Consent may only be granted to the subdivision of land:

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

The applicant submits that *upholding of the objection would be consistent with the aims of SEPP 1 in that strict compliance with the 40 hectare development standard would unreasonably preclude the appropriate subdivision of the site in accordance with the capability of the land to facilitate more efficient and sustainable use of Lots 1 and 2 for sugar cane production.*

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

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

- The proposed subdivision will eliminate four (4) nonconforming allotments within land zoned 1(b2) and achieve two (2) compliant allotments that can continue to be used for sustainable and efficient agricultural purposes.
- The proposed subdivision does not result in the creation of isolated rural residential development
- The subject land has negligible ecological values north of Cudgera Creek Road as it is used entirely for sugar cane production
- Cudgera Creek contains riparian vegetation and the whole of the creek frontage will be located in proposed Lot 3 and no change in land use or physical disturbance is proposed or required.
- The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment
- Compliance with the 40ha development standard would preclude a logical subdivision of the site to reflect the location of Cudgera Creek Road, existing land capabilities for sugar cane production and constraints imposed by Cudgera Creek, flooding and soil types

- Compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities
- No change in land use results from the subdivision
- No physical disturbance to the landform or vegetation results from the subdivision
- Each lot north of Cudgera Creek Road will contain more than 40ha of 1(b2) land
- The land south of Cudgera Creek Road does not contain an area of 1(b2) land greater than 40ha and therefore because of the split zoning, compliance with the 40ha requirement for 1(a) and 1(b2) land is simply not possible
- The shape of each lot and common boundary location provides a logical and efficient layout
- The proposed subdivision will create lots that are similar to the size of other lots in the immediate locality
- No impacts are likely to be created by the proposal on the surrounding area.

The applicant concludes that no matters of Regional planning significance are raised and that there is considered to be no public benefit in maintaining the standard.

Assessment of the applicant's submission:

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

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

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

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

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

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

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

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

The proposal provides for a Torrens Title subdivision that consolidates five (5) allotments into three (3) with no evidence of an unreasonable burden on public infrastructure being created.

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

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

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

No public benefit issues are adversely affected by not being able to maintain the development standard in this case as four (4) existing allotments are already non-compliant and the degree of non-compliance will be reduced.

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

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

- The existing agricultural use of the land designated as Regionally Significant Farmland is unlikely to be adversely affected by the proposed subdivision; and
- The proposal is consistent with the intent of the development standard and the objectives of the 1(a) Rural and 1(b2) Agricultural Protection zones.

SEPP No. 55 - Remediation of Land

A Preliminary Site Contamination Investigation, HMC December 2010 was submitted for consideration. A detailed site and land use history was established.

Soil sampling was undertaken at the location of the two proposed dwelling pads. Eight (8) samples were taken at each site and combined into composite samples.

Test results for the relevant potential contaminants indicate levels to be above background levels but below the 'Health Investigation Level' for Residential A occupancy. The report indicates that the dwelling pad locations on proposed Lots 1 & 2 are suitable for the future use.

The Investigation was prepared substantially in accordance with the relevant Department Environment, Climate Change and Water NSW contaminated land policies.

SEPP (Rural Lands) 2008

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

None of the provisions contained within the SEPP relate specifically to this site as only dwelling pads have been nominated and the future use of these dwelling pads is for rural residential use associated with the agricultural nature of the land.

The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of denser residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

The shire-wide Draft Local Environmental Plan was recently placed on exhibition. The draft zones are RU1 Primary Production (replaces 1(b2)), RU2 Rural Landscape (replaces 1(a)) and E2 Environmental Conservation.

Cudgera Creek is draft zoned E2. This does not affect the proposal.

The proposed subdivision involves rearrangement of portions of land draft zoned RU1 and RU2 in order to consolidate agricultural activities over the subject site and provide large enough allotments north of Cudgera Creek Road to enable dwelling entitlements for two of the proposed lots associated with sugar cane production.

Minimum allotment sizes for the draft zones are as follows:

- 40ha for RU1
- 40ha for RU2

This is consistent with current zoning provisions. Objectives for both zones are also consistent with current zoning provisions.

The existing dwelling house and future dwelling pads are located within the draft RU1 zone. However, dwelling houses are a permissible form of development in both draft zones. A 'dwelling house' is a form of 'Residential' development'.

Land Use Controls:

RU1

3 Permitted with consent

Agricultural Produce Industries; Animal Boarding or Training Establishment; Aquaculture; Bed and Breakfast Accommodation; Biosolid waste applications; Boat Sheds; Cellar Door Premises; Dual Occupancies (attached); Dwelling houses; Extractive Industries; Farm Buildings; Farm Stay Accommodation; Flood Mitigation Works; Forestry; Helipads; Home Based Child Care; Home Businesses; Home Industries; Intensive Livestock Agriculture; Mining; Roadside Stalls; Rural Worker's Dwellings; Turf Farming; Water Recreation Structures; Water Storage Facilities.

Any other development not specified in item 2 or 4

RU2

3 Permitted with consent

Airstrips; Animal Boarding or Training Establishments; Aquaculture; Bed and breakfast accommodation; Biosolid waste applications; Boat sheds; Caravan parks (camping ground only); Cellar door premises; Cemeteries; Community facilities; Crematorium; Depots; Dual occupancies (attached); Dwelling houses; Educational establishments; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Funeral Chapels; Funeral homes; Helipads; Home-based child care; Home businesses; Home industries; Hostels; Information and education facilities; Intensive Livestock Agriculture; Landscape and garden supplies; Mining; Places of public worship; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Research Stations; Restaurants; Roadside stalls; Rural industries; Rural Supplies; Rural workers' dwellings; Serviced Apartments; Sewerage Systems; Timber and Building Supplies; Transport Depots; Truck Depots; Turf Farming; Veterinary Hospitals; Water recreation structures; Water Supply Systems.

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

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

In the case of this subdivision proposal, the development standard is varied considerably (up to 95% in regard to proposed Lot 2) which would require the applicant to justify the contravention of the development standard and for concurrence of the Director-General to be obtained by the consent authority.

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

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

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

The design flood level for the proposed site is RL 6.7m AHD and the floor level for any future dwelling house shall be RL 7.2m AHD. Flooding matters will be addressed when the future dwelling applications are lodged for assessment.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate “best practice” subdivision development in line with the policies of Council and the State. The DCP defines “subdivision” liberally as “the division of land into two or more parts” and includes the creation of lots in community title subdivisions.

Council’s Development Assessment Engineer has assessed compliance of the proposal against Section A5.5 of this DCP – Rural Subdivision Guidelines and Development Standard and has concluded that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

B21-Pottsville Locality Based Development Code

The Pottsville Locality Based Development Code came into effect 28 April 2010. It is intended to provide the framework for managing growth in Pottsville over the next 25 years, building upon the work contained within the Pottsville Village Strategy 1998.

The code provides policy guidance in relation to a number of key strategy areas. These include:

- Urban structure
- Major retail development
- Pottsville village centre
- Residential neighbourhoods
- Employment
- Community facilities
- Public domain improvements
- Traffic and transport
- Open space and recreation, and
- Infrastructure.

The code is intended to provide provisions for development within the Pottsville locality that will:

- Contribute to the growth and character of the Pottsville village centre and surrounding areas
- Protect and enhance the public domain, and
- Provide for future retail and employment centres as the population increases to meet the needs of the Pottsville locality area.

The main component identified within the subject site by this code is the cane land north of Cudgera Creek Road and the green corridor of Cudgera Creek itself. The land is not identified as being within the town and village growth boundary, nor is it identified as a future urban release area or an employment area.

There are no specific controls put in place to address the future development of the subject site. As such, the proposed development does not conflict with the objectives of the code.

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

Clause 92(a) Government Coastal Policy

The subject land is not affected by the coastal policy.

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

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by this management plan.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by this management plan.

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

The subject site is not located within an area that is affected by this management plan.

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

Access, Transport and Traffic

The proposed boundary alteration has frontage to Cudgera Creek Road which exhibits a bitumen sealed pavement of 10.0m in good condition. As the proposal is a boundary alteration, no upgrading of the existing road infrastructure is required.

A public transport service currently services the Pottsville area and is accessible to both allotments.

Proposed Lots 2 and 3 have existing access from Cudgera Creek Road which are 10m wide at the road pavement and 4m wide at the property boundary.

Proposed Lot 1 will have a new driveway access from the proposed Right of Carriageway located within Lot 2 which will be constructed at the same time as a future dwelling.

Currently, there are no footpaths constructed in the Cudgera Creek Road area and therefore there will be no requirement for the construction of any footpaths.

The proposed boundary alteration will not generate any additional traffic for the local area. Adequate parking and manoeuvring is available to each proposed allotment.

Stormwater and Drainage

Proposed Lots 1 and 2 drain to the north from Cudgera Creek Road to a cane drain which grades to the north. The existing cane drain runs adjacent to the cane road flowing north through a network of drains where it enters a tributary of Cudgera Creek.

Flora and Fauna

There is a large fig tree to the east of the existing dwelling on proposed Lot 3. NSW Rural Fire Service has imposed a condition stating that a 10m Asset Protection Zone (APZ) is to be maintained around the existing dwelling.

The owner of the existing dwelling is currently maintaining a pruning regime for this large fig tree which is compliant with the proposed APZ condition. Council's ecologist has inspected the site and does not consider any sensitive vegetation to be impacted by the 10m APZ requirement.

(c) Suitability of the site for the development

Landuse / Amenity

Existing agricultural land uses are proposed to continue. No unreasonable conflict is anticipated in regard to the proposed dwellings sites and future rural residential use.

Effluent

With respect to the existing dwelling on proposed Lot 3, a current approval OSSMF 1465 exists for the on-site system. The system is not impacted by the proposed boundary adjustment and any future upgrade or modifications required for this system can be determined in the Section 68 inspection / approval regime.

An On Site Sewerage Management Design Report, HMC November 2010 has been submitted. The Report provides an on site sewage management design for the two future dwellings on proposed Lots 1 & 2 that will be subject to an assessment as part of separate future development applications.

However, it is considered that the on-site sewage treatment and disposal method (disposal 480m² shallow surface drip irrigation) as detailed in the On-Site Sewerage Management Design Report, including all recommendations of the report are sufficient to attain an acceptable level of environmental impact within the allotment boundaries as assessed in accordance with AS1547/2000.

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

The application was not required to be notified but was referred, as integrated development to NSW Rural Fire Service for comment and to the Department of Planning for Concurrence with regard to SEPP 1.

The NSW Rural Fire Service imposed two conditions in relation to asset protection zones and landscaping. Refer to the SEPP 1 section for a detailed assessment inclusive of the Department of Planning's response.

(e) Public interest

In accordance with Council's Notification DCP, there was no requirement for advertising or notification of this application, and therefore no public submissions were received.

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

13 [PR-CM] Development Application DA08/1069 for an Expansion of Existing Burringbar Quarry at Lot 6 DP 868345, Howards Road, Burringbar

ORIGIN:

Development Assessment

FILE NO: DA08/1069 Pt2

SUMMARY OF REPORT:

Council is in receipt of a development application for the continuing operation and expansion of Burringbar Quarry, which supplies prepared roadbase for the Council area. The application was lodged 2 October 2008 following extensive investigations and withdrawal of a similar development application D95/0085 on 25 January 2006.

The application was originally lodged as 'expand existing Burringbar Quarry'. However, it was amended to include continuing operations under the current development description on 31 March 2009 following a request by Council's Development Assessment Unit for the applicant to clarify a claim to existing use rights.

The proposal is classified as 'designated development', being a type and a scale specified under Schedule 3 of the Environmental Planning and Assessment Regulation 2000.

In this instance and in accordance with Schedule 3, the quarry operations:

- disturb a total surface area of more than 2 hectares
- are located on land that slopes at more than 18 degrees to the horizontal, and
- blast within 500m of a dwelling not associated with the development.

Accordingly, an Environmental Impact Statement (EIS) is required under the Environmental Planning and Assessment Act 1979 and has been provided by the applicant.

On 1 July 2009, the provisions of the Environmental Planning and Assessment Amendment Act 2008 relating to joint regional planning panels (JRPP's) commenced along with amendments to the Major Projects SEPP that required designated development to be assessed by the JRPP.

The amendments to the Major Projects SEPP (now called the Major Development SEPP) contained savings provisions. Amendments to the SEPP do not apply to development applications which were made but not finally determined before 1 July 2009.

As such, this development application which was lodged 2 October 2008 is not required to be assessed by the JRPP.

Quarry reserves are presently close to exhausted. This application proposes to extend the life of the quarry from between 15 to 30 years, by expanding the quarry area into the

southern sector of the site. Land affected is approximately 3.3 hectares or 60% of the southern section of the subject site.

It is anticipated that the final land use for Burringbar Quarry will be Council owned community land for conservation purposes with restriction of public access.

Having regard to relevant statutory controls and an assessment against the Tweed LEP 2000, the proposed continuing operation and expansion of Burringbar Quarry is generally considered suitable for the location and therefore the proposed development is recommended for approval subject to deferred commencement conditions.

RECOMMENDATION:

That:

- 1. ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(a) of the Local Government Act 1993, because it contains personnel matters concerning particular individuals (other than councillors)**
- 2. Development Application DA08/1069 for an expansion of existing Burringbar quarry at Lot 6 DP 868345, Howards Road, Burringbar be approved subject to the following conditions:**

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 12 months of the date of notification.

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

SCHEDULE "A"

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

- A. The applicant shall provide to Council an initial dilapidation report of the adjacent dwelling located at Lot 5 DP 868345.**
- B. The applicant shall undertake trial blasting that reflects typical proposed operations as outlined in the Environmental Impact Statement prepared by Sinclair Knight Merz and dated 8 April 2009. Advance notification of the trial blasting is to be undertaken to the satisfaction of the General Manager or delegate.**
- C. The applicant shall provide a report to Council outlining the results and recommendations of the trial blast addressing the blasting impact attenuation characteristics for the site and inclusive of a second dilapidation report of the adjacent dwelling located at Lot 5 DP 868345. The report and results shall be to the satisfaction of the General Manager or delegate.**

- D. Approval or notification of exemption under the Native Vegetation Act 2003 must be gained from the Northern Rivers Catchment Management Authority for clearing of native vegetation. Should a Property Vegetation Plan arise from such approval, this plan may be regarded as the Habitat Restoration Plan for the site.

SCHEDULE "B"

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

GENERAL

1. The development shall be completed in accordance with the Environmental Impact Statement Revision 4 Project No. ENO1991 prepared by Sinclair Knight Merz and dated 8 April 2009, except where varied by the conditions of this consent.

[GEN0005]

2. Progressive ecological restoration of the quarry as it descends shall be undertaken within created benches as described within the Environmental Impact Statement accompanying the application. The species list for planting in these areas must be approved by the General Manager or delegate.

[GENNS01]

3. Restoration works must be undertaken in accordance with a Habitat Restoration Plan approved by the General Manager or delegate or a Property Vegetation Plan approved by the Northern Rivers Catchment Management Authority.

[GENNS02]

4. Habitat to be retained and restored outside the development footprint must be protected through reclassification to Community Land or other mechanism approved by the General Manager or delegate. Such process must be commenced within one year of the date of this development consent.

[GENNS03]

5. The maximum annual rate of extraction in any 12 month period is 30,000 tonnes.

[GENNS04]

PRIOR TO COMMENCEMENT OF WORK

6. Section 94 Contributions

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

Prior to commencement of works, all Section 94 Contributions are to be paid with the Certifying Authority having 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:

16.3676 Trips @ \$1124 per Trips \$18,397
(\$1021 base rate + \$103 indexation)

S94 Plan No. 4

Sector11_4

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5.1.1 prior to the commencement of works. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

\\$Unit the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.5

[PCWNS01]

7. A dust management plan shall be prepared and implemented to the satisfaction of Council's General Manager or delegate prior to the commencement of operations. The dust management plan shall incorporate appropriate mitigation measures as outlined in Section No. 6.2 of the Air Quality Assessment prepared by Sinclair Knight Merz and dated August 2008.

[PCWNS02]

8. A groundwater and surface water quality monitoring program is to be prepared and implemented to the satisfaction of Council's General Manager or delegate prior to the commencement of operations.

[PCWNS03]

9. A sediment and erosion control management plan shall be prepared and implemented to the satisfaction of Council's General Manager or delegate prior to the commencement of operations.
[PCWNS04]
10. A noise management plan shall be prepared to the satisfaction of Council's General Manager or delegate prior to the commencement of operations. The noise management plan shall incorporate ongoing community consultation and appropriate mitigation measures as outlined in Section No. 6 of the Noise Impact Assessment prepared by Sinclair Knight Merz and dated August 2008.
[PCWNS05]
11. Turning paths for typical articulated heavy vehicles that will be used for quarry operations shall be provided prior to commencement of operations that show safe exit / entry at the following locations:
- Tweed Coast Way and Cudgera Creek Road, and
 - The quarry entrance and Cudgera Creek Road.
- [PCWNS06]
12. Intersection / entrance driveway corner widening shall be provided prior to commencement of operations if shown to be required by the turning paths referenced in Condition 11.
[PCWNS07]
13. Chevron markers shall be provided on the bridge approaches on Cudgera Creek Road prior to commencement of operations.
[PCWNS08]
14. Vegetation shall be removed to the left and right of the entrance road on Cudgera Creek Road to improve sight distance prior to commencement of operations.
[PCWNS09]
15. Additional guideposts shall be provided on Cudgera Creek Road for better delineation of road geometry prior to commencement of operations.
[PCWNS10]
16. The existing quarry access road shall be bitumen sealed for at least the first 15 metres from the edge of the Cudgen Creek Road carriageway prior to commencement of operations.
[PCWNS11]
17. A Property Vegetation Plan approved under the Native Vegetation Act 2003 or, in its absence, a Habitat Restoration Plan formulated in accordance with Council Draft Guidelines and which demonstrates restoration of native vegetation impacted by the proposed development to the satisfaction of Council must be submitted for approval by the General Manager or delegate prior to commencement of works.
[PCWNS12]

18. Prior to commencement of works and prior to removal of vegetation, the site must be inspected at dusk by a suitably qualified and experienced fauna ecologist familiar with microhabitat requirements and the behavioural patterns of rainforest and wet sclerophyll-dependent fauna species for signs of activity. Should any threatened species or other native fauna be located within vegetation to be cleared, they must be collected and released into adjoining unaffected suitable habitat the next evening.

[PCWNS13]

USE

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

[USE0125]

20. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

[USE0145]

21. Hours of operation of the business are restricted to the following hours:

- * 7:00am to 5:00pm - Mondays to Fridays
- * 7:00am to 12:00pm - Saturdays
- * No operations are to be carried out on Sundays or Public Holidays except for emergency requirements.
- * All deliveries and pickups relating to the business are to occur within the approved hours
- * During the approved hours the following annual restrictions apply to specific quarry operations:

Activity	Total
Blasting	2 periods.
Drilling	200hrs.
Screening & Crushing	500hrs.
Loading and Transport	2700 truck movements.

An operational log book is to be maintained at all times and shall be made available to Council's Building & Environmental Health Unit upon request.

[USE0185]

22. A community liaison officer and community liaison contact phone number shall be available on a 24-hour basis on the days that quarry activities are undertaken (including 24 hours pre-and post-event). Local, directly affected residents shall be notified by means of an individual letter drop a minimum of fourteen (14) days prior to crushing, screening, drilling or blasting activities.

[USE0215]

23. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.
[USE1035]
24. All containers, whether or not empty, which contain or once contained potentially contaminated materials, mechanical parts and the like shall be stored to the satisfaction of Council's General Manager or his delegate.
[USE1045]
25. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate.
[USE1055]
26. All quarry operations shall be undertaken in accordance with the approved Noise Management Plan, Dust Management Plan and Sediment & Erosion Control Management Plan.
[USENS01]
27. Vegetation shall be removed or lopped only as strictly necessary to complete the proposed works. Boundaries of significant vegetation to be retained must be clearly marked in the field with highly visible traffic control barriers prior to the commencement of any clearing operations. No machinery is to traverse beyond the marked boundaries. All tree-felling and vegetation removal must be undertaken so as to avoid damage to remaining native vegetation.
[USENS02]
28. Topsoil removed during construction must be stockpiled and reused within restoration areas to improve re-vegetation success.
[USENS03]

REPORT:

Applicant: Tweed Shire Council
Owner: Tweed Shire Council
Location: Lot 6 DP 868345, Howards Road, Burringbar
Zoning: 1(a) Rural
Cost: \$50,000

BACKGROUND:

History

There are 29 operational quarries within the Tweed Shire area, 14 of which supply material as a prepared roadbase commodity.

Burringbar Quarry has been in operation since at least 1972 with evidence of some activity prior to this time following review of historical aerial photography. Due to a lack of records, however, the exact quarry operation commencement date and subsequent existing use status is difficult (if not impossible) to determine.

The enacting of SEPP 37 in 1993 provided a moratorium for existing use quarries to register and gain approval for any proposed expansion. Burringbar Quarry was registered and an Environmental Impact Statement (EIS) commenced to seek formal approval under the SEPP 37 process. However, the EIS was not completed and it is only now that Council is seeking approval for the continuing operation and expansion of Burringbar Quarry.

D95/0085 (application for extensions to Burringbar Quarry) was lodged 27 March 1995 and withdrawn 25 January 2006, given the inactivity of the file.

Current Operations

The current quarry operations occupy approximately 1.7 hectares at the northern end of the southern section of Lot 6 DP 868345. The current rate of extraction is approximately 5,000 – 10,000 tonnes per annum and consists of the following operations:

- drilling and blasting activities once every one to two years, depending on demand
- screening (and crushing where required) using mobile equipment
- stockpiling of extracted and processed material; and
- loading of material into trucks for transportation.

The existing quarry is located wholly within the footprint of the proposed quarry expansion and therefore no rehabilitation of the existing quarry areas is required.

NSW Department of Industry and Investment description of Burringbar Quarry

Name: Burringbar Quarry

Operator: Tweed Shire Council

Commodity: Prepared roadbase

Rock Type: Chert

Status: Operating - intermittent

Comment: Resource > 1 M tonnes. Long life at last years production rate of 6 500 – 7 000 tonnes. Proposal (DA lodged) to expand and increase production to 30 000 per annum, implying a life of 30 – 40 years.

Extract from Plan 1 Mineral Resource Audit of Tweed Shire May 2011:



Burringbar Quarry site

Key:

	Identified Resource Area – containing active mineral, petroleum and/or extractive operations and/or identified resources.
	Development within these areas could adversely affect or be affected by current or future resource development operations. Any proposed zoning changes or developments that may prohibit or restrict current or potential future operations in these areas should be referred to I&I NSW.
	Transition Area – areas adjacent to identified resource areas.
	Development within these areas could adversely affect or be affected by current or future resource development operations in the adjacent resource area. Any proposed zoning changes or developments that may prohibit or restrict current or potential future operations in the adjacent resource areas should be referred to I&I NSW.

The Subject Site

The subject site is located on Cudgera Creek Road at Lot 6 DP 868345, approximately 1km north of Burringbar township. It is classified as operational land vested with Council.

Burringbar Quarry is located in the southern section of Lot 6 which includes the existing quarry and semi-disturbed bushland.

The site is not identified as flood prone or regionally significant / State significant farmland but it is bushfire prone.

Total land area is 12.396 hectares.

Aerial imagery dating back to 1970 substantiates clear felling of the site and surrounds.



1970 Aerial Imagery of Lot 6 DP 868345

The Proposed Development

The proposed development is an expansion of an established quarry which is currently used by Tweed Shire Council for supply of road construction materials, gravel, aggregates and other quarry material for local use in road maintenance.

The development involves the expansion of an existing quarry including:

- Gradually expand the quarry south to a maximum limit of the RL70 contour
- extraction of a maximum of 30,000 tonnes per annum of material throughout the life of the quarry
- intermittent extraction and crushing operations with materials stockpiled at the quarry
- transportation of stockpiled material to the immediate area for use in road maintenance and upgrade activities; and
- drilling, blasting (1-2 times per year) and screening activities (2-3 times per year) using mobile equipment which is shared with other quarries across the Shire
- revegetation and restoration.

The primary objectives of the proposed development are to:

- provide quarry materials for use by Council maintenance crews in the immediate area without outsourcing to external commercial quarries
- undertake the optimal extraction and utilisation of an identified resource
- implement the required environmental safeguards to ensure the quarry is environmentally acceptable; and
- comply with the expectations of the community and the requirements of legislation.

It is anticipated that the quarry would produce up to 30,000 tonnes of material per year, averaging 20,000 tonnes per year, depending on demand within the local area. Based on estimated reserves in the quarry, this would continue for 15 – 30 years.

Five staff are to attend the site for approximately 6 weeks of the year to supervise extraction and crushing operations. Two staff would attend the site (independently of the former) to supervise truck haulage for approximately 9 weeks of the year.

Hours of operation are restricted from 7am to 5pm Mondays to Fridays and 7am to 12noon on Saturdays. Therefore staff will attend the site for six days within the week.

Truck movements are estimated at approximately 100 trips per day on average for a period of 9 weeks in the year.

The main impact of the proposed quarry extension will be the removal of a small area of semi-disturbed forest bushland which provides potential habitat to native fauna in the area. The applicant proposes to mitigate this impact by minimising the quarry as much as possible, maintaining a continuous bushland corridor, planning for a final landform and gradually rehabilitating the site.

Extraction Methodology

Initial extraction removes material down to RL100, which is the existing upper bench level. Subsequent extraction involves creation of 5m benches initially taking a crescent shape in the plan with the concave side facing north / north-east. A berm is to be left at the top of each bench along its southern edge.

This operation creates a series of bench steps along the western quarry face with each step being 5m high and 3m wide.

This extraction method is to continue down to the 70m contour.

Below the 70m contour, extractions are to continue as above with the bench steps continuing across the southern and eastern quarry faces with operations becoming increasingly screened from the south and east.

Rehabilitation and Restoration

The site is to be rehabilitated progressively with the return of topsoil and revegetation of the site. As each bench step is created, the previous step is to be covered with topsoil and mulched vegetation and planted with indigenous species. Progressive restoration of the site ensures that the view of exposed quarry faces is screened by vegetation as soon as possible.

Upon completion of extraction activities, the quarry floor will be a relatively large flat area sloping gently to the sedimentation pond. Rehabilitation methods include:

- covering with topsoil
- contour deep ripping to retain moisture
- tube-stock tree planting along the rip lines
- hydro-mulching with a seed mix containing native species and a sterile annual grass to provide initial rapid cover and mulch layer.

Public Submissions

The development application was advertised as designated development for a period of 30 days with three (3) submissions being received within the exhibition period.

Summary

Having regard to the site's characteristics, the site history, ongoing use, intended use, proximity of surrounding village, rural residential and agricultural development, amenity issues and an assessment against relevant clauses of the Tweed LEP 2000, the proposed continuing operation and expansion of Burringbar Quarry is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval subject to deferred commencement conditions.

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 consistent with the aims of the Tweed Local Environmental Plan and consistent with the vision of the shire "to manage growth so that the unique natural and developed character of the Tweed shire is retained." The proposed development is for the continuing and expanded operation of an existing quarry and is considered to be consistent with the character of the shire.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally compliant with the principles of ecological sustainable development.

Following a full assessment of the Environmental Impact Statement and the applicant's proposed mitigation measures, the proposed development is not considered to have a detrimental impact on the environment and is generally in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

Clause 8 – Consent Considerations

Clause 8(1) (a) the proposed development has been considered in regards to the primary objective of the zone and this is discussed under Clause 11 below.

Clause 8(1) (b) the proposed development has been considered in accordance with the aims and objectives of the plan above under Clause 4.

Clause 8(1) (c) Cumulative Impact: The proposed development is not considered to create a detrimental cumulative impact in the locality. The proposed continuing operation and expansion of Burringbar Quarry is specific to the site and does not allow or induce other land holders undertake such development. It will not result in any detrimental cumulative impact on the surrounding locality given the existing operations of the quarry for several decades.

Clause 11 - Zone objectives

The subject site is zoned 1(a) Rural under the provisions of the Tweed LEP 2000. As such, all current and proposed quarrying activities are located wholly within the 1(a) zone. The current and proposed quarrying activities are defined as an extractive industry, which is a permissible use, with development consent in the 1(a) Rural zone. The primary objectives of the zone focus on enabling ecologically sustainable development that is suitable for natural resource utilisation while protecting the rural character and amenity.

The proposal is considered to comply with these objectives and includes restoration of vegetated areas with consideration of blasting impacts upon the locality and upon one nearby residence in particular. The expansion of the quarry will allow better utilisation of a valuable primary product (chert) that is in high demand in the Shire for use as prepared roadbase. Furthermore, the proposed expansion is not considered to have any substantial negative impact on the rural character and amenity of the area, as the quarry is already in operation.

The proposal is consistent with primary zone objectives and is considered to satisfy the consent considerations under Clause 11.

Clause 15 - Essential Services

Reticulated sewer and water are not available to the site.

Clause 16 - Height of Building

There are no buildings proposed as part of this development application.

Clause 17 - Social Impact Assessment

The proposed development does not require a social impact assessment.

Clause 35 - Acid Sulfate Soils

Class 5 Acid Sulfate Soil is present on the site, however soil will be removed in order for the quarry operations to take place. As such, there will be no impact upon Acid Sulfate Soil.

Clause 39A – Bushfire Protection

The site is bushfire prone. However, the activities proposed as part of the continuing operation and expansion of the quarry do not increase the risk for bush fire.

The application was referred to NSW RFS as part of the advertising requirements for designated development. A response was received 26/6/09 stating that the service had reviewed the plans and documents received for the proposal and subsequently raised no concerns or issues in relation to bush fire.

North Coast Regional Environmental Plan 1988

Clause 12: Impact on agricultural activities

Clause 12 states

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

The proposed continuation and expansion of the Burringbar Quarry is confined to the existing site which has been designated for such use, and will not impact upon the use of adjoining land for agricultural activities. It will not cause a loss of prime crop or pasture land.

Clause 18: Extractive industry

The application clearly demonstrates that site rehabilitation will be carried out progressively. Any consent will be appropriately conditioned to address this issue.

State Environmental Planning Policies

SEPP No. 44 - Koala Habitat Protection

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

The site does not contain Primary Koala Habitat nor any Primary Koala Food trees. Koalas are known from the immediate vicinity in the past (1987 to the north; 1998 on an area of the quarry floor since having trees removed), however, no evidence of Koala use of the site was recorded during the 2007 consultant survey or the 2011 Ecologist's site visit. The predominant vegetation type is Brushbox wet sclerophyll forest grading to rainforest and is considered unsuitable for Koala use. Nonetheless, the function of the area as a movement corridor remains important and all vegetation outside the quarry expansion footprint should be retained. This aspect has been conditioned.

SEPP (Infrastructure) 2007

Since commissioning the current Environmental Impact Statement, the SEPP (Infrastructure) 2007 was enacted. The SEPP Infrastructure does not deal with extractive industries although it repealed SEPP 11 – Traffic Generating Developments.

Traffic generating developments are now dealt with under Schedule 3 of the SEPP Infrastructure.

Under Schedule 3, the proposed development would be defined as 'any other purpose' and would require the capacity of the site to enable 200 or more vehicles to access any road from the site.

The proposal does not trigger Schedule 3 of the SEPP.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

Under the provision of the SEPP (Mining, Petroleum Production and Extractive Industries) 2007, underground mining may be undertaken, with development consent on any land. Open cut mining, petroleum production and extractive industry may be undertaken with development consent on land subject to pre-existing mining or petroleum production leases or where development for the purposes of agriculture or industry may be carried out.

Of note is that under the SEPP, a land-use compatibility assessment must be undertaken by the consent authority for any proposed development adjacent to an existing mine, quarry or petroleum production facility or on land identified as containing state or regionally significant mineral, petroleum or extractive resources.

SEPP (Rural Lands) 2008

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

None of the provisions contained within the SEPP relate specifically to this site. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities. The existing extractive industry does not impact upon existing farming activities.

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

The shire-wide Draft Local Environmental Plan was placed on exhibition in early 2010. The draft zone is RU2 – Rural Landscape.

The proposed continuation and expansion of an extractive industry is permissible in this zone, as outlined below.

3 Permitted with consent

Airstrips; Animal Boarding or Training Establishments; Aquaculture; Bed and breakfast accommodation; Biosolid waste applications; Boat sheds; Caravan parks (camping ground only); Cellar door premises; Cemeteries; Community facilities; Crematorium; Depots; Dual occupancies (attached); Dwelling houses; Educational establishments; **Extractive industries**; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Funeral Chapels; Funeral homes; Helipads; Home-based child care; Home businesses; Home industries; Hostels; Information and education facilities; Intensive Livestock Agriculture; Landscape and garden supplies; Mining; Places of public worship; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Research Stations; Restaurants; Roadside stalls; Rural industries; Rural Supplies; Rural workers' dwellings; Serviced Apartments; Sewerage Systems; Timber and Building Supplies; Transport Depots; Truck Depots; Turf Farming; Veterinary Hospitals; Water recreation structures; Water Supply Systems.

The objectives of the RU2 Rural Landscape zone include the following:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To provide for a range of tourist accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land, such as bush foods, forestry, crafts and the like.
- To provide for a range of compatible land uses that support tourism in the hinterlands and Tweed generally, such as teahouses, macadamia farms, specialised produce farms and the like.

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

Tweed Development Control Plan

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

Clause 92(a) Government Coastal Policy

The proposed site is not located within the area covered by the Government Coastal Policy.

Coastal Zone Management Plans (within the meaning of the *Coastal Protection Act 1979*)

The subject site is not located within an area that is affected by the following policies of management:

- Tweed Shire Coastline Management Plan 2005
- Tweed Coast Estuaries Management Plan 2004
- Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 Meeting”).

(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

Noise

The EIS is supported by a Noise Impact Assessment (NIA) dated August 2008. Noise modelling has been undertaken to predict noise impacts on the closest sensitive receivers. A majority of sensitive receiver benefit from the shielding provided by the quarry face.

The NIA indicates that sensitive receiver No.6 will be subjected to noise greater than the adopted noise criteria of 43dbA for screening and crushing activities for the current quarry configuration. The report indicates however that the future configuration of the quarry will reduce noise impacts at sensitive receiver No.6 below the adopted noise criteria.

Proposed operating hours of the Quarry are 7:00am to 5:00pm Monday to Fridays and 7:00am to 12:00pm on Saturdays, which is to be conditioned.

The following quarry activities are proposed and will be conditioned;

Activity	Total
Blasting	2 periods/year
Drilling	200hrs
Screening & Crushing	500hrs
Loading and Transport	2700 truck movements per year.

An operational log book is to be maintained at all times to ensure the above requirements are not exceeded. The log book shall be made available to Council Environmental Health Unit upon request.

It is considered important that ongoing community consultation be undertaken prior to significant quarry activities being undertaken to minimise potential noise conflicts.

The development of a noise management plan is required prior to the commencement of operations. The noise management plan shall incorporate ongoing community consultation and appropriate mitigation measures as outlined in Section No.6 of the Noise Impact Assessment prepared by Sinclair Knight Merz dated August 2008.

It is considered that noise impacts will be experienced by the sensitive receivers, however considering the proposed hours of operation, intermittent usage of operational equipment and proposed mitigation measures these impacts will be minimised.

Blast Activities

A Review of Blast Activities has been undertaken by The Saros Group dated November 2009. Blast vibration can have impacts on the structural integrity of building and structures and impact on human comfort levels. It is considered that noise generated from blasting activities will have impacts on human comfort levels.

These impacts can be minimised through appropriate community consultation prior to blasting activities being undertaken and shall be included in the Noise Management Plan. Blasting activities will also be limited to two (2) times per year.

Construction Noise

The NIA predicts that constructions noise impacts associated with the clearance of vegetation will exceed the adopted noise criteria of 43dBA at all sensitive receivers. Significant noise impacts are anticipated with this activity however considering the short term nature of this works the impacts are considered acceptable.

Air Pollution

The EIS is supported by an Air Quality Assessment (AQA) dated August 2008. Air quality modelling has been undertaken to predict dispersion of PM10, TSP and dust deposition on the closest sensitive receivers. The AQA modelling indicates that quarry activities are unlikely to cause exceedences in the Department of Environment, Climate Change and Water requirements as detailed in Section No.5 of the AQA.

The development of a dust management plan is required prior to the commencement of operations. The dust management plan shall incorporate appropriate mitigation measures as outlined in Section No.6.2 of the Air Quality Assessment prepared by Sinclair Knight Merz dated August 2008, which is to be conditioned.

It is anticipated that due to the quarry site location, topography of the land and significant vegetative buffers that impacts from dust will be minimal. This will be further enhanced with the implementation of a dust management plan.

Chemical / Fuel Storage

Potential environmental risks exist from spillage of fuels, oil or other chemicals if not appropriately managed. The EIS indicates that no hazardous materials or dangerous good will be stored on-site with the exception of oils and grease. Standard conditions will apply to ensure all chemicals are appropriately stored to minimise the risk to the environment.

Access, Transport and Traffic

A traffic and transport study was provided at Appendix H of the EIS. Council's traffic engineer has reviewed the traffic and transport study and recommended conditions of consent to ensure that access to and from the quarry via local roads is upgraded to cater for the additional proposed truck movements.

Conditions have been applied.

Flora and Fauna

The lot is constricted in the centre, with the existing quarry and proposed expansion limited to the southern half. Vegetation on site is mapped as “highly modified/disturbed” in the south and “Brush Box Open Forest on bedrock substrate” in the north. The Ecological Status of the site ranges from High in the northern section, Unclassified in the existing quarry section and Low in the southern section of the site. More detailed vegetation mapping has been undertaken with the application for the site and is included as Figure 1 below.

The development is focused upon the low conservation area, where Brushbox is mixed with Camphor Laurel dominated areas. The understorey within the more intact Brushbox forest to the immediate south-east of the existing quarry area however, is exhibiting good regeneration of rainforest species and occasional rainforest canopy species. For this reason; consideration was given as to whether any part of the site may represent the Endangered Ecological Community (EEC) *Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions*. Comparison with the Scientific Committee determination, particularly with regard to dominant canopy species, revealed that the site could not be so classified and thus no EEC's are considered to occur on the site. Nonetheless, this patch is of moderate to high conservation value and areas outside the footprint should be retained and protected.



Figure 1: Vegetation Communities, RoTAP Species and Proposal Area

No threatened flora species were recorded on site over two survey periods, although three rare flora species were recorded, as listed below.

Table 1: Significant plant species observed on site

Species	Scientific Name	RoTAP Class	No. present on site
Veiny Lace Flower	<i>Archidendron muellieranum</i>	3RCa	1
Black Walnut	<i>Endiandra globosa</i>	2RC	2
Smooth Turpentine	Scrub <i>Rhodamnia maideniana</i>	2RC	1

RoTAP Codes - 2 = geographic Range in Australia less than 100km; 3 = geographic Range in Australia greater than 100km; R = Rare – uncommon plants with no current threats; C = Reserved. a = 1000 plants or more known from conservation reserves; - = reserved population size not accurately known

The value of the habitat on the study area for fauna is considered low to moderate and is evidenced by the low faunal diversity recorded over two surveys (i.e. 67 species across the allotment) and the lack of complex structural and floristic diversity. No water resources are present on the site and the habitat lacks critical features for fauna with a scarcity of fruiting and flowering native trees and shrubs and a low abundance of hollow trees and logs. The site retains some moderate value for common fauna species in particular sheltering and breeding opportunities for birds, mammals and reptiles and may constitute a refuge or strategic stepping stone for highly mobile species moving through the landscape to access other higher quality forest habitats in the locality.

Nonetheless, two threatened fauna species were recorded in the study area; the Koala (*Phascolarctos cinereus*) on the basis of scratch marks in 1998, and the Little Bent-wing Bat (*Miniopterus australis*). An additional six threatened fauna species were identified as potentially occurring in the study area on the basis of suitable habitat, including the Rose-crowned Fruit Dove (*Ptilinopus regina*), White-eared Monarch (*Monarcha leucotis*), Large Bent-wing Bat (*M. schreibersii*), Greater Broadnosed Bat (*Scoteanax rueppellii*), Eastern Freetail Bat (*Mormopterus norfolcensis*) and Northern Long-eared Bat (*Nyctophilus bifax*).

The proposed site sits within the Burringbar II mapped Regional Fauna Corridor identified by DEC (2003) which has particular value to species with larger home ranges and dispersing individuals establishing new territories. This 'regional corridor' does not form part of a continuous vegetated corridor but includes fragmented forests and cleared land. The implications of the proposed scale of clearing in this corridor are considered unlikely to significantly impact on fauna movements or the exchange of genetic material for regional populations.

The focal species for this corridor is the Koala, with alternate links and additional wet Eucalypt Forest dependent species also important. A Koala Wildlife Atlas record occurs to the immediate north of the allotment, arising from 1986 and the initial 1998 fauna survey recorded characteristic scratch marks on two Grey Gums, since removed from the quarry floor area. The recent Tweed Coast Koala Habitat Study (Biolink 2011) has mapped the area of the quarry and southwards as unassessed/ other (cleared) and as Secondary B Koala Habitat in the northern half. The inclusion of Koala food trees in restoration planning outside of the development footprint has been conditioned.

In regards to noise impacts on fauna at the site, it is generally considered unlikely that the noise due to the construction of the project and subsequent operational activities will have a lasting or major impact on the native fauna. The following points are proposed to support this assumption:

- The site is an existing quarry and subsequently, there may already be some level of habituation to quarry operation noise at the site (including screening/crushing/infrequent blasting/loading activities) albeit at a marginally lesser scale.
- The residual areas of the site have been subject to past clearing resulting in a lack of complex fauna habitats and subsequently, the site supports a comparatively low vertebrate species diversity and as a consequence, limited habitat for legislatively significant species.
- Operational hours would be limited to diurnal periods thereby having little to no impact on nocturnally active species, crepuscular species, and high activity vocalising periods for diurnal birds (dawn and dusk).
- As the quarry develops, physical barriers would be in place to buffer quarry operations from remnant vegetation bordering the site and further a-field.
- Field assessments did not record roosting colonies of the Grey headed Flying-fox (*Pteropus poliocephalus*) such that the noise from the proposal is not expected to impact on existing flying fox colonies in the area.

In addition the following assessment has been undertaken in relation to the Native Vegetation Act 2003:

Legislation	Section(s)	Comment
<i>Native Vegetation Act 2003</i>	Division Excluded clearing Clause Legislative exclusions	<p>4</p> <p>25</p> <p>The Act applies to Rural land and generally requires dual consent where vegetation clearing is proposed. The vegetation is of an age that is regarded as either remnant vegetation or protected regrowth, thus should not be cleared without (dual) consent. The application was referred to the Northern Rivers CMA and a response received indicated that the clearing was a matter of interest to them and that:</p> <ol style="list-style-type: none"> 1. The development should demonstrate consistency with the targets of the Northern Rivers Catchment Action Plan 2. Council must assess whether any clearing of native vegetation falls under the jurisdiction of the NV Act and if so must seek approval prior to the commencement of any clearing work. 3. Council should have regard to the document <i>North Coast Guide for reducing rural landuse conflict and interface issues</i>.

Legislation	Section(s)	Comment
		<p>The Act does not apply to the following types of clearing of native vegetation:</p> <p><i>Division 4 Clause 25 (f) any clearing that is, or that is part of, designated development within the meaning of the EPA Act and for which development consent has been granted under that Act.</i></p> <p>Because the NV Act necessitates a dual consent role and development consent under the EP&A Act has not yet been granted, consent should first be sought from the Catchment Management Authority for the clearing of native vegetation. The most likely process to arise from such consent is the formulation of a Property Vegetation Plan to offset the clearing. Since a restoration plan is required by Council and has been proposed by the applicant anyway, the process is not considered onerous and has been included as a deferred commencement condition. It should be noted that once a PVP is agreed, clearing is exempt from the Act provisions as shown below.</p> <p><i>Division 4 Clause 25 (d) any clearing carried out in accordance with a property management plan approved by the Director-General of the Department of Environment and Conservation for the purposes of the Threatened Species Conservation Act 1995,</i></p>

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding land uses include rural, semi-rural and agricultural uses to the east, northeast, south and west.

Groundwater / Surface Water

Surface flows are currently diverted to a sediment basin located immediately adjacent to Cudgera Creek Road. Surface waters then flow to a drainage line along Cudgera Creek Road that feed into tributaries of Burringbar Creek.

It is proposed to undertake works to improve the existing sediment basin and construct a new sediment basin as the expansion of the quarry moves south. The mitigation measures proposed appear to be adequate however the development of a sediment & erosion control management plan is required prior to the commencement of operations.

No groundwater or surface water quality monitoring has been undertaken or proposed by the EIS. This is considered important and prior to the expansion of quarry operations the applicant is required to develop and implement a Water Quality Monitoring Program which is to be conditioned.

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

Public Agencies

On 15 May 2009, the proposal was referred to several external agencies based on Council's perception that these agencies may have an interest in the proposal as designated development. A response was not mandatory.

Agency	Response
Department of Planning	No response received.
Department of Environment & Climate Change (EPA Licensing Authority) (now known as DECCW)	A response was provided 1/6/09 stating that as the matter is not scheduled with respect to the Protection of the Environment Operations Act 1997, DECC does not intend to review or provide any further response on the matter.
Roads and Traffic Authority	A response was provided 3/6/09 with advice in relation to the impacts on road safety, efficiency and traffic management. The comments were provided to Council's Traffic Engineer for incorporation into final comments and conditions for the proposed development.
North Coast Catchment Management Authority (now known as Northern Rivers Catchment Management Authority)	A response was provided 19/7/10 including advice regarding 3 points of interest. Council's ecologist has incorporated these points of interest into the assessment and final comments / conditions for the proposed development.
NSW Rural Fire Service	A response was received 26/6/09 stating that the service had reviewed the plans and documents received for the proposal and subsequently raised no concerns or issues in relation to bush fire.
Department of Water and Energy (now known as NSW Office of Water)	No response received.

Public Exhibition

The application was placed on public exhibition for 30 days from 20 May 2009 to 19 June 2009 in accordance with Section 79 of the Environmental Planning and Assessment Act 1979 and Sections 77 to 81 of the Environmental Planning and Assessment Regulation 2000.

A copy of the application documentation was made available at Council's Tweed Heads and Murwillumbah offices. Copies were also available for viewing at Kingscliff Library and the Department of Planning's offices in Grafton and Sydney.

During this period the application attracted three (3) objections that were based on the following concerns:

Objection	Concerns
1	The proposed expansion comes to within 80m of our dwelling. Dust, noise, impact upon collection or rainwater. Effect upon resale value of property. Potential structural damage to buildings and bore from blasting and ground vibrations.
2	Too many trucks and impact on young families.
3	Devaluing of property. Impact from drifting of dust.

The applicant responded in detail to the concerns raised within the submissions as follows:

Adequate buffer distances to adjacent dwelling

The proposal will maintain existing vegetated buffer widths at the site which vary between about 20m and 50m along the western boundary of Lot 6 DP 868345. The adequacy of a buffer relates to the buffer's ability to ameliorate or absorb the impacts of the development.

Due to the topography of the site, a ridge would be maintained along the western boundary of the quarry, with the quarry expanding to the south and facing north-east.

As a consequence, the retained buffer, although narrow, would not be subject to impacts such as changes to surface water hydrology, nutrient loading, incremental clearing through stockpiling, or ongoing access works for example.

In addition, the provision of a high wall between lot 5 and lot 6 would also help mitigate operational noise and air quality issues.

There would be no line of sight issues on lot 5.

Environmental pollution (eg. dust) from additional quarrying activities

Refer to comments raised above and Section 5.7 (**Attachment 1**) and Appendix E (**Attachment 2**) of the EIS.

Property devaluation

When the property was purchased, the quarry was already in existence and operations. This is evidenced by the 88B instrument, development application and other documents provided by the respondent.

In the above documents, there is a clear understanding that the quarry would continue to operate.

Potential damage to infrastructure (including existing bore) from blasting vibration

Refer to Review of Proposed Blast Activities by the Saros Group (**Attachment 3**) clause 2.3 which states that the predicted ground vibration and air overpressure from blasting is well below the guidelines in AS2187.2 for structural damage.

Refer also to letter from consulting structural engineers Michael Samms & Associated P/L (**Attachment 4**) attached to the building file for Lot 5, 72 Howards Road stating that the building design has the structural facility for ground vibration and air overpressure at the current legislative levels.

In regards to human discomfort levels, the Saros Report states that 'based on the distance to the residence and the limits discussed, vibration levels are likely to be strongly perceptible and could be considered to cause a significant impact'.

Section 5.4.1 of the EIS notes that accurate estimation of ground air blast levels and vibration is complex due to variations in blasting processes and rock types.

For air blast levels, the graphical representation of the reduction of air blast levels with distance (Figure 5.5, S5.4.2 EIS) do not take into account the orientation of the quarry face. Thus, some sensitive receivers are likely to benefit from shielding by the quarry walls, and therefore, lower air blast levels may be realised than those presented in the EIS.

For air blast and ground vibration limits, it is argued that due to the very low frequency of proposed blasting activities (eg. 1 to 2 blasts per year pending demand), the impact on human comfort levels could be successfully managed through a dedicated notification strategy to adjacent sensitive receivers thereby limiting this impact substantially.

In addition to the low frequency blasting proposed, a trial blast program with concentrated vibration monitoring is proposed to ascertain site specific vibration attenuation characteristics to more accurately understand the real impacts of the blasting program on human comfort levels.

Adequacy of bridge on Cudgera Creek Road to support truck movements

The bridge on Cudgera Creek Road has the structural capacity to withstand the loads imposed by truck haulage of quarry products. The bridge has a trafficable width of 6.5m and has two lanes. The speed limit is 60kph. The bridge is adequate for the increased traffic movements associated with quarry operation.

Amenity impacts on residents from truck movements on Cudgera Creek Road

Addressed in Section 5.8 of the EIS (**Attachment 5**). Transport of quarry products was not raised as an issue by these residents in door-knock interviews or public meeting.

Council Assessment

Council's assessment generally accepts the mitigation measures outlined in the Environmental Impact Statement and considers that the benefits of the continuing operation and expansion of the Burringbar Quarry for the general community and Shire as a whole, are significant.

Assessment also takes into account the definite life span of the quarry of up to 30 years into the future and understands that the quarry will be returned to community bushland following completion of extraction activities, which is also of benefit to the general community and the Shire as a whole in perpetuity.

However, the impacts of blasting activities on the adjacent residential dwelling remain uncertain and unqualified. It is agreed, as highly recommended at the end of the *Review of Proposed Blast Activities* by the Saros Group that *'further investigation and a more detailed review is undertaken in conjunction with a trial blast program with concentrated monitoring'*.

As such, support for the development application is based on deferred commencement conditions that request the following, in the following order:

- Dilapidation report on adjacent dwelling
- Trial blasting designed to reflect typical proposed operations as outlined in the EIS
- Results of the trial blast addressing the blasting impact attenuation characteristics for the site and second dilapidation report on adjacent dwelling to be submitted with outcome to be to the satisfaction of DAU.

Once the deferred commencement conditions have been satisfied, operation of development consent is enabled to allow production blasting to take place.

In further support of the continuing operation and expansion of Burringbar Quarry, the following extracts from *Plan 1 Mineral Resource Audit of Tweed Shire May 2011* by Industry and Investment NSW suggest that the operating quarry should be protected from sterilisation or hindrance by encroachment of incompatible adjacent development.

Minerals can only be mined where they occur. Economic, environmental and other constraints further limit the areas available for mining. An important aspect of mineral resource evaluation and development from a land use planning viewpoint is that the locations of minable deposits cannot always be predicted. This makes it imperative that known resources should be protected from sterilisation by inappropriate zoning or development, and that access to land for mineral exploration should be maintained over as much of the planning area as possible.

I&I NSW recommends that councils adopt the following strategies regarding mineral resources in its planning.

1. **Operating mines and quarries should be protected from sterilisation or hindrance by encroachment of incompatible adjacent development.**
2. **Known resources and areas of identified high mineral potential should not be unnecessarily sterilised by inappropriate zoning or development.**

It is understood that in 1996 Council put in place the following restriction by way of a Section 88B instrument upon the title of adjacent Lot 5 DP 865491 in order to cater for future residential development of the land:

No dwelling shall be constructed outside of the building envelope designated and the foundations of any such dwelling are to be designed to the satisfaction of the Tweed Shire Council in relation to any ground vibrations and air blast pressure from adjacent quarry operations.

An application for a dwelling on Lot 5 was lodged on 22 May 2003 prompting a request for a variation of covenant so that the dwelling could be constructed outside of the designated building envelope and closer to the quarry site, with potential to jeopardise quarry operations.

Approval of the dwelling was based on the successful variation of covenant and production of a design certificate from a structural engineer confirming that the dwelling's foundations were designed to account for any ground vibration or air overblast pressure resulting from quarry operation.

The dwelling was approved 20 November 2003. The property was sold to a new owner on 8 June 2010.

(e) Public interest

As outlined through this report the proposal is not likely to adversely affect the general public. It will actually have some public benefit through the provision of the continued use of an extractive material for community purposes such as road base. The quarrying operations currently have some adverse effects on some members of the public from the truck usage of Cudgen Creek Road and will continue to do so as such an activity in the proximity of any residence will always have some adverse impact. However, the site has been used for such purposes for many years and this application is not considered to exacerbate these effects but rather reduce the potential impact. Subject to the compliance with the recommended conditions of consent the proposed application is considered to be satisfactory having regard to the public interest.

OPTIONS:

1. Approve this application in accordance with the recommendation for approval.
2. Resolve to refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed continuing operation and expansion of Burringbar Quarry integrated is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development, pending successful resolution of matters contained within Schedule A of the proposed development consent.

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 or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. Section 5.7 of the EIS (ECM 35638073)
 2. Appendix E of the EIS (ECM 35639155)
 3. **Confidential Attachment** Review of Proposed Blasting Activities prepared by The Saros Group and dated November 2009 (ECM 35638076)
 4. Letter from consulting structural engineers Michael Samms & Associated P/L, undated and faxed to Council 11 December 2003 (ECM 35639078)
 5. Section 5.8 of the EIS (ECM 35639114)
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14 [PR-CM] Development Application DA10/0178 for the Erection of an Attached Dual Occupancy at Lot 2 DP 1058988, No. 1 Kennedy Drive, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA10/0178 Pt1

SUMMARY OF REPORT:

Consent is sought for the erection of a two storey attached dual occupancy at the site, including the construction of retaining walls and a steep driveway due to the slope of the site. The proposal incorporates a 3 storey element for a garage for proposed Unit 2, which is cut into the site. A SEPP 1 Objection has been submitted in this regard to Clause 16 of the Tweed Local Environmental Plan 2000 which prescribes a 2 storey height limit for the subject site. The application is being reported to Council in accordance with the Department of Planning requirements or SEPP1 objections that involve a variation of greater than 10%. It should be noted that the variation is considered minor however given storeys cannot be quantified any variation of storeys of any magnitude is reported to Council.

RECOMMENDATION:

That Development Application DA10/0178 for the erection of an attached dual occupancy at Lot 2 DP 1058988, No. 1 Kennedy Drive Tweed Heads be approved subject to the following conditions:

GENERAL

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

Title	Prepared by	Dated
SK01 – Site Layout (as highlighted and excluding driveway details)	Luke Stephens Building Design	12/10/2010
SK02 - Lower Level Floor Plan	Luke Stephens Building Design	12/10/2010
SK03 – Upper Floor Plan	Luke Stephens Building Design	12/10/2010
SK05 – South and East Elevations	Luke Stephens Building Design	12/10/2010
SK06 – North and West Elevations	Luke Stephens Building Design	12/10/2010

Tr <Right Click> Name Tr <Right Click> Name RESOLVED SK07 – 3D views	Luke Stephens Building Design	12/10/2010
SK08 – 3D views	Luke Stephens Building Design	12/10/2010
SK09 – Section A	Luke Stephens Building Design	12/10/2010
Cut and Fill Plan (CF1)	Planit Consulting	1/6/2011
SK3 – Driveway Plan (Issue E, as amended in red)	Cozen Reagan Williams Prove	01/11
SK4 – Driveway Longitudal and Cross Sections (Issue C)	Cozen Reagan Williams Prove	10/10
SK5 – Driveway Longitudal and Cross Sections (Issue B)	Cozen Reagan Williams Prove	10/10

2. Driveway gradients shall comply with Plan No SK 7 (Issue A) prepared by Cozen Reagan Williams Prove and dated 06/11. This plan takes precedence over gradient information contained in all other plans.

[GEN0005]

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

[GEN0115]

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

[GEN0135]

5. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

6. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]]

7. This development consent does not include demolition of the existing structures on the subject site. A separate approval will need to be obtained for this purpose, as statutorily required.

[GEN0305]

8. A person must not carry out vegetation clearing of the following koala food trees of three metres or more in height on land identified as 'Tweed Coast Koala Habitat Study Area' on the map entitled "Tree Preservation Order (2011)" dated 15 February 2011: Swamp Mahogany Eucalyptus Robusta, Forest Red Gum E. Tereticornis, Tallowwood E. Microcorys, Grey Gum E. Propinqua.

[GENNS01]

9. All habitable rooms shall have operable windows.

[GENNS02]

10. Dwellings shall have an acoustic seal on the front door to reduce noise transmission from Kennedy Drive.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges 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:

1.3 Trips @ \$656 per Trips \$853

(\$596 base rate + \$60 indexation)

S94 Plan No. 4

Sector1_4

(b) Open Space (Casual):

0.75 ET @ \$526 per ET \$395

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

S94 Plan No. 5

- (c) **Open Space (Structured):**
0.75 ET @ \$602 per ET \$452
(\$575 base rate + \$27 indexation)
S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
0.75 ET @ \$792 per ET \$594
(\$792 base rate + \$0 indexation)
S94 Plan No. 11
- (e) **Bus Shelters:**
0.75 ET @ \$60 per ET \$45
(\$60 base rate + \$0 indexation)
S94 Plan No. 12
- (f) **Eviron Cemetery:**
0.75 ET @ \$120 per ET \$90
(\$101 base rate + \$19 indexation)
S94 Plan No. 13
- (g) **Extensions to Council Administration Offices
& Technical Support Facilities**
0.75 ET @ \$1759.9 per ET \$1319.93
(\$1759.9 base rate + \$0 indexation)
S94 Plan No. 18
- (h) **Cycleways:**
0.75 ET @ \$447 per ET \$335
(\$447 base rate + \$0 indexation)
S94 Plan No. 22
- (i) **Regional Open Space (Casual)**
0.75 ET @ \$1031 per ET \$773
(\$1031 base rate + \$0 indexation)
S94 Plan No. 26
- (j) **Regional Open Space (Structured):**
0.75 ET @ \$3619 per ET \$2714
(\$3619 base rate + \$0 indexation)
S94 Plan No. 26

[PCC0215]

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP4:	1 ET @ \$11571 per ET	\$11571
Sewer Tweed Heads:	1 ET @ \$5560 per ET	\$5560

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

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

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

[PCC0265]

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

[PCC0465]

14. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

15. The footings, floor slab and site retaining shall be designed by a practising Structural Engineer after consideration of a site stability report prepared by a practising geotechnical engineer and details shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

16. 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]

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

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

[PCC1155]

18. Prior to the issue of a Construction Certificate, applications shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for the following works (as applicable, but not limited to);

- (a) Water
 - Provision of individual water meters for each dwelling,
- (b) Sewerage,
- (c) Drainage works,
 - Erosion and sediment control works.

The Legal Point Of Discharge for piped stormwater for the development is via connection into the existing piped drainage within the site.

[PCC1195]

19. The construction of any retaining wall must at no time result in additional overland flow discharging upon neighbouring properties. Where applicable, catch drains are to be provided along the top side of retaining walls, in accordance with Council's Development Design Specification D6 – Site Regrading.

The retaining wall in the north western corner of the site must be set back at least 500mm from the western property boundary and provide appropriate drainage along the top of the retaining wall.

Detailed engineering plans of cut/fill levels, retaining walls and perimeter drainage shall be submitted with a S68 Stormwater application for Council approval.

[PCCNS01]

20. A detailed Geotechnical Report, prepared by a suitably qualified geotechnical engineer shall be prepared and submitted to Principal Certifying Authority, advising of site's stability and confirming the suitability of the proposed development, prior to the issuing of any Construction Certificate.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

22. 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]

23. 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]

24. Residential building work:

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

[PCW0235]

25. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

26. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

27. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

28. 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]

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

[PCW1005]

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

[PCW1065]

DURING CONSTRUCTION

31. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

33. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

34. 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]

35. 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]

36. 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]

37. 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]

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

[DUR0415]

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

[DUR0445]

40. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.
- [DUR0815]
41. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.
- Please note timber retaining walls are not permitted.
- [DUR0835]
42. 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]
43. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.
- [DUR0985]
44. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of an Occupation Certificate.
- [DUR0995]
45. 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]
46. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.
- [DUR1015]
47. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.
- [DUR1045]
48. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to any use or occupation of the buildings.

[DUR1875]

49. No portion of the structure may be erected over any existing easement. The building shall be designed so that no structural load will be imposed on services within the easement.

[DUR1945]

50. Any retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation Certificate.

[DUR1955]

51. 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]

52. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

53. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.

[DUR2425]

54. 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]

55. 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]

56. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

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

[DUR2515]

58. 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]

59. 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]

60. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter.

[DUR2615]

61. Air conditioning units, heat pump water systems and any other mechanical plant and equipment shall be located and installed so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DURNS01]

62. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 68 of the Local Government Act. The proponent shall liaise with Councils Engineering and Operations Division to arrange suitable inspections, as required.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

63. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

64. 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]

65. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and

- (ii) the date of installation of the system; and
- (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
- (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

66. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 100mm high.

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

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

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

[POC0265]

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

[POC0435]

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

[POC1045]

69. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act.

[POCNS01]

70. All constructed retaining structures in excess of 1.2m in height are to be certified by a suitably qualified geotechnical/structural engineer.

The certification is to be submitted to the Principle Certifying Authority and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

[POCNS02]

71. Prior to the issue of an Occupation Certificate, a certificate from a registered Geotechnical Engineer shall be submitted to the Principal Certifying Authority, certifying that the site is stable and is suitable for its intended use.

[POCNS03]

USE

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

[USE0225]

- 73. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.**

[USE0435]

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

[USE0735]

- 75. All externally mounted air conditioning units, heat pump water systems, and any other mechanical plant and equipment shall be acoustically treated where required by Council's Environmental Health Officer so as to avoid the creation of offensive or intrusive noise to any occupant of neighbouring or adjacent premises.**

[USENS01]

- 76. Air conditioning units, heat pump water systems and any other mechanical plant and equipment shall not be operated should it be heard in a habitable room of a residence during restricted hours or at any other time should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.**

[USENS02]

REPORT:

Applicant: Mrs V Campbell
Owner: Teton Trading Pty Ltd
Location: Lot 2 DP 1058988, No. 1 Kennedy Drive, Tweed Heads
Zoning: Uncoloured Land & 2(a) Low Density Residential
Cost: \$580,000

BACKGROUND:

Consent is sought for the erection of a two storey attached dual occupancy at the site, including the construction of retaining walls and a steep driveway due to the slope of the site. The proposal incorporates a 3 storey element for a garage for proposed Unit 2, which is cut into the site. A SEPP 1 Objection has been submitted in this regard against Clause 16 of the Tweed Local Environmental Plan 2000 which prescribes a 2 storey height limit for the subject site.

The site is zoned 2(a) Low Density Residential as well as being partially unzoned, however is located within 300m of Council's identified 'Tweed Heads Business Centre', thus the minimum lot size is reduced from 450m² per dwelling to 250m² per dwelling, with which the development complies.

The development incorporates cut to 4.9m within the footprint of the building to create a 'basement' garage for Unit 2, as well as a large retaining wall along the eastern boundary to create a driveway without which it is not envisaged that appropriate vehicle access could be provided to proposed Unit 2. Cut of 3.07m and retaining is also required in the northern corner of the site to create a turning area for Unit 1 to ensure the site can be exited in a forward direction.

The development is comprised of the following:

Unit 1 (ground floor)

Double garage and associated turning area in the northern corner of the site
Dwelling entry
2 bedrooms (Bdrms 2 and 3)
Laundry
Bathroom and shower
South facing balcony off bedrooms

First Floor

Master bedroom at rear with ensuite and walk in robe
Dining, kitchen and living room
Powder room with toilet
South facing balcony

Unit 2 (garage level and technical ground floor)

Double garage and stairs to first floor

First Floor

Dwelling entry and small porch area (from ground level at entry to garage)

Secondary stairs from rear of garage (internal)

2 bedrooms (Bdrms 2 and 3)

Laundry

Bathroom and shower

South facing balcony off bedrooms

Second Floor

Master bedroom at rear with ensuite and walk in robe

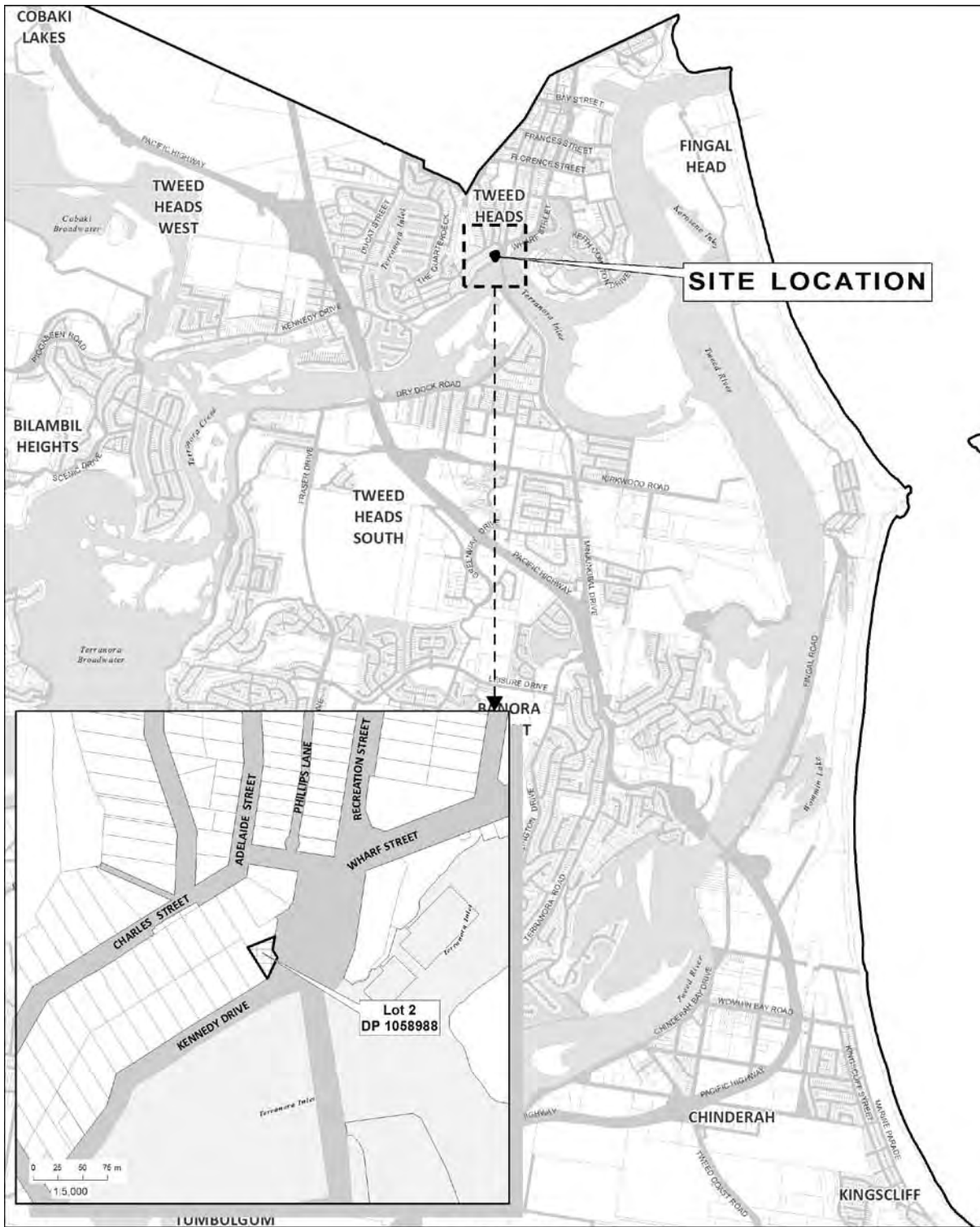
Dining, kitchen and living room

Powder room with toilet

South facing balcony

As discussed, the development is technically three storeys for a small portion of Unit 2 (approximately 4.2m) where the proposed 'basement' garage protrudes more than 1.5m above natural ground level. The accompanying SEPP 1 Objection is discussed further in this report.

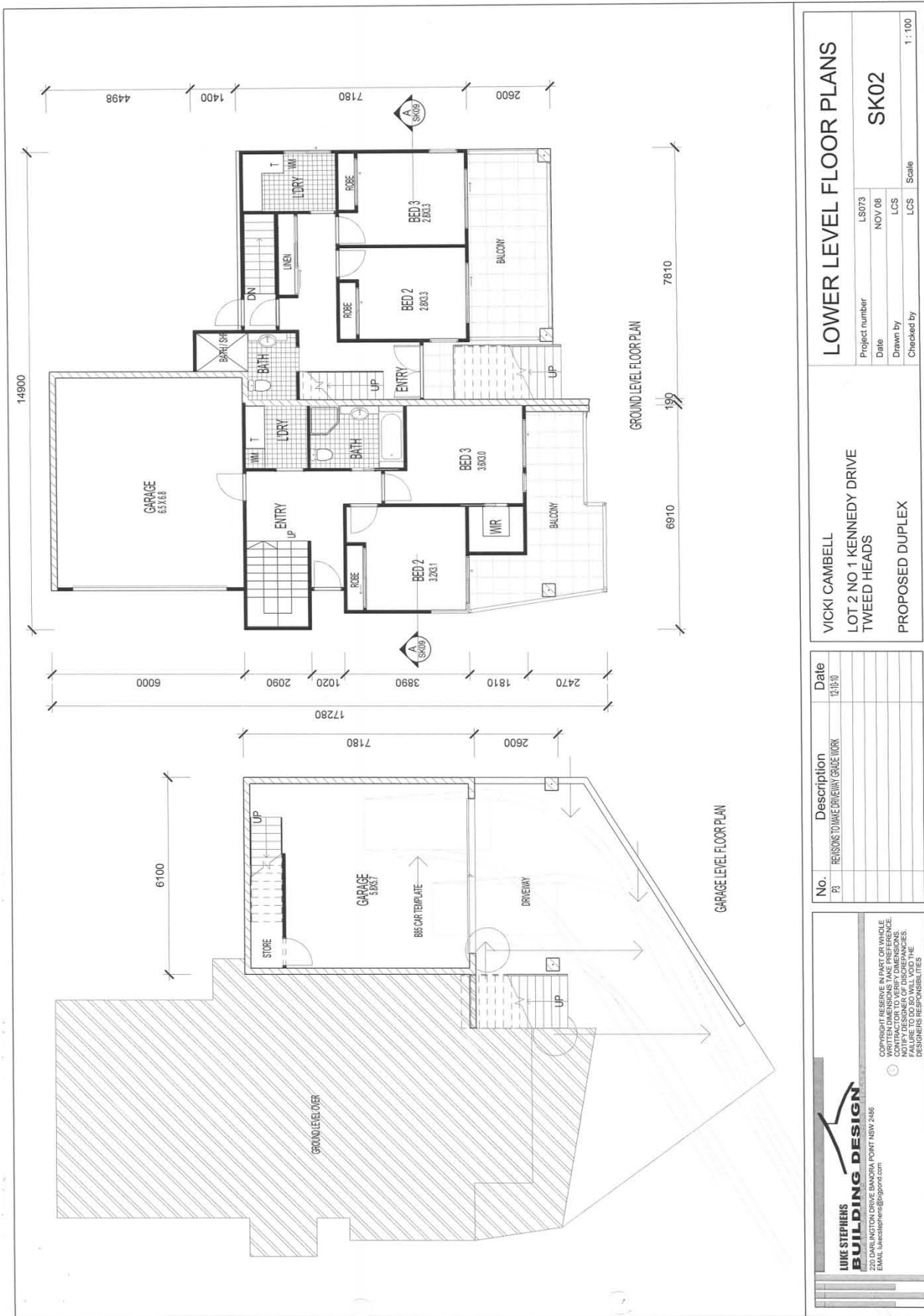
SITE DIAGRAM:



Locality Plan
 Lot 2 DP 1058988
 No.1 Kennedy Drive, Tweed Heads

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DEVELOPMENT PLANS:



LOWER LEVEL FLOOR PLANS

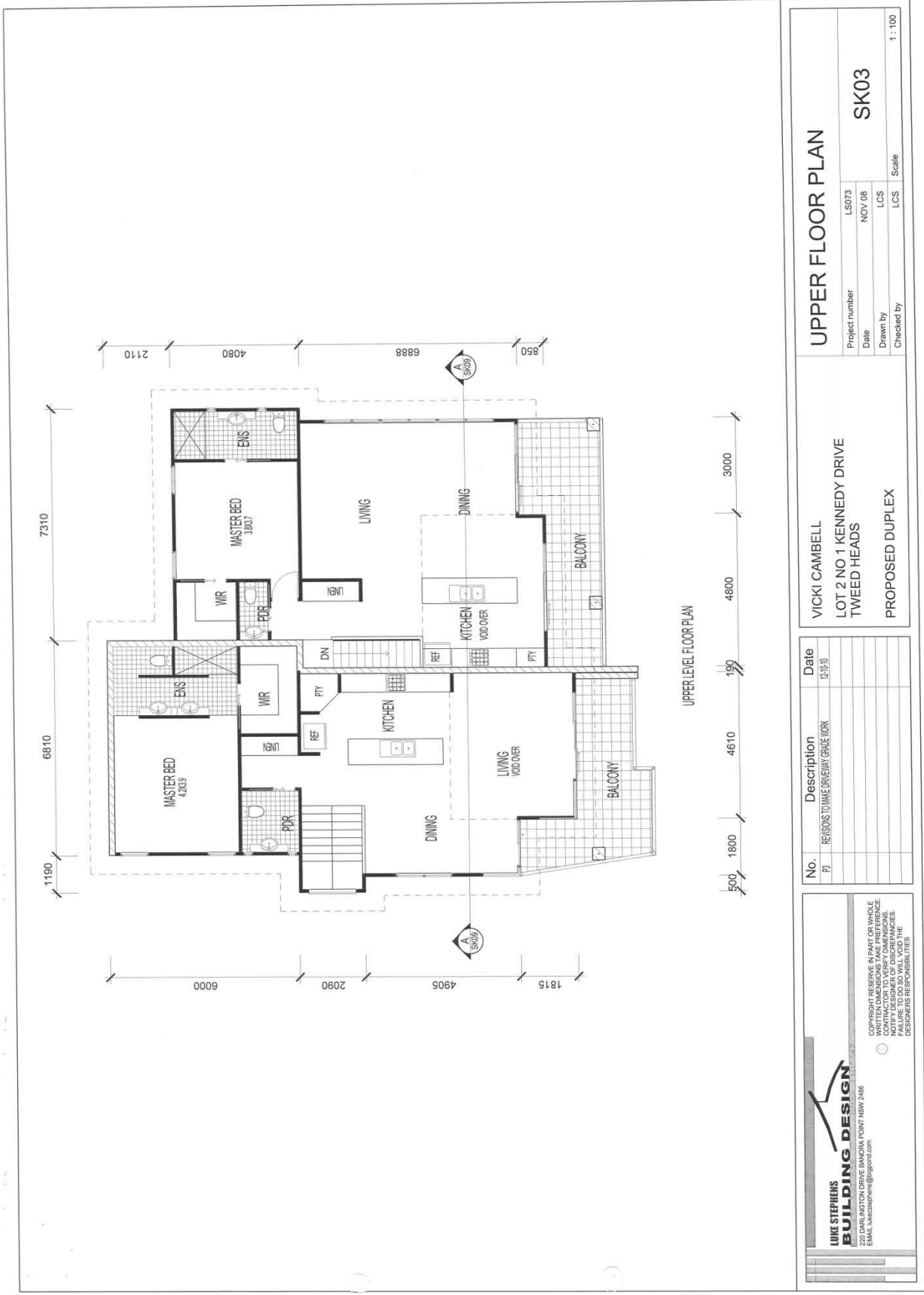
Project number	LS073
Date	NOV 08
Drawn by	LCS
Checked by	LCS
Scale	1:100

VICKI CAMBELL
 LOT 2 NO 1 KENNEDY DRIVE
 TWEED HEADS
 PROPOSED DUPLEX

No.	Description	Date
P3	REVISIONS TO MAKE DRIVEWAY GRADE WORK	12-10-10

LUKE STEPHENS BUILDING DESIGN
 220 DARLINGTON DRIVE BANDORA POINT NSW 2446
 EMAIL: lukestephens@bpoint.com

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LUKE STEPHENS BUILDING DESIGN
 220 DARLINGTON DRIVE BANCORA POINT NSW 2486
 EMAIL: lukestephens@legend.com

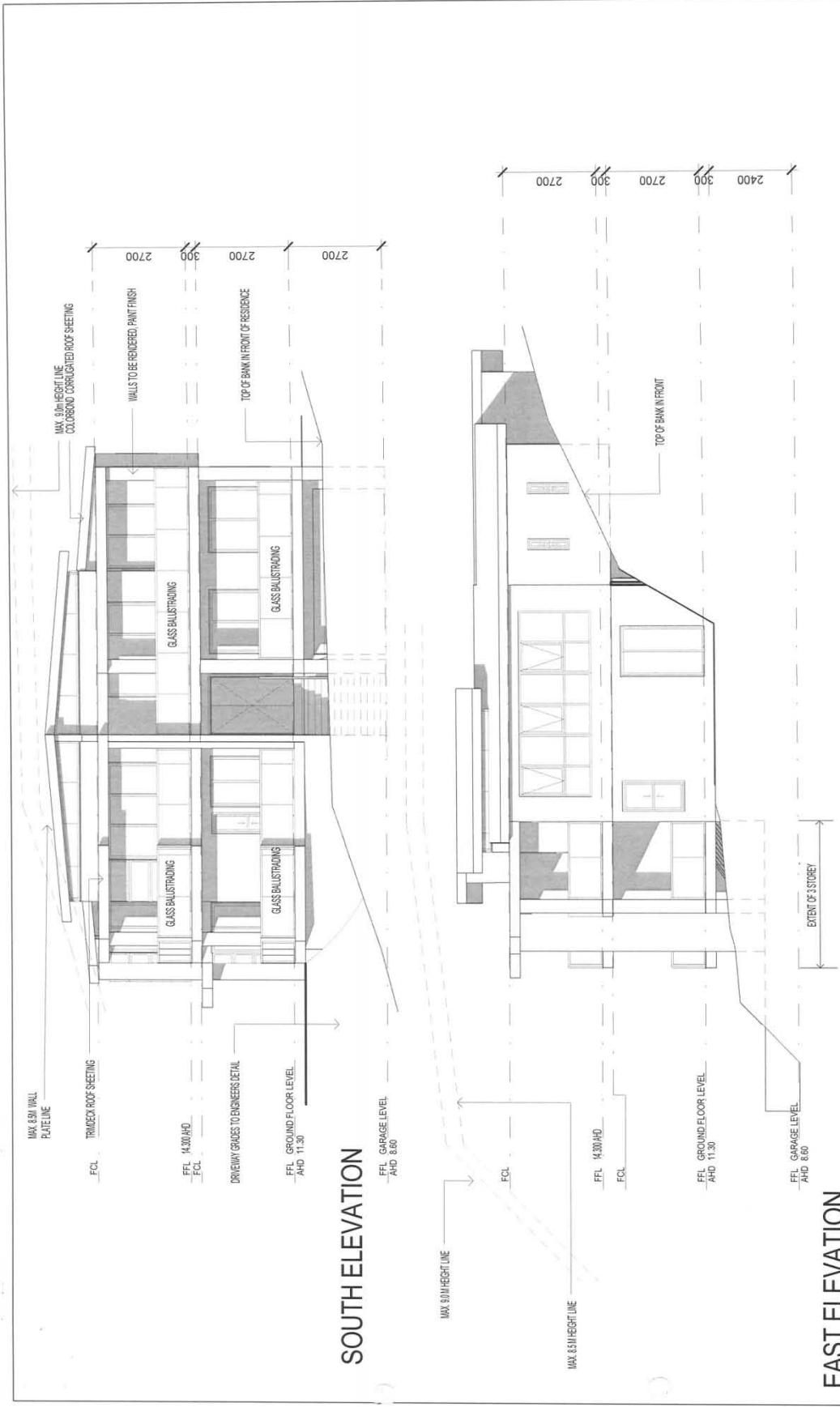
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UPPER FLOOR PLAN

Project number: LS073
 Date: NOV 08
 Drawn by: LCS
 Checked by: LCS
 Scale: 1:100

VICKI CAMBELL
LOT 2 NO 1 KENNEDY DRIVE
TWEED HEADS
PROPOSED DUPLEX

No.	Description	Date
01	REASONS TO MAKE DRIVEWAY GRADE WORK	12-10-10



LUNE STEPIERS BUILDING DESIGN
 220 DARLINGTON DRIVE BANORA POINT NSW 2486
 Email: lunestepiers@gsound.com

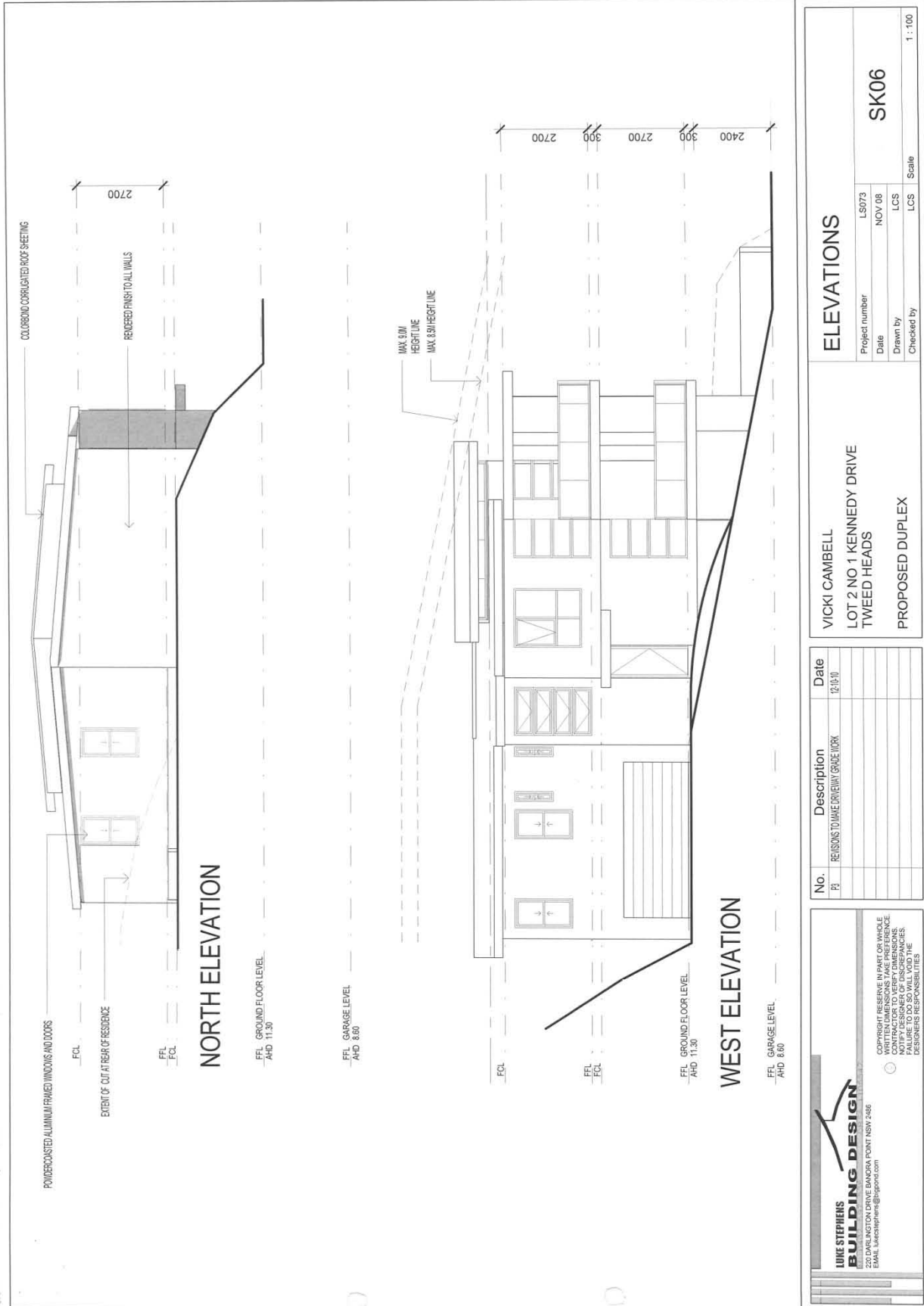
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ELEVATIONS

VICKI CABBELL
 LOT 2 NO 1 KENNEDY DRIVE
 TWEED HEADS
 PROPOSED DUPLEX

Project number: LS073
 Date: NOV 08
 Drawn by: LCS
 Checked by: LCS
 Scale: 1 : 100

No.	Description	Date
P1	REVISIONS TO MAKE DRIVEWAY GRADE WORK	12/10/10



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No.	Description	Date	
P3	REVISIONS TO MAKE DRIVEWAY GRADE WORK	12/13/10	
<p>ELEVATIONS</p>			<p>Project number LS073</p>
<p>VICKI CABBELL LOT 2 NO 1 KENNEDY DRIVE TWEED HEADS PROPOSED DUPLEX</p>			<p>Date NOV 08</p>
<p>SK06</p>			<p>Drawn by LCS</p>
<p>Checked by LCS</p>			<p>Scale 1 : 100</p>

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

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

The proposed development is considered to be generally consistent with the aims of the Tweed Local Environmental Plan 2000.

Clause 5 - Ecologically Sustainable Development

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

The proposed development is not considered to contravene the principles of ecologically sustainable development, noting in particular that significant deep soil and landscaped area is proposed and the site is located within a designated residential zone.

Clause 8 – Consent Considerations

Clause 8 prescribes that the consent authority may grant consent to the development only if:

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

With regard to the subject application, the primary zone objective is to:

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

Whilst the development proposes a medium density design (which is permitted by Clause 51A of the LEP, the design of the dwellings is not considered to be unreasonable in terms of density, particularly given the topography of the site results in the proposed development being hardly visible from the street. The characteristics of the site are unique in that the site is located within 300m of a Council identified business centre therefore the proposal does not create any unreasonable precedent with regard to increases in density within a 2(a) zone.

The proposed development is consistent with Clause 8(a).

All relevant aims and objectives of the TLEP have been considered in this report. The proposed development is consistent with Clause 8(b).

The circumstances of the site inclusive of its topography and high level above the street are unique and the development is not considered to have an unacceptable cumulative impact on the Tweed Heads area or the Shire as a whole. The proposed development is consistent with Clause 8(c).

Clause 11 – Zone Objectives

The primary objectives of the 2(a) zone are as follows:

In the case of land within Zone 2 (a) between the Tweed Heads Bypass and Cobaki Bridge:

- *to minimise the number of dwellings subject to unacceptable aircraft noise and to limit development within the Kennedy Drive traffic catchment so that development is compatible with Kennedy Drive traffic capacity.*

In the case of all other land within Zone 2 (a):

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

The secondary objectives of the zone are as follows:

- *to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*
- *to allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.*

The site is not located between the Tweed Heads Bypass and Cobaki Bridge and as such the first objective is irrelevant.

With regard to the secondary primary objective, whilst the development proposes a medium density design (which is permitted by Clause 51A of the LEP, the design of the dwellings is not considered to be unreasonable in terms of density, particularly given the topography of the site results in the proposed development being hardly visible from the street. The characteristics of the site are unique in that the site is located within 300m of a Council identified business centre therefore the proposal does not create any unreasonable precedent with regard to increases in density within a low density area.

With regard to the secondary objectives, the proposed development contributes to a diversity of housing types in the locality whilst remaining consistent with the intent of the primary objective.

The proposal is consistent with the secondary objectives.

Clause 15 - Essential Services

All essential services are made available to the site.

Clause 16 - Height of Building

The LEP prescribes a 2 storey height limit for the subject site. A SEPP 1 objection accompanies this application to vary the 2 storey standard for a portion of Unit 2 at ground level to accompany the proposed garage. It is noted that the overall height of the building is 9m which remains consistent with the maximum height for a 2 storey building under both the LEP (4.5m per storey) and DCP A1 which is addressed further in this report. Notwithstanding the SEPP 1 Objection which is addressed further below, the proposed development is considered to be consistent with the intent of Clause 16.

Clause 17 - Social Impact Assessment

No significant social impacts are envisaged as a result of approval of this application.

Clause 35 - Acid Sulfate Soils

The site exhibits Class 5 ASS. No concerns have been raised in this regard by Council's Environmental Health Officer given the elevated nature of the site and a management plan is not required.

Other Specific Clauses

Clause 13 - Development of Unzoned Land

A small triangular area of the site is uncoloured on the zoning maps, and is directly adjacent to the 2(a) – Low Density Residential zoning of the majority of the site.

Clause 13 of the LEP refers to development of uncoloured land. Consideration must be given as to whether the proposed development is compatible with development permissible within the adjoining zone. The zoning of the adjacent and surrounding land is 2(a) Low Density Residential. As noted above, the proposed development is considered to be consistent with the zone objectives.

Clause 39 – Contaminated Land

This clause requires contaminated land to be adequately remediated prior to development occurring, in accordance with the provisions of State Environmental Planning Policy No 55 – Remediation of Land. Council's Environmental Health Officer has reviewed the application and advised that contamination is not considered a constraint for the site.

Clause 51A – Multi-dwelling Housing Densities in Zone 2(a)

The objective of this clause is as follows:

- *to control the density of multi-dwelling housing in Zone 2(a) (Low Density Residential zone) by the use of a development standard.*

The clause prescribes that multi-dwelling housing proposed to be erected on land within Zone 2(a) is to be at a density not greater than:

- (a) one dwelling per 450 square metres of site area, or
- (b) if the site is within 300 metres of a business centre as indicated on the Business Centres Map – one dwelling per 250 square metres of site area.

The applicant is relying on this clause to affect the density proposed by the subject dual occupancy, which proposes 1 dwelling per 325m². This is consistent with Clause 51A.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B – Coastal Lands

In accordance with Clause 32B of the NCREP, the proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy and the Coastline Management Manual.

The proposal does not incorporate any physical restriction of access to a foreshore area or detrimental impacts upon the coastal character and amenity of the site. Nor does the development overshadow any area of beach or waterfront open space. Accordingly, the proposal fully complies with this clause of the REP.

Clause 43 – Residential Development

The proposed development is consistent with Clause 43, being residential development in a dedicated residential area, with established access to services and the road network.

The proposal does not contravene the remaining components of the NCREP.

SEPP No. 1 - Development Standards

As noted above, a SEPP 1 Objection has been made in relation to the proposed development incorporating elements of three (3) storeys when a height limit of two (2) storeys applies to the site, pursuant to Clause 16 of the Tweed Local Environmental Plan 2000.

The area of non compliance relates to the southern side of Unit 2, whereby the proposed garage (which is cut into the site toward the rear) provides a technical third storey for approximately 4.2m (until the garage 'roof' is less than 1.5m above natural ground level).

The applicant has supplied the following justification for the SEPP 1 Objection:

"The proposed development, being an attached dual occupancy incorporates a technical third storey. The site has a two (2) storey height limit. As such an objection pursuant to SEPP No. 1 is submitted seeking a variation to the provisions of Clause 16 of Tweed Local Environmental Plan 2000. The relevant provisions of clause 16 are as follows:

Heights of buildings

(1) Objective

- to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.*

(2) Consent must not be granted to the erection of a building which exceeds the maximum height or number of storeys indicated on the Height of Buildings map in respect of the land to which the application relates.

*State Environmental Planning Policy No. 1 - Development Standards, provides a mechanism by which Council can consent to a variation to a development standard where it is considered **unreasonable** or **unjustified** to request strict adherence to the standard or where the granting of such a variance will not result in the compromising of the objects of the Act. The objective of the height limitation clause is:*

"to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land".

It is contended that the proposal is entirely consistent with the abovementioned objective and it is noted that the integrity of the LEP or specifically Clause 16 will not be impacted upon via the approval of the development. In this regard, the following matters are considered relevant to assessing the merits of the proposed departure from the development standards:

- 1. The development has been designed to comply with the 9m maximum physical height limit applicable to two (2) storey developments under Section A1 of the Tweed Development Control Plan 2008.*
- 2. The proposal presents as a two (2) storey form to Kennedy Drive.*
- 3. The proposed three (3) storey area is effectively screen by existing remnant vegetation located along the eastern boundary.*
- 4. The proposal will appear as two (2) useable storeys only, with the lay person unlikely to be able to decipher whether the proposal is three (3) storeys in part.*
- 5. The proposal steps down the slope and adopts urban design principles such as are promoted within Section A1 of the TDCP 2008.*
- 6. The partial third storey results in a building that is responsive to the sites environmental characteristics particularly in relation to minimising cut and fill.*

Please also refer to the architectural drawings and photo montage contained within Appendix A of this planning submission. These plans provide a graphical representation of the extent of the technical third storey element and clearly demonstrate that its height is entirely appropriate.

Accordingly, it has been demonstrated that strict compliance with the two (2) storey development standard is unreasonable and unnecessary. Furthermore, it is clear that the proposal is consistent with the objectives contained within section 5(a) of the Environmental Planning and Assessment Act 1979."

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

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

3. It is also important to consider:

- (a) whether non-compliance with the development standard raises any matter of significance for State or regional planning; and
- (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

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

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

The applicant contends that the objectives of the standard (*"to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land"*) are achieved notwithstanding the minor non compliance which is for a length of only 4.2m.

Planning assessment generally concurs with the applicant's assessment, noting that the topography of the site will screen the proposed three storey element (retaining wall below ground level along driveway to Unit 2 and existing vegetation), also noting that the maximum height limit for the remainder of the development is met and the extent of technical non compliance is small.

As such, the objection is considered to be well founded.

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

The aims of the policy are as follows:

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

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

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

With respect to Sections 5(a) (i) and (ii) the proposed relaxation of the building height controls is not considered to hinder the proper management, development and conservation of any resources. Negligible impact upon resources and the social and economic welfare of the community is anticipated to result from approval of the application.

Further, non compliance with the development standard is not considered to raise any matters of significance for State or regional environmental planning due to the very minor extent of the non compliance (only 4.2m) and the unique topography of the site. No public benefit is considered to be maintained by strict application of the standard in this instance.

In conclusion, it is considered that the development is of a scale and design that complements the locality without undue or unnecessary impact and that strict compliance with the two-storey height limit is both unreasonable and unnecessary in the circumstances of this case. The Development Assessment Unit recommends that the concurrence of the Minister administering the Environmental Planning and Assessment Act, 1979 be assumed in this instance and the SEPP 1 Objection be supported.

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. Specifically the proposed development is considered compatible with the intent for the development of the locality.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certification accompanied the development application (which required modification due to significant amendments to the building design during the assessment process). A revised certificate was submitted and SEPP (BASIX) is considered satisfied.

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

The site is covered by the Tweed City Centre LEP with a draft equivalent zoning of R2 Low Density Residential. In such a zone, 'dual occupancy' remains permissible with consent. A 9m height limit remains with which the proposal remains predominantly consistent.

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

Tweed Development Control Plan

A1- Residential and Tourist Development Code

A detailed DCP A1 (Part B) assessment is available on file. Compliance with the document is generally achieved, with the exception of the following variations (which are considered to be appropriate):

Building Types Control:

Dual occupancy development is permitted only:

- On significantly regular, rectangular or square, shaped lots
- Each dwelling is to be designed so that the access way to the front door is clearly identifiable from the public street
- Each dwelling with a street frontage is to be designed so that the front door faces the street

With regard to the above, the topography of the site is such that identification of the accessways to each dwelling from the street is not possible. It is considered that entry to the dwellings is easily discernable upon entry to the site. This variation is considered acceptable.

The site is not a regular shaped allotment. However, the applicant has demonstrated that the proposed design is suitable for the site with only minor non compliances with DCP A1 and the subject SEPP 1 Objection. This variation is therefore considered acceptable.

External Living Areas Control:

The site has a southerly aspect with views over the Tweed River, hence the development has been designed to address this aspect (which is aided by the topography which slopes to the south).

The control requires external living areas to be oriented to the north where possible. As mentioned, external living areas are oriented to the south to make use of views over the Tweed River. Considerable cut would have been required for north facing external living areas. As such, this variation is considered acceptable.

Landscaping Control:

The 900mm wide pathway from the street to the rear of the dwellings is not provided due to the topography of the site. In addition, the applicant notes that due to the slope of the site, the rear setback is unusable for anything other than landscaping/seep soil zone, hence provision of the path would serve no reasonable purpose. This is considered acceptable.

Cut and Fill Control:

The development incorporates cut and fill as follows:

Cut:

3.07m in northern corner of driveway to Unit 1 (to provide reversing area)
3.2m under north eastern corner of Unit 1 (contained within building footprint)
1.44m under north eastern corner of Unit 2 (contained within building footprint)
4.9m in northern corner of Unit 2 (to provide for basement garage)
Varying cut to create driveway access to Unit 2, retained by max height 2.35m retaining wall at Unit 2 and 3.0m retaining wall at Unit 1 reversing area.

Fill:

1m maximum at south western corner of proposed Unit 1, contained within the building footprint.

Appropriate conditions with regard to compliance with boundary setbacks (500mm) for the Unit 1 retaining wall have been applied (to ensure adequate drainage), with Council's Development Assessment Engineer noting such setback is not required for the Unit 2 driveway retaining wall as the land falls away from the wall cutting. Additional conditions regarding certification of the structural adequacy of all retaining walls over 1.2m have been applied

As such, cut and fill at the site are considered to be acceptable. It is noted that issues pertaining to achievable vehicle access along the proposed driveway have been clarified by way of the applicant's provision of tyre longsections which show that scraping, tyres becoming airborne or bottoming out do not occur.

Setbacks control:

Whilst no setback requirements are specifically provided for 3 storey townhouse development, the DCP prescribes that a 1.5m setback shall occur for 2 storey townhouse development with minor encroachments (up to 900mm from boundary) for guttering etc being allowable.

Whilst a setback of only 900mm is provided (with encroachments by guttering to 350mm), it is noted that the eastern and southern sides of the site are bounded by road reserve and as such, reduced setbacks on these sides will not result in overlooking or crowding of any residential dwellings.

The proposed variation is considered acceptable in this instance ONLY due to the height above road level of the site and the unique 'wrapping' of the road reserve along the site's southern and eastern boundaries.

The proposed variations are considered acceptable and support of the application is therefore recommended.

A2-Site Access and Parking Code

DCP A2 requires the provision of two car spaces per dwelling which are accommodated within double garages.

A3 - Development of Flood Liable Land

The site is not flood prone.

A11- Public Notification of Development Proposals

The application was notified for a period of 14 days from 14 April 2010 to 29 April 2010. During this time, nil (0) submissions were received.

B2 -Tweed Heads

The site is covered by DCP B2 – Tweed Heads, however the policy prescribes that DCP A1 is to be used in lieu of the design guidelines of DCP B2 for all residential developments of three storeys or less. As such, the design controls of DCP A1 apply (which have been assessed as above).

Notwithstanding, the subject site is located in the 'Razorback Precinct' prescribed by the DCP, which has objectives relating to retention of an attractive residential area with buildings that respect the slope and take advantage of views and preserve vegetation where possible.

This area is also noted to have potential geotechnical difficulties (in fact the subject site is identified specifically within the relevant map). As such, a condition has been applied requiring submission of geotechnical certification prior to the issue of a construction certificate.

The proposed development is considered to be consistent with the Razorback precinct objectives as it steps down the slope, provides generous external living areas and remains consistent with the existing scale of development in the locality.

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

Clause 92(a) Government Coastal Policy

The subject land is within the coastal policy area. The proposed development is consistent with the objectives strategies and actions of the policy.

Clause 92(b) Applications for demolition

Demolition is not sought under this application. A condition has been applied to the effect that demolition of the existing dwelling shall be subject to future development consent.

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

Tweed Shire Coastline Management Plan 2005

The proposed development does not contravene the plan.

Tweed Coast Estuaries Management Plan 2004

The proposed development does not contravene the plan.

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

The proposed development does not contravene the plan.

(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 immediate locality surrounding the subject site is essentially residential in character, with a mixture of older one and two storey residential dwellings and multi dwelling housing developments. The property adjoining the northern boundary consists of a four dwelling townhouse development at 70 Adelaide Street, with no neighbouring lot to the east or south. The property to the west supports a single dwelling. Landscaping is proposed in order to minimise any potential amenity/privacy issues with the adjoining properties though negligible impacts are envisaged.

Access, Transport and Traffic

During assessment of the application, access to the proposed garages was an ongoing matter, the provision of which is made difficult by the slope and shape of the site. In an effort to demonstrate compliance with Council's controls, the applicant has provided turning templates for both units, showing that vehicles (in plan view) can enter and exit the designated garages in a forward direction.

The applicant has also provided complying long sections to service both units. It is noted that the existing driveway (within the road reserve) which is intended to remain is slightly steeper than Council's maximum (of 25%) but as this portion of driveway is to remain as is, this is acceptable (as advised by Council's Development Assessment Engineer).

With specific reference to the Unit 2 driveway, although Council's documentation on driveways does not specify maximum allowable crossfalls, Council are reluctant to approve a driveway with a crossfall exceeding 5%. The amended plans propose a crossfall of up to 15% at Section A.

The Applicant (at Council's request) has provided additional long sections showing that a standard B99 Template (as per Figure C1 – Ground Clearance Template of AS2890.1:2004) can access Unit 2 (being the unit of greatest concern for access) without "bottoming out".

Council's Development Assessment Engineer recommended that the applicant provide a statement acknowledging that the driveway may be challenging to drivers and that they are well aware of this and recommend that Council support the proposal. Such a statement has been supplied.

As such, the applicant has appropriately resolved issues pertaining to driveway access.

Erosion and Sediment Control

Conditions have been applied requiring submission of an Erosion and Sediment Control Plan prior to issue of a construction certificate.

Flora and Fauna

No threatened or protected flora or fauna species are recorded on the site. The site is covered however by Council's 2011 Tree Preservation Order (Study Area) which prohibits vegetation clearing without consent on land identified as 'bushland'. The applicant has provided information indicating that removal of ornamental landscaping only is required. A condition prohibiting the removal of any vegetation covered by the TPO has been applied.

Overshadowing

The applicant has lodged shadow diagrams for the proposed development. The diagrams indicate that the proposal will have minimal impact upon the adjoining residences to the north or west.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The development remains consistent with surrounding residential land uses which include other multi dwelling developments on similarly sloping sites.

Contamination

Though demolition does not form part of this application, a Pre-Demolition Soil Contamination Investigation was submitted at the request of Council's Environmental Health Officer which shows that all results are below the reporting limit. Contamination from sub-slab treatment for termite protection is not considered a constraint.

Geotechnical Stability

The Applicant has not submitted a Geotechnical Assessment (as per DCP B2 Tweed Heads) that assesses the subject site. The report submitted with the application assessed the neighbouring Lot 2 DP 780214 and Lot 20 DP 1517. Notwithstanding, Council's Development Assessment Engineer has advised that as there is "no evidence of past instability on the lots" an appropriate condition requiring submission of a geotech report prior to issue of a construction certificate is sufficient to be applied.

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

Nil submissions were received.

(e) Public interest

The proposal is not considered to be in conflict with the general public interest in the locality. The proposed development is considered to be suitable for the subject site with negligible environmental impacts (subject to conditions) and is consistent with intended development for the locality.

OPTIONS:

1. Approve the proposed development in accordance with the recommended conditions.
2. Refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right of appeal to the Land and Environment Court should they be dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil – support of the SEPP 1 objection in the circumstances of this case is not considered likely to have adverse policy implications.

CONCLUSION:

The proposed development has regard to the design and scale of development in the area and has achieved the intentions of Council's development control plans for the area. Having had regard for all of the matters relevant to the proposal it is considered that the proposal warrants conditional consent. Therefore, the SEPP 1 objection should be supported and the application approved, subject to conditions of consent.

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 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 DA10/0360 for a Six (6) Lot Community Title Subdivision at Lot 205 DP 755721; Lot 5 DP 821963, No. 532 Upper Burringbar Road, Upper Burringbar

ORIGIN:

Development Assessment

FILE NO: DA10/0360 Pt1

SUMMARY OF REPORT:

The proposed development is to undertake a six lot community title subdivision (5 residential lots and one community lot for driveway access).

A SEPP 1 objection accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(l) Environmental Protection (Habitat) zone. The SEPP 1 objection relates to proposed Lot 6 which has a total area of 39.26 hectares (17.88ha within the 1(b1) – Agricultural Protection zone and 21.36ha in the 7(l) – Environmental Protection (Habitat) zone).

The application was referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard because all land in the 7(l) zone will be retained in a single allotment and the subdivision of the balance of the land complies with the standard for the 1(b1) zone.

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

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

RECOMMENDATION:

That Development Application DA10/0360 for a six (6) lot community title subdivision at Lot 205 DP 755721; Lot 5 DP 821963, No. 532 Upper Burringbar Road, Upper Burringbar be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans;**
 - Drawing Titled "Plan of Proposed Community Title Subdivision of Lot 5 DP 821963 and Lot 205 DP 755721 at Burringbar" Revision G, prepared by Brown and Hann, dated 27-01-10,**
- and**

- Drawing No. A3-4206-D02 A,
- Drawing No. A3-4206-D03 A,
- Drawing No. A3-4206-D04 A,
- Drawing No. A3-4206-D08 A,
- Drawing No. A3-4206-D09 A,
- Drawing No. A3-4206-D10 A,
- Drawing No. A3-4206-D11 A,
- Drawing No. A3-4206-D12 A,
- Drawing No. A3-4206-D13 A,

prepared by Tweed Coast Consulting Engineers Pty Ltd, dated July 09, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0125]

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

[GEN0135]

4. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Geotechnical Engineering Assessment Report, prepared by Border-Tech and dated 4 February 2010, except where varied by the conditions of this consent.

All individual house sites are subject to further geotechnical testing at time of building approval.

[GENNS01]

5. The proposal for Road Closure within the subject allotment is subject to a separate application under the Roads Act and does not form part of this consent.

[GENNS02]

6. No Primary Koala food trees Tallowood (*Eucalyptus microcorys*), may be removed without separate approval from the Director Planning and Regulation or his delegate. These trees must be protected throughout the development site during construction works and the operational phases of the development.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

[PCC0275]

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

[PCC0285]

9. Where earthworks result in the creation of batters and/or cuttings greater than 1m high and/or slopes within allotments 17° (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan endorsed by Council. This Plan shall accompany the Construction Certificate application.

Such Plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

10. Prior to the issue of a construction certificate, documentary evidence shall be submitted to Tweed Shire Council demonstrating that a Controlled Activity Approval (CAA) under the Water Management Act 2000 has been obtained for works within 40m of waterfront land (as defined under the Water Management Act 2000) or any works that involve an aquifer interference activity as defined under the Water Management Act 2000.

[PCC0575]

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

[PCC0865]

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

(a) copies of compliance certificates relied upon

(b) four (4) copies of detailed engineering plans and specifications. Unless agreed otherwise by Council, the detailed plans shall include (but are not limited to) the following:

- earthworks
- roadworks/furnishings
- Upgrade of the intersection of Upper Burringbar Road and the unnamed Public Lane servicing the development to provide a Type AUR Right Turn Treatment in accordance with AUSTRROADS Pt 5 "Intersections at Grade", giving particular attention to sight distance.
- Upgrade of the unnamed Public Lane to provide:
 - a minimum 4.5m sealed pavement upon a 6.5m formation,
 - widening of the seal to 6.0m (minimum) to accommodate passing areas of minimum length 20m, between chainage 100 and the creek crossing and near chainage 320.
 - a cul-de-sac head of 18m dia with full kerb and gutter.
 - concrete lined table drains where longitudinal grades are less than 0.5% or between 5% and 8%. Where longitudinal grades exceed 8%, kerb and gutter is to be provided.
- Construction of a complying, private access road to service the development, providing:
 - a minimum 4.5m sealed pavement upon a 6.5m formation, with passing bays in accordance with the NSW Rural Fire Service, Planning For Bushfire Protection, 2006.
 - concrete lined table drains or kerb and gutter where longitudinal grades exceed 8%.
 - a standard driveway layback off the public road cul-de-sac to service the development.
 - Individual, complying driveways providing a minimum 3m wide, 2 coat bitumen sealed.
- stormwater drainage, including;
 - replacement of the existing causeway with box culverts.
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits

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

[PCC0985]

13. Permanent stormwater quality treatment shall be provided in accordance with Councils *Development Design Specification D7 - Stormwater Quality*.

[PCC1105]

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

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

[PCC1155]

15. The Construction Certificate Application must include a detailed Hydraulic Report confirming that the proposed culverts over Burringbar Creek provide flood immunity to the Q10 storm event.

In accordance with the NSW Rural Fire Service, Planning For Bushfire Protection, 2006 the crossing must be capable of carrying a fire fighting load of 15 tonnes.

[PCCNS01]

16. Prior to issue of the construction certificate, the applicant is to submit a Habitat Restoration Plan in accordance with Council's draft guidelines attached to this consent detailing additional environmental enhancement works across the site. The Habitat Restoration Plan must be approved to the satisfaction of Council's Director of Planning and Regulation or delegate prior to commencement of works. The plan is to include planting (including koala food trees) in areas unaffected by any subdivision works and riparian zone restoration. The Habitat Restoration Plan is to be incorporated into the Community Management Statement and a funding mechanism established and approved by Council.
17. Prior to issue of the construction certificate, a Threatened and Significant Protected Species Management Plan for Koalas, Platypus, threatened rainforest flora and any other threatened species known from or found on the site or as a result of the proposed works is to be lodged and approved to the satisfaction of Council's Director of Planning and Regulation or delegate, in accordance with Council's draft guidelines attached to this consent. The Plan is to identify and protect any known or potential threatened and significant protected species locations and habitat on the subject land and outline measures to reduce known threats or impacts to the species. The Threatened and Significant Protected Species Management Plan is to be incorporated into the Community Management Statement and a funding mechanism established and approved by Council.

18. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17 degrees or steeper, such slopes shall be densely planted with local native species in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

[PCNS02]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

20. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

21. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

22. Civil work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
 - C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and

- (iv) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (v) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

23. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

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

[PCW0985]

DURING CONSTRUCTION

25. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

26. 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]

27. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L_{Aeq, 15 min} noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

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

[DUR0215]

- 28. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

- 30. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**

[DUR0985]

- 31. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.**

[DUR0995]

- 32. 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]

- 33. Any watercourse crossing is to be in compliance with current NSW Fisheries Policy and Guidelines for Bridges, Roads, Causeways, Culverts and Similar Structures.**

[DUR1205]

34. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
- [DUR1795]
35. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
- [DUR1805]
36. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.
- [DUR1825]
37. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.
- [DUR1845]
38. Any damage caused to public infrastructure (roads or services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate.
- [DUR1875]
39. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:-

Road and Driveway works

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Final inspections - on maintenance
- (h) Off Maintenance inspection

Drainage

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

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

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

[DUR1895]

40. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

41. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

42. The development must be undertaken in accordance with the requirements of the approved Habitat Restoration Plan and Threatened Species Management Plan.
43. A water quality monitoring program is to be undertaken weekly during any earthworks and construction activity for any runoff from the site, and is to continue until stabilisation of any exposed areas. Parameters to be measured include pH, suspended solids (mg/L), salinity (ppt), Total N and Total P. Any runoff to the creek that breaches ANZECC guidelines for receiving waters shall be reported to Council and will include adaptive management measures proposed to rectify the breach.

[DURNS01]
44. Dogs and cats are prohibited from entering this locality by a covenant applying to this land. All persons associated with the development of this site and construction of this building/subdivision are prohibited from permitting any such domestic animals to enter this subdivision locality. Please note that this prohibition also applies to all contractors, sub-contractors and other trades persons accessing this site.
45. The consent holder is responsible for installation and maintenance of signage sufficient to clearly indicate the prohibition of cats and dogs at any and all entrances to the development at all times.
46. Trail bike riding is prohibited within the environmental protection areas described in the approved Habitat Restoration Plan.
47. All works and use of the site must comply with the approved Threatened Species Management Plan.

[USENS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

[PSC0005]

49. Section 94 Contributions

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

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

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

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

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

- (a) **Tweed Road Contribution Plan:**
 - 19.5 Trips @ \$1124 per Trips \$21,918
 - (\$1021 base rate + \$103 indexation)
 - S94 Plan No. 4
 - Sector11_4
- (b) **Open Space (Casual):**
 - 3 ET @ \$526 per ET \$1,578
 - (\$502 base rate + \$24 indexation)
 - S94 Plan No. 5
- (c) **Open Space (Structured):**
 - 3 ET @ \$602 per ET \$1,806
 - (\$575 base rate + \$27 indexation)
 - S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
 - 3 ET @ \$792 per ET \$2,376
 - (\$792 base rate + \$0 indexation)
 - S94 Plan No. 11
- (e) **Eviron Cemetery:**
 - 3 ET @ \$120 per ET \$360
 - (\$101 base rate + \$19 indexation)
 - S94 Plan No. 13
- (f) **Community Facilities (Tweed Coast - North)**
 - 3 ET @ \$1305.6 per ET \$3,917
 - (\$1305.6 base rate + \$0 indexation)
 - S94 Plan No. 15
- (g) **Extensions to Council Administration Offices
& Technical Support Facilities**
 - 3 ET @ \$1759.9 per ET \$5,279.70
 - (\$1759.9 base rate + \$0 indexation)
 - S94 Plan No. 18
- (h) **Regional Open Space (Casual)**
 - 3 ET @ \$1031 per ET \$3,093
 - (\$1031 base rate + \$0 indexation)
 - S94 Plan No. 26

- (i) **Regional Open Space (Structured):**
3 ET @ \$3619 per ET **\$10,857**
((\$3619 base rate + \$0 indexation)
S94 Plan No. 26

[PSC0175]

50. **Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

51. **A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.**

[PSC0235]

52. **Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.**

[PSC0725]

53. **Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.**

The plans are to clearly identify private and public infrastructure and must be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

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

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

[PSC0735]

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

[PSC0825]

55. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act.

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

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

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

[PSC0835]

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

[PSC0845]

57. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

58. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

59. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate – Roads and Driveway Access
- (b) Compliance Certificate - Drainage

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

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

[PSC0925]

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

[PSC0945]

62. Prior to issue of Subdivision Certificate a final Community Management Statement is to be submitted to and approved by Council. The statement is to include provisions for (but not be limited to) the use of the access road by emergency services, bona fide members of the public and public authorities.

The statement must also provide a Utility Services Plan, showing works as executed (WAE).

[PSC1005]

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

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

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

[PSC1065]

64. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply to proposed Lots 2 to 6 has been completed.

[PSC1165]

65. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to proposed Lots 2 to 6.

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

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

[PSC1175]

66. Prior to the issue of subdivision certificate the applicant shall decommission the existing on-site sewage system including the septic tank and effluent disposal area servicing the existing dwelling on proposed Lot 6 in accordance with the guideline Advisory Note 3 dated may 2006 prepared by NSW Health. Following the decommissioning the applicant shall provide to Council a certification statement from a NSW licensed plumber confirming the decommissioning has been completed in accordance with Advisory note 3.

[PSCNS01]

67. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the subdivision is required to provide a pit and conduit network to allow for the installation of fibre to the home (FTTH) broadband services.

[PSCNS02]

68. A Restriction As To User shall be created over all lots such that:

- a) Areas external to the nominated building sites, asset protection zones and existing cleared areas on each lot are to be maintained and restored for conservation purposes in accordance with the approved Habitat Restoration Plan. . Burden: Each lot. Benefit: Tweed Shire Council.
- b) Any boundary and internal fencing must be fauna-friendly to permit the unhindered dispersal of fauna across the site.
- c) Restriction as to user regarding no dogs or cats permitted on the site at any time. Burden: Each lot on the subject site. Benefit: Tweed Shire Council
- e) Restriction as to user regarding protection of all Koala food tree species on the site of 3m or greater in height. Burden: Each lot on the subject site. Benefit: Tweed Shire Council
- f) Restriction as to user regarding building only within the designated building envelope. Burden: Each lot on the subject site. Benefit: Tweed Shire Council

69. All future owners are to be provided with a copy of an Environmental Education Brochure which describes owners obligations in regard to environmental protection and management.

70. Habitat restoration works must be completed to a level specified in the approved Habitat Restoration Plan prior to the release of the subdivision certificate and shall be maintained at all times to the satisfaction of the General Manager or his delegate. Trees identified for retention in the Habitat Restoration Plan shall not be removed without separate Council approval.

[PSCNS03]

GENERAL TERMS OF APPROVAL UNDER THE FISHERIES MANAGEMENT ACT

1. The watercourse crossing design used at chainage 200-220 is to be consistent with fish passage requirements outlined in DPI Fisheries Guidelines for Fish Friendly Watercourse Crossings and Why do fish need to cross the road? available respectively at:
http://www.dpi.nsw.gov.au/data/assets/pdf_file/0004/202693/Why-do-fish-need-to-cross-the-road_booklet.pdf
http://www.dpi.nsw.gov.au/data/assets/pdf_file/0003/202692/Fish-friendly-waterway-crossings-Policy-and-guidelines.pdf
2. A permit under s198-202 of the *Fisheries Management Act* 1994 for dredge and reclamation activities be obtained prior to commencement of the works associated with the waterway crossing.
3. Environmental safeguards (silt curtains, booms etc.) are to be utilised during construction of the new driveway approaches to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works. Dewatering works are to be undertaken consistent with Best Management Practice to avoid the release of sediment downstream.
4. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.
5. Works be undertaken during periods of low flow
6. To ensure minimal risk of water pollution from oil or petroleum products and to minimise disturbance to the streambed substrate machinery is not to enter, or work from the waterway unnecessarily.
7. Floating silt booms and/or hay bales wrapped in geo-textile fabric are to be used to minimise impacts of turbidity and mobilised sediment during the construction and removal of the causeway to minimise the impact of the works at the site and on downstream habitats.
8. No snags (large woody debris) are to be removed, realigned or relocated without first consulting DPI Fisheries as "Removal of large woody debris" is listed as a Key Threatening Process under the provisions of the *Fisheries Management Act* 1994.
9. Damage to riparian vegetation is to be minimised and any damage caused is to be restored as "Decline in native riparian vegetation" is listed as a Key Threatening Process under the provisions of the *Fisheries Management Act* 1994.

10. On completion of the works the site is to be rehabilitated and stabilised. Surplus construction materials and temporary structures (other than silt fences and other erosion and sediment control devices) installed during the course of the works are to be removed.

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

1. The existing managed areas as detailed within the Bushfire Hazard Assessment Report prepared by Building Code and Bushfire Hazard Solutions Pty Ltd, dated 5 February 2010, ref. 80463, Attachment 1, shall continue to be managed as an inner protection area (IPA) as outlined within Appendices 2 and 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.
2. Water, electricity and gas are to comply with section 4.1.3 of Planning for Bush Fire Protection 2006.
3. The entire access road shall comply with section 4.1.3(1) of Planning for Bush Fire Protection 2006. A perimeter road and secondary access road are not required in this case.
4. Road widths shall comply with Table 4.1 in Planning for Bush Fire Protection 2006.
5. If the existing dwelling is to remain, it is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

REPORT:

Applicant: Landsurv Pty Ltd

Owner: Mr PJ Bodey, Ms TM McGeown and Mr PB Brain

Location: Lot 205 DP 755721; Lot 5 DP 821963, No. 532 Upper Burringbar Road
Upper Burringbar

Zoning: 1(b1) Agricultural Protection; 7(l) Environmental Protection (Habitat)

Cost: Nil

BACKGROUND:

Consent is sought for a six (6) lot community title subdivision (Lot 1 comprising an internal access road and Lots 2 - 6 comprising residential allotments).

Each proposed lot is as follows:

Lot 1 – internal access road (approximately 0.32ha)

Lot 2 – 10 hectares, entirely within 1(b1) – Agricultural Protection zone

Lot 3 – 10 hectares, entirely within 1(b1) – Agricultural Protection zone

Lot 4 – 10 hectares, entirely within 1(b1) – Agricultural Protection zone

Lot 5 – 10 hectares, entirely within 1(b1) – Agricultural Protection zone

Lot 6 - 39.26 hectares (17.88ha within the 1(b1) – Agricultural Protection zone and 21.36ha in the 7(l) – Environmental Protection (Habitat) zone).

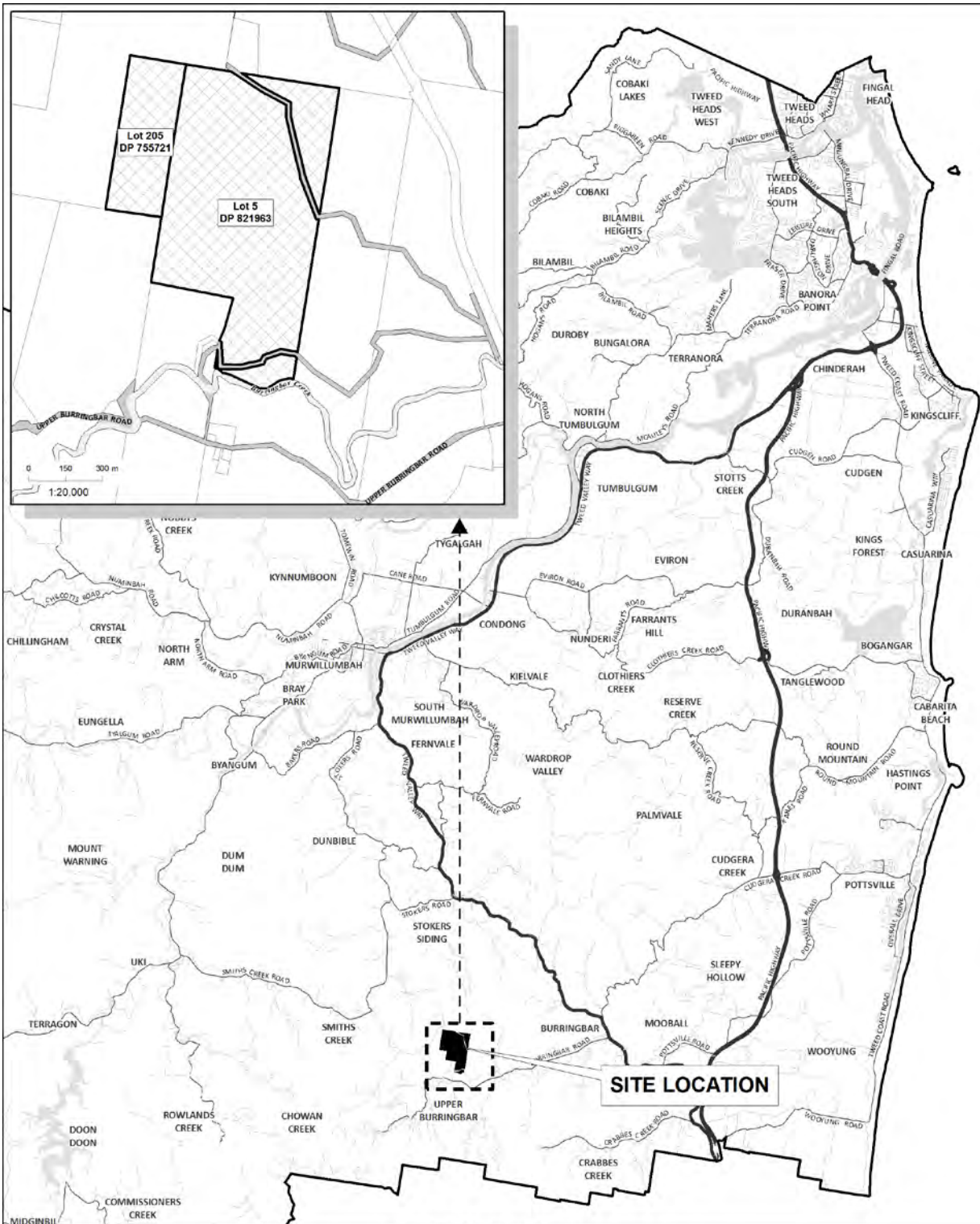
Lots 2-5 are currently vacant and Lot 6 contains an existing dwelling which is proposed to be demolished. New houses are proposed to be constructed on all allotments as per nominated house sites on the plan of subdivision (house construction subject to future consent). Two (2) existing ancillary sheds are also located on proposed Lot 6.

A SEPP 1 Objection accompanied the application as proposed Lot 6 does not meet the minimum lot size for the 7(l) – Environmental Protection (Habitat) zone. Concurrence from the Director General of the Department of Planning was also required (which was granted) as the area within the 7(l) zone is less than 90% of the required minimum lot size, being 21.36ha (Council does not have assumed concurrence).

Existing Lot 5 is benefited by a right of carriageway over adjoining Lot 4 DP 821963 which is separately owned. The right of carriageway is proposed to remain to provide access to the proposed community scheme. The owners of Lot 4 have advised that they raise no objection to a potential increase in traffic along the right of way as a result of approval of this application.

Road upgrade works are required including widening, drainage and installation of culverts.

SITE DIAGRAM:



Locality Plan

Lot 205 DP 755721; Lot 5 DP 821963
No. 532 Upper Burringbar Road, Upper Burringbar

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential 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 approximate only. It should not be used for survey or construction purposes and prior to any excavations a 'Dig before You Dig' enquiry must be made by calling 3100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastra: 03 June, 2011
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Boundaries shown should be considered approximate only.

0 1 2 3 4 Km
1:150,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED

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

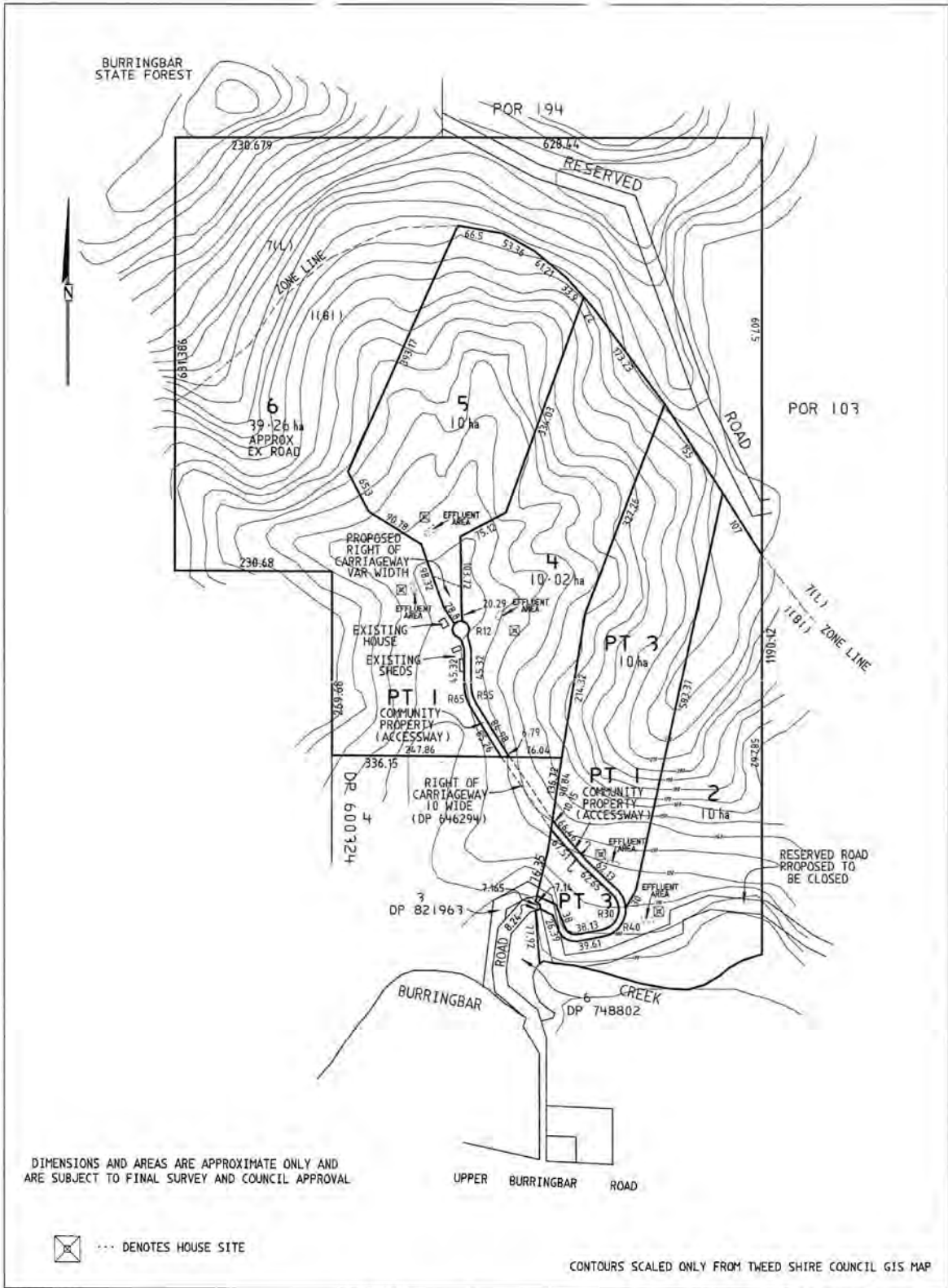
Civic and Cultural Centre
3 Tumbulgum Road
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Murwillumbah NSW 2484

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E | planning@tweed.nsw.gov.au

TWEED
SHIRE COUNCIL

PROPOSED SUBDIVISION PLAN



DRAWING TITLE PLAN OF PROPOSED COMMUNITY TITLE SUBDIVISION OF LOT 5 DP 821963 AND LOT 205 DP 755721 AT BIRRINGBAR	LEVEL DATUM	SCALE 1: 5000	BROWN and HAAN REGISTERED SURVEYORS & DEVELOPMENT CONSULTANTS Suite 7 Carinya, Cnr Commercial Rd & King St, Murwillumbah NSW Ph. (02) 6672 1256 Fax (02) 6672 1276 email: barb@landsurv.com.au
	DATE OF SURVEY	REVISION G	
CLIENT: Mr PAUL BODEY	DATE 27-01-10	SHEET 1 OF 1	
	DRAWN GMB	JOB No 20961	
	CHECKED BG		
	CAD FILE No. 20961-PROP-E		

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is considered to be consistent with the aims of the TLEP 2000.

Clause 5 - Ecologically Sustainable Development

The subject development application is considered consistent with the four principles of ESD, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms* as it respects the minimum lot size for the 1(b1) zone whilst keeping the existing undersized portion of the 7(l) zone within a single lot.

Clause 8 - Zone objectives

The primary objective of the **1(b1) Agricultural Protection** zone is to *protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses*. The secondary objective is to *allow other development that is compatible with agricultural activities*.

The proposal is considered to be consistent with the zone objectives as the minimum lot size for all 1(b1) allotments is met and the proposed subdivision is not considered to detrimentally affect the use of the agricultural land for agricultural purposes. The smaller lots are considered to remain suitable for agricultural uses such as small scale grazing or small cropping as currently occurs over parts of the site.

The proposal is consistent with the secondary objective in that approval of the application will likely result in dwelling houses being located on the agricultural sites, which is considered to be a compatible and necessary form of development for the zone, particularly from an agricultural management perspective.

It is noted that future consent will need to be sought for dwelling houses.

The primary objectives of the **7(l) – Environmental Protection (Habitat)** zone is to *protect areas or features which have been identified as being of particular habitat significance, to preserve the diversity of habitats for flora and fauna and to protect and enhance land that acts as a wildlife corridor*.

The secondary objectives are to *protect areas of scenic value and to allow for other development that is compatible with the primary function of the zone*.

In this instance, the 7(l) zone is located wholly within proposed Lot 6 and it is worthy of note that the 7(l) portion of the site is already undersized. The proposed subdivision is not considered to result in any increased impacts on the 7(l) zone in terms of habitat significance or scenic value than already attributed to it by virtue of abutting an agricultural protection zone. It is considered that with the recommended conditions of consent, adequate protection of the 7(l) land will occur which will have the advantage of providing further environmental management works via the Habitat Restoration Plan, whilst enabling residential and agricultural use of those parts of the site zoned for such a purpose. As such, the proposed development is considered consistent with the primary and secondary objectives of the 7(l) zone.

Clause 15 - Essential Services

Council's reticulated potable water supply and reticulated sewer are not available in the area. Tank water for domestic use and a static provision for fire fighting will be made available.

Effluent treatment is proposed via individual EAA (Effluent Application Area) beds. Council's Environmental Health Officer has reviewed the proposed arrangement and raised no objections, subject to conditions.

Clause 16 - Height of Building

A consideration of building heights is not required at this time and will be undertaken with future application for any dwellings on the proposed lots. It is noted that a three storey height limit applies.

Clause 17 - Social Impact Assessment

The proposed development is not anticipated to generate significant social impacts, being residential in nature and of a small scale.

Clause 19 – Subdivision

This clause outlines that a person must not subdivide land without consent. Consent is therefore sought for the subject application.

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

This clause aims to prevent the potential for fragmentation of ownership of rural land that would adversely affect the continuance or aggregation of sustainable agricultural units or generate pressure to allow isolated residential development and provide public amenities and services in an uncoordinated and unsustainable manner. It also aims to protect the ecological and scenic values of the land and protect the quality of water supply.

Clause 20 specifies that consent may only be granted to subdivision in the 7(l) zone if the allotment to be created is at least 40ha, and at least 10ha in the 1(b1) zone.

In this instance, the land within the 7(l) zone has an existing area of 21.36ha which is not proposed to be further fragmented. A SEPP 1 Objection was submitted and concurrence sought (and received) from the Department of Planning in this regard.

The remaining land falls within the 1(b1) zone, and each lot achieves the required 10ha minimum lot size with the exception of Lot 1 (access road, which has an area of approximately 3248m², or 0.324ha). The shortfall in area of proposed Lot 1 was incorporated into the SEPP 1 Objection and concurrence granted by the Department of Planning. It is noted that the Department of Planning have raised no objection to the lot sizes in the 1(b1) zone, though they have noted that the type of rural living proposed may conflict with the objectives of the Agricultural Protection zone. It is considered that discretion exists at the time consent is sought for dwelling houses on the lots to regulate dwelling design and siting such that the vast majority of each site is retained for agricultural purposes.

With respect to Clause 20, the proposal not considered to adversely affect the continuance of agricultural use of the subject sites or surrounding properties or generate unfavourable pressure for development. The proposal is not considered to detract from the ecological or scenic values of the land and is not located in proximity to the Tweed catchment.

Based on the above, the proposal is considered to accord with Clause 20.

Note: comments from the Department of Planning are considered further in this report.

Clause 28 – Development in Zone 7(l) Environmental Protection (Habitat) and on adjacent land

This clause aims to protect identified habitat areas from the adverse impacts of development and specifies that consent must not be granted for development on 7(l) land without considering effects on flora and fauna, the potential for their disturbance, fire risk, rubbish dumping and weed invasion/vegetation clearing.

The clause also requires preparation of a plan of management to mitigate impacts of the proposed development.

The following condition has been applied in this regard by Council's Ecologist:

“Prior to the commencement of works, a Threatened Species Management Plan for Koalas, threatened rainforest flora and any other threatened species known from or found on the site is to be lodged and approved to the satisfaction of Council's Director of Planning and Regulation or delegate, in accordance with Council's draft guidelines attached to this consent. The Plan is to identify and protect any known or potential threatened species locations and habitat on the subject land and outline measures to reduce known threats or impacts to the species. The Threatened Species Management Plan is to be incorporated into the Community Management Statement and a funding mechanism established and approved by Council”.

Clause 29 – Development adjacent to Zone 8(a) National Parks and Nature Reserves

Clause 29 aims to ensure that development of land adjacent to Zone 8 (a) does not have a significant impact on wildlife habitat.

Consent must not be granted unless effects on flora and fauna, the potential for their disturbance, fire risk, rubbish dumping and weed invasion/vegetation clearing have been considered.

In this regard, comments were sought from the NSW National Parks and Wildlife Service (NPWS). A letter was received from the Department of Environment and Climate Change (DECC) which raised no objection to the development, though pointed out that Council should ensure consistency of the proposed development with various legislation, including the threatened species provisions of the Environmental Planning and Assessment Act, the Native Vegetation Act and related State Environmental Planning Policies.

In this regard, a detailed assessment of the proposed development has been undertaken by Council's Ecologist, including the matters prescribed by Clause 29 of the Tweed Local Environmental Plan 2000. Subject to conditions and the submission of Threatened Species Management Plan, the proposed development is considered to have minimal impact on local flora and fauna.

Assessment has indicated that the proposed development is acceptable in terms of bushfire and waste management (see further comments from NSW Rural Fire Service and Council's Waste Management Coordinator).

Additionally, it is noted that Council's Ecologist has recommended the prohibition of cats and dogs within the subdivision and the provision of fauna friendly fencing. Such conditions have been applied.

The proposed development is subsequently considered to accord with Clause 29.

Clause 35 - Acid Sulfate Soils

The subject site does not exhibit Acid Sulfate Soils.

Clause 39 – Remediation of Contaminated Land

Council's Environmental Health Officer has reviewed the submitted Contamination Report and advised that all contaminants of concern were below the relevant health investigation levels. As such, remediation under Clause 39 is not required.

Clause 39A – Bushfire Prone Land

The proposed development site is bushfire prone. Due to being a 'subdivision', the application constituted 'integrated development' and a Bushfire Safety Authority from the NSW Rural Fire Service was sought. The RFS issued a bushfire safety authority on 13 August 2010 with five (5) specific General Terms of Approval (GTA's) which have been applied.

The proposed development is considered to be consistent with Clause 39A.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

In this instance, the proposed subdivision meets the minimum lot size provisions prescribed by the TLEP 2000 (with the exception of the SEPP 1 Objection for the 7(l) – Environmental Protection zone that is already undersized) that are set to minimise fragmentation of agricultural land. Further, the majority of the site is not identified as regionally significant or state significant farmland, though it is noted that a small portion of the site adjoining Burringbar Creek is identified as regionally significant non contiguous farmland. In this regard, comments were sought from Industry and Investment NSW who raised no objection to the proposal. Site inspection has indicated that the subject site and nearby lots are utilised generally as cattle grazing, with pockets of uncontrolled fruit cropping on the subject site. The Department of Primary Industry's Living and Working in Rural Areas (2007) suggests a buffer of 50m between residential development and stock grazing. There is no specified buffer from small cropping, except bananas which are not grown in the vicinity of the site. A 300m buffer is also recommended between regionally significant farmland and residential development.

Inspection of the plans and Council's aerial photography has indicated that the proposed dwelling sites are in excess of 100m from any adjoining properties except for the proposed dwelling on proposed Lot 3 which is only 70m to the adjoining property. However the 50m buffer is well exceeded.

With regard to regionally significant farmland, the nearest dwellings to the farmland, being the proposed dwelling on Lots 2 and 3 are located approximately 70m (Lot 2) and 150m (Lot 3) from the identified regionally significant farmland. NSW Industry and Investment (Primary Industries Division) were contacted with regard to the occurrence of regionally significant farmland on the site. NSW Industry and Investment raised no objections to the proposed development, noting that they are no longer providing specific advice on agricultural issues relating to development applications unless they are for intensive animal agriculture.

Industry and Investment (Primary Industries Division) have also produced a guideline titled 'Issues for Community Title in Agricultural Areas'. This guideline outlines a number of assessment criteria for community title developments on agricultural land and is addressed in detail further in this report. It is noted that the application is generally consistent with the assessment criteria of the guideline.

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

Clause 15: Wetlands or Fishery Habitats

The subject site is intersected by Burringbar Creek and as such, Clause 15 of the NCREP is relevant. It is noted that Industry and Investment NSW (Fisheries Ecosystems Branch) have indicated that Burringbar Creek is a key fish habitat, as is a 3rd order stream which bisects adjoining Lot 4 (and is not affected by the subject proposal).

With regard to the provisions of Clause 15, the proposed development (which requires works to upgrade an existing creek crossing over Burringbar Creek) is not considered to adversely affect the quality or quantity of water flows within Burringbar Creek. In fact, Council's Ecologist has advised that the proposed culverts will have the effect of improving the flow of water for fish movement, though there may be some minor habitat disturbance in the construction phase (movement of rock overhangs etc). It is noted however that any displaced material has the ability to be reused and habitat recreated.

The creek does not form part of any existing commercial fishery operations and is not located in proximity to any aquatic reserves or foreshore areas. A plan of management has been conditioned which shall address the conservation of existing vegetation along the creek and conditions relating to erosion and sediment control have been applied to minimise the entry of soil and sediment into the creek during the upgrade phase of the road.

Industry and Investment NSW (NSW Fisheries) have reviewed the application and provided general terms of approval, including the requirement for the applicant to obtain a permit under s198-202 of the *Fisheries Management Act* 1994 for dredge and reclamation activities prior to any work commencing.

The proposed development is considered to be consistent with Clause 15.

Clause 43: Residential development

The proposed subdivision is accessed via an existing track which requires upgrading to meet current road design standards as well as Rural Fire Service regulations. A detailed assessment has been undertaken which demonstrates that the proposed development should not have an adverse impact on the environment and will not result in an unacceptable increase in traffic to and from the site. The proposal's integration into the road network and proposed road widths are considered acceptable. Conditions regarding sediment and erosion control have been applied.

As such, the proposed subdivision is considered to be consistent with Clause 43.

Clause 81: Development adjacent to the ocean or a waterway

Clause 81 relates to the provision of foreshore access.

The proposed development does not interfere with any foreshore access due to the waterway being a small creek through private properties, nor is there a foreshore management plan for the subject area. There are no buildings proposed as part of this application.

The proposed development does not contravene Clause 81.

SEPP No. 1 - Development Standards

SEPP 1 provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

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

A SEPP 1 Objection was submitted to Clause 20 of the Tweed Local Environmental Plan, as land within both zones (7(l) and 1(b1) falls short of the minimum lot size as follows:

- Lot 1 (community property/access way) is zoned 1(b1) Agricultural Protection with a 10ha minimum lot size. The area of proposed Lot 1 is approximately 0.3248ha.
- Lot 6 is zoned both 1(b1) Agricultural Protection and 7(l) Environmental Protection – Habitat (minimum lot size of 40ha). The 1(b1) portion of the site exceeds 10ha and as such a dwelling entitlement will remain. The 7(l) portion of the site is only 21.36ha.

The applicant has supplied the following justification for the SEPP 1 Objection (italicised):

“The proposal is consistent with 1(b1) zone objectives since the community lots 2-5 have an area in excess of 10ha and Lot 6 has a 1(b1) component of more than 10ha. Lot 1 is less than 10ha however it is not a saleable lot being association property shared by all other lots and required by the Land and Property Management Authority to be shown as Lot 1 in the Community Scheme.

The proposal is consistent with the 7(l) zone objectives as the environmental protection zone component is not fragmented.

*Development Standard to be Varied
Clause 20 of the Tweed Local Environmental Plan 2000*

The standard is unreasonable as the total component of 7(l) land within the parent property is substandard anyway, being approximately 22.8ha excluding road. The proposal is not inconsistent with the standard. The pattern of existing subdivision is irregular in this locality of uneven topography”.

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

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

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

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;**
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**
- 3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**
- 4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

5. **The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

Though not stated by the applicant, the subject SEPP 1 Objection seems to rest upon point one above, in that the objectives of the 1(b) and 7(l) zone are achieved notwithstanding the undersized allotments (one to be created purely for property access in the 1(b) zone and the allotment encompassing the 7(l) zoned land which is presently undersized).

The objection is considered to be well founded, as proposed Lot 6 (containing the 7(l) land is already well below the required 40ha minimum lot size and proposed Lot 1 (access way) is required to be nominated as a stand alone 'Lot' by the Land and Property Management Authority.

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

The aims of the policy are as follows:

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

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

"(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

(ii) the promotion and co-ordination of the orderly and economic use and development of land."

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

Further, non compliance with the development standard is not considered to raise any matters of significance for State or regional environmental planning. As no additional dwelling potential will be created by the proposed subdivision (proposed Lot 6 received its dwelling entitlement from the balance of the 1(b) land, not the 7(l)), no public benefit would be gained by maintaining the standard in this instance.

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

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

SEPP No. 44 - Koala Habitat Protection

Council's Ecologist has advised that the site contains known koala habitat and as such has applied conditions relating the submission and approval of a Threatened Species Management Plan as follows:

"Prior to the commencement of works, a Threatened Species Management Plan for Koalas, threatened rainforest flora and any other threatened species known from or found on the site is to be lodged and approved to the satisfaction of Council's Director of Planning and Regulation or delegate, in accordance with Council's draft guidelines attached to this consent. The Plan is to identify and protect any known or potential threatened species locations and habitat on the subject land and outline measures to reduce known threats or impacts to the species. The Threatened Species Management Plan is to be incorporated into the Community Management Statement and a funding mechanism established and approved by Council".

Detailed conditions have also been applied to prohibit the removal of any primary koala food trees as well as a prohibition on dogs and cats.

In combination, these conditions are considered to ensure consistency with the provisions of SEPP 44.

SEPP (Rural Lands) 2008

This SEPP aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes and reduce land use conflicts through utilising Rural Planning Principles and Rural Subdivision Principles. It also aims to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land.

Clause 10(3) specifies the following matters to be considered in determining development applications for rural subdivisions or rural dwellings:

- (a) *the existing uses and approved uses of land in the vicinity of the development;*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*

- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

In this instance, the proposed subdivision is considered to be consistent with the surrounding agricultural land use, which includes crop growing and pasture land. The proposal is not considered to impact upon any such uses, nor will it prejudice the ability for suitably zoned parts of the subject site to continue to be used for agricultural purposes commensurate with the zone objectives. The proposal is consistent with Clause 10(3)(a).

The preferred land uses in the 1(b1) Agricultural Protection zone are considered to be agriculture and forestry (both allowed without consent in the zone). The subject proposal is not considered to have a significant impact on either such land use given the minimum lot sizes for the agricultural protection zone are maintained. The proposal is consistent with Clause 10(3)(b).

Given the proposal is for subdivision only (with dwelling construction subject to future consent), it is not considered to be incompatible with the land uses mentioned in (a) or (b) above. The proposal is not considered to reduce the agricultural viability of the subject site or surrounding properties. NSW Industry and Investment (Primary Industries Division) have raised no objection to the proposal. The proposal is consistent with Clause 10(3)(c).

Adjoining sites exhibit the same zoning mix as the subject site and the proposed development is considered to be compatible with adjoining land uses. Clause 10(3)(d) is considered satisfied.

A Community Management Statement for the development is required to be submitted which will require assessment by Council officers. An acceptable plan and commencement of management actions in accordance with that plan should serve to ameliorate any potential for land use conflict, though given the similarity of land uses between the proposed development and surrounding sites, conflict is not anticipated. The recommended buffers (detailed by the Department of Primary Industry) are exceeded by the proposed development. Clause 10(3)(e) is considered satisfied.

The proposed subdivision has no further ramifications for SEPP (Rural Lands) 2008 and is considered to be consistent with the Policy in its entirety.

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

The subject sites are zoned RU1 – Primary Production and RU2 – Rural Landscape under the draft Tweed Local Environmental Plan 2010, with a corresponding minimum lot size of 10ha (RU1) and 40ha (RU2). The proposed subdivision, inclusive of the SEPP 1 Objection would remain permissible under the draft LEP 2010.

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

Tweed Development Control Plan

A5-Subdivision Manual

The proposed community title subdivision generally complies with the requirements of Section A5 of the DCP. With regard to the relevant provisions regulating lot size all allotments (except proposed Lot 6) are compliant meeting the 10ha minimum lot size and easily providing sufficient width and length to accommodate a standard 10m by 15m building envelope. Proposed Lot 6 meets the minimum lot size provisions for the 1(b1) zone and has received concurrence to vary the standard 40ha control for the 7(l) Environmental Protection zone.

With regard to physical constraints on the site, it is noted that the approach road is flood liable (which is proposed to be upgraded as part of the proposed works) to provide immunity to the Q10 flood event. All proposed allotments are elevated above RL 100 AHD with no flood threat existing.

The site is bushfire prone and a Bushfire Hazard Assessment was submitted (prepared by FPA Australia) and reviewed by the New South Wales Rural Fire Service under the integrated development provisions of the Act. The Rural Fire Service issued a bushfire safety authority under Section 100B of the Rural Fires Act and such conditions have been applied.

Council's Ecologist has reviewed ecological matters and Council's Environmental Health Officer has provided comments on the suitability of the proposed locations for onsite effluent treatment. Both officers have deemed the application to be acceptable and applied conditions of consent.

With regard to rural watercourses and drainage, being a rural environment, stormwater discharge will remain as predominantly sheet flow, with surface run-off finding its way to the natural water-course below Lots 4, 5 & 6. A table drain is proposed on the eastern side of the public accessway, with drainage along the driveway managed via reinforced concrete pipes beneath the road, with discharge running into the natural watercourse below.

Compliant road access is provided.

The proposal is considered to be consistent with DCP A5.

A11-Public Notification of Development Proposals

The application was notified in accordance with DCP A11 for fourteen (14) days from 28 June to 12 July 2010. During this period, four (4) submissions were received. The matters raised in the submissions are addressed further in this report.

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

Clause 92(b) Applications for demolition

No demolition is proposed by this application. It is noted that the existing dwelling on Lot 6 is proposed to be demolished in the future. Separate approval for demolition will be sought at a later date.

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

Context and Setting

The proposed subdivision is considered to be generally benign with negligible adverse impacts on the context and setting of the Upper Burringbar area, subject to the recommended conditions.

Access, Transport and Traffic

Road upgrade (public and private)

As per Council's Design Specification D1, a 4.5m full width seal access is required where a development services between 3 and 5 properties. As such, Council will accept a 4.5m trafficable pavement within a 6.5m formation, plus passing bays approximately every 200 metres to provide a 6.0m sealed pavement for the private road portion within the subject property (as advised by Council's Development Assessment Engineer). This road will terminate in a cul-de-sac at the entry to Lots 4, 5 and 6.

Similarly, Council's Development Assessment Engineer has advised that Council will accept a 4.5m trafficable pavement within a 6.5m formation, plus widening for passing bays providing a 6.0m sealed pavement (where advised) for the public road portion servicing the development.

It is noted that the engineering drawings show the cul-de-sac head with only a 12m diameter which is below Council's standards. A condition has been applied specifying construction of the cul-de-sac head to 18m in line with Council's standards.

Sections of the upgraded public and private roads servicing the development will be required to provide kerb and gutter, including the cul-de-sac head. Individual driveways are proposed providing a 3 metre wide, 2 coat bitumen seal which is consistent with Council's Driveway standards.

Intersections

Council's Development Assessment Engineer has advised that the intersection of Upper Burringbar Road and the laneway servicing the development will need to be upgraded to provide a Type AUR Right Turn Treatment in accordance with Austroads 2005, unless agreed otherwise by Council. An AUR intersection has been proposed in the submission.

Creek Crossings

There are four culvert crossings proposed, one to replace the existing bridge within the road reserve over Burringbar Creek at Chainage 200-220, another at around chainage 340 and two at the beginning of driveways to proposed Lots 5 and 6.

The crossing at Chainage 200-220 is proposed from 6 x 3.3 wide x 2.4 high box culverts to replace the old bridge over Burringbar Creek.

The crossing at Chainage 340 is proposed of 6 x 1.2m wide x 0.6m high box culverts. The third crossing at Chainage 60 is proposed of 3 x 900mm pipes at the beginning of entry to Lot 5 and 6 driveways.

The fourth crossing is at Chainage 6.09 and is proposed of 2 x 900mm pipes at beginning to Lot 6 driveway.

The existing creek crossing (bridge) is required to provide flood immunity to the Q10 flood event as per Council's specifications. Appropriate conditions have been applied, including the requirement for the submission of a Hydraulic Report at Construction Certificate stage to confirm the sizing of the proposed culverts.

No objections have been raised to the proposed culverts by Council's Development Assessment Engineer.

Flora and Fauna

Council's Ecologist has reviewed the proposed development in considerable detail and applied detailed conditions of consent relating to the protection of threatened flora and fauna species on the site.

Sediment & Erosion Control

Access driveways to proposed dwelling sites are to be sealed minimising the loss of aggregate to adjacent waterways. Standard conditions have been applied with regard to standard erosion and sediment control devices during the construction phase.

Draft Community Management Statement

A Community Management Statement (CMS) (assumed Draft) has been submitted with the DA. A condition has been applied requiring a final CMS to be submitted and approved by Council prior to the issuing of the Subdivision Certificate.

(c) Suitability of the site for the development

Potable Water Supply

Domestic water supply is proposed via individual rain water tanks.

Onsite Sewage Management

The applicant has provided an On-site Sewage Management Systems (OSMS) report prepared by Duncan Dey dated 30 November 2009. The report includes an OSMS site and soil assessment for each separate allotment with recommendations for suitable wastewater treatment method and OSMS land application area locations. Effluent is to be treated to secondary standard prior to discharge to appropriately sized Evapo-Transpiration / Absorption (ETA) beds. Proposed lot 6 is to have additional disinfection of treated effluent prior to discharge due to proximity of the proposed effluent Land Application Area (LAA) to the creek.

The applicant has confirmed in writing that the existing dwelling on proposed Lot 6 will be demolished. The OSMS servicing the existing dwelling and packing shed will not be required and decommissioning of the existing systems should therefore be undertaken prior to issue of subdivision certificate. An appropriate condition has been applied.

It is considered the proposed allotments provide sufficient area and suitable locations for on-site sewage management of domestic wastewater as recommended in the OSMS report prepared by Duncan Dey dated 30 November 2009.

No objections were raised by Council's Environmental Health Officer to the above, subject to the imposition of the following condition:

"Prior to the issue of subdivision certificate the applicant shall decommission the existing on-site sewage system including the septic tank and effluent disposal area servicing the existing dwelling on proposed Lot 6 in accordance with the guideline Advisory Note 3 dated may 2006 prepared by NSW Health. Following the decommissioning the applicant shall provide to Council a certification statement from a NSW licensed plumber confirming the decommissioning has been completed in accordance with Advisory note 3".

Flooding

Council's Development Assessment Engineer has advised that all proposed allotments are elevated above RL 100 AHD with no flood threat existing. The proposed creek crossing (culverts) will be required to provide immunity to the Q10 storm event (sizing to be confirmed at Construction Certificate stage).

Contaminated Land

A Preliminary Contaminated Land Assessment was prepared by HMC Environmental Consulting (HMC 2010.003) dated February 2010.

Council's Environmental Health Officer has reviewed the report and conducted a site inspection and has advised the following:

"The report identifies an existing dwelling, two sheds and an aboveground fuel tank located within 100m from the proposed dwelling site on proposed Lot 6. The report indicates the sheds are currently used for the storage of farm machinery, banana packing and are likely to have been used for the storage of chemicals. A site inspection undertaken on the 12 July 2010 revealed there are significant buffer distances between the existing structures and the proposed dwelling sites. The proposed dwelling site on proposed Lot 6 is separated by a creek to the existing structures. Potential contamination from existing structures is not anticipated to impact upon the proposed dwelling sites considering the significant buffer distances that exist."

No further concerns with regard to contaminated land are raised, with the conclusion that the site is not contaminated land.

Stormwater

Being a rural environment, stormwater discharge will remain as predominantly sheet flow, with surface run-off finding its way to the natural water-course below Lots 4, 5 & 6. No easement provisions are proposed or required.

Regionally significant farmland and significant non contiguous farmland

A small portion of proposed Lot 1 is identified as regionally significant non contiguous farmland. The Department of Primary Industries have previously advised that they raise no concerns in this regard for applications other than intensive animal agriculture, which the subject application is not.

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

During the notification period, four (4) written submissions were received which raised issues as follows. All issues are considered appropriately addressed via the recommended conditions of consent and none are considered to warrant refusal of the application.

Matters raised in submission	Planning comment
<p>It is impossible for vehicles to safely enter and exit the lane leading to the property. Vehicles travelling east on Upper Burringbar Road have only 25m to react to vehicles entering or exiting the lane. Increased vehicle flow would be dangerous.</p>	<p>The plans show upgrades to the existing intersection to comply with Austroads 2005. This includes the formalisation of a passing bay directly opposite the intersection and the installation of regulatory signage (give way sign) and linemarking. The longitudinal section also shows lowering of the existing road at the intersection to achieve improved sight distance. Such measures are considered to be a significant improvement to the current road conditions which should serve to improve safety when entering and exiting the site. It is noted that matters such as speeding vehicles are not within Council's jurisdiction and are a Police matter. As such, this reason does not warrant refusal of the application.</p>
<p>Any changes to the existing bridge could adversely affect the platypus population living in the creek.</p>	<p>A Fisheries permit is required for any new bridge or culvert structure which must be constructed so as to avoid impacts on the creek and maintain fish passage. This matter has been conditioned.</p>
<p>Widening of the road will require the removal of endangered trees.</p>	<p>Macadamia tetraphylla (Rough Shelled Bush Nut) is located in the vicinity of the public road though Council's Ecologist has indicated it is likely within the riparian zone (along the creek). The recommended condition for the Threatened Species Management Plan incorporates threatened rainforest flora and as such, consideration of the trees (dependant upon their location) is required as part of that plan. As such, this does not form a reason for refusal of the application.</p>

Matters raised in submission	Planning comment
<p>Upgrade of the road and bridge will restrict access to the waterhole and existing pump which is the only means to get water to the house.</p>	<p>The Water Management Act 2000 provides that an owner or occupier of a landholding is entitled to take water from a river, estuary or lake which fronts their land or from an aquifer which is underlying their land for domestic consumption and stock watering without the need for an access licence. Should the land not front a river, estuary or lake, then a licence under the WMA is required (which is the case at the site in question). As such, this is a matter beyond Council's control and does not form a reason for refusal of the application. It is not known whether an appropriate licence to pump from the creek exists however this is not a matter for Council's concern under Section 79C of the Environmental Planning and Assessment Act.</p>
<p>Water levels in the creek will be depleted if pumping from the creek is proposed for the new dwellings.</p>	<p>Dwelling sites only are sought under the current application and the application notes that water tanks are proposed for potential future domestic use. Appropriate licences would be required if supply from the creek was proposed. As such, this matter does not warrant refusal of the application.</p>
<p>Rates will increase</p>	<p>There is no evidence to suggest that approval of a subdivision in this location will increase rates. This is not a matter for Council's concern under Section 79C of the Environmental Planning and Assessment Act.</p>
<p>Widening of the road will move it closer to our property</p>	<p>The road is located within a designated road reserve. Minor widening is proposed to achieve compliance with Austroads standards and improve safety, wholly contained within the existing reserve alignment. This does not form a reason for refusal of the application.</p>

Matters raised in submission	Planning comment
<p>At the road junction there is a blind spot and a serious accident is inevitable with increased traffic.</p>	<p>The plans show upgrades to the existing intersection to comply with Austroads 2005. This includes the formalisation of a passing bay directly opposite the intersection and the installation of regulatory signage (give way sign) and linemarking. The longitudinal section also shows lowering of the existing road at the intersection to achieve improved sight distance. Such measures are considered to be a significant improvement to the current road conditions which should serve to improve safety when entering and exiting the site. This matter does not warrant refusal of the application.</p>
<p>Traffic noise will increase</p>	<p>The road has sufficient capacity to cater for a small increase in additional traffic as a result of approval of this development (inclusive of the proposed upgrades). It is noted that Council's standard condition relating to all work associated with the approval being carried out so as not to impact the neighbourhood in terms of noise (and other matters) has been applied. It is not considered that traffic noise will be significant given the rural nature of the locality and the relatively minor nature of the proposed subdivision. As such, this is not considered to warrant refusal of the application.</p>
<p>Waste water and sewage could find its way into Burringbar Creek</p>	<p>Council's Environmental Health Officer has reviewed the proposed OSSM treatment land application areas (LAA's) and advised that they are appropriate with regard to proximity to the creek. It is noted that proposed Lot 6 is to have additional disinfection of treated effluent prior to discharge due to the proximity of the LAA to the creek (approximately 300m). As such this does not warrant a reason for refusal of the application.</p>

Matters raised in submission	Planning comment
More housing may create an increased bushfire risk.	There is no evidence to suggest that increased housing in this location could increase bushfire risk. It is noted that the Rural Fire Service have provided General Terms of Approval under Section 100B of the Rural Fires Act for the subdivision and further bushfire assessment for individual dwellings on the site will occur at the time consent is sought for such. Therefore this is not considered to form a reason for refusal of the application.
A koala management plan must be incorporated into this DA	Conditions have been applied in this regard by Council's Ecologist.
Council must show consistency between determinations and the same conditions applied to DA08/0240 should be applied to DA10/0360.	Similar conditions to DA08/0240 have been applied for this application by Council's Ecologist.
The existing platypus population in Burringbar Creek must be protected. A declared area (fencing, planting of natives to protect and stabilise land and creek bank) must be set aside.	Platypus will be protected and their habitat enhanced through the requirement for a Threatened and Significant Protected Species Management Plan which will be tied to the Community Management Statement and funded by the Community Association.
There is no mention of platypus sightings in the environmental report	Platypus have been considered within Council's environmental assessment and appropriate conditions imposed to ensure protection.
Runoff from above should not pollute the dam at number 534	There should be no increase in runoff from the subject site due to considerable land area available for infiltration and the installation of drainage along the proposed upgraded road and internal driveway. This does not form a reason for refusal of the application. In any case, conditions about an ongoing water quality program have been applied.

Accordingly, the recommended conditions of consent are considered to appropriately address all relevant matters raised above.

(e) Public interest

Subject to the recommended conditions, the proposed development is generally in the public interest, being consistent with the prescribed zoning and Council's Subdivision Manual. Environmental impacts are considered to be appropriately ameliorated via the proposed conditions of consent and the site is considered suitable for the development. As such, the proposed subdivision is considered to be in the public interest.

OPTIONS:

1. Adopt the recommendation and resolve to approve the development application with conditions.
2. Resolve to refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is therefore considered that the site is suitable for the development and warrants approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

16 [PR-CM] Development Application DA10/0342.04 for an Amendment to Development Consent DA10/0342 for Dwelling Additions and Retaining Wall at Lot 19 DP 737064, No. 54 Parkes Lane, Terranora

ORIGIN:

Building and Environmental Health

FILE NO: DA10/0342 Pt1

SUMMARY OF REPORT:

At its meeting of 19 October 2010 Council granted conditional development consent to Development Application DA10/0342 for a proposed two storey outbuilding connected with the existing dwelling and the use of an illegally constructed retaining wall.

The applicant has since lodged an application to modify this consent under the provisions of section 96 of the Environmental Planning & Assessment Act 1979.

The approved application involved the construction of a two storey outbuilding consisting of a 144m² garage on the ground floor with a 53.6m² first floor component comprising a rumpus room and bathroom. A 32m² first floor deck was located at the northern end of the building and two other smaller decks linked the outbuilding to the existing swimming pool deck.

Two small Bali huts were also approved on the decking and swimming pool surrounds.

This approval also included the conversion of the existing double garage of the dwelling into a bedroom and the use of an illegally constructed 1.40m high retaining wall located inside part of the rear property boundary.

The current Section 96 proposal to modify the outbuilding structure involves additional habitable rooms on the first floor for family use whilst improving the overall appearance of the building.

The application to modify the consent was notified to adjoining property owners and three written objections were received.

The objector's main concerns related to the size of the building, possible dual occupancy, possible business use, privacy issues and suitability in this location.

The issues raised in the objections have been addressed in detail in the body of this report.

On balance of the assessment of the relevant planning matters, the nature of the allotment, and the circumstances of the case it is considered that the proposed application to modify the consent is suitable for approval subject to the attached conditions.

RECOMMENDATION:

That Development Application DA10/0342.04 for an amendment to Development Consent DA10/0342 for dwelling additions and retaining wall at Lot 19 DP 737064, No. 54 Parkes Lane, Terranora be approved subject to the original conditions of consent and the following new/altered conditions:

1. Delete Condition No. 1 which reads:

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent, subject to a revised plan being submitted which alters the layout of the proposed bathroom on the mezzanine floor of the proposed outbuilding to limit the facilities within, to correspond with the proposed adjoining rumpus room use, to the satisfaction of the Director Planning and Regulation.

and replace with Condition No. 1A which reads:

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

2. Delete Condition No. 4 which reads:

4. A detailed plan of landscaping is to be submitted and approved by the PCA prior to the issue of a Construction Certificate. Such plan is to detail particular species and densities of plants located within the southern, eastern and northern setbacks of the development which upon reaching maturity will minimise impact from the development onto surrounding properties.

and replace with Condition No. 4A which reads:

- 4A. A detailed plan of landscaping is to be submitted and approved by the PCA prior to the issue of a Construction Certificate. Such plan is to detail particular species and densities of plants located within the southern, eastern and northern setbacks of the development which upon reaching maturity will minimise impact from the development onto surrounding properties. Planting along the eastern side of the additions shall be located on top of the existing retaining wall to maximise the screening effect.

3. Insert new Condition No. 45.1 which reads:

- 45.1 Prior to the issue of an occupation certificate or occupation of the dwelling house additions, screens which will restrict direct visual contact with adjoining premises shall be installed to the outside of windows to the eastern wall of the media room, rumpus room and office.

4. Delete Condition No. 47 which reads:

47. The building is not to be used for any habitable commercial or industrial purpose.

and replace with Condition No. 47A which reads:

- 47A. The garage is not to be used for any habitable commercial or industrial purpose.**
- 5. Delete Condition No. 48 which reads:**
- 48. The garage/rumpus must not be used for human habitation or occupation.**
- and replace with Condition No. 48A which reads:**
- 48A. The garage/rumpus must not be used for separate human habitation or occupation.**
- 6. Include the following new condition under the USE heading which reads:**
- 50. The proposed dwelling additions shall be used for single dwelling purposes only in conjunction with the existing dwelling.**

REPORT:

Applicant: Mr WF Morley and Mrs P Morley
Owner: Mr Wade F Morley & Mrs Priscilla Morley
Location: Lot 19 DP 737064, No. 54 Parkes Lane, Terranora
Zoning: 1(c) Rural Living
Cost: Nil

BACKGROUND:

The property is zoned 1(c) Rural Residential under the Tweed Local Environmental Plan 2000 and is located on the eastern side of Parkes Lane Terranora. The property is irregular in shape, contains an existing two storey dwelling house with attached double garage and in-ground concrete swimming pool.

The property falls to the rear having a grade of approximately 25 percent.

The Applicant stated in their original application that the proposed additions will improve functionality and improve living & storage space in association with the existing dwelling.

The proposed habitable additions will be used in conjunction with the existing dwelling and will continue to be used as a single dwelling only.

There will be a bathroom in the first floor additions however no additional kitchen or laundry facilities are proposed.

The modifications for which the applicant seeks approval are as follows:

- *The garage/studio building has been repositioned. The rear setback has been reduced from 7m to 4.5m. The setback from the northern boundary reduced from 16m to 15.27m and the setback from the southern boundary increased from 11m to 16m.*
- *The size of the garage/studio building has been reduced from 18mx8m (144m²) to 15.19mx7.4m (112.4m²).*
- *Roof shape changed from pitched to skillion.*
- *Internal stairs slightly repositioned.*
- *Upper floor layout modified. Deck removed from northern end of first floor with media, office pottery and storerooms added and size of rumpus room reduced.*
- *External decks modified and roof over verandah changed from flat roof to pitched roof.*
- *Bali hut removed.*
- *Additional landscaping provided to eastern side of retaining wall to act as a screen.*

The first floor additions will form a pavilion type extension to the dwelling located adjacent to the swimming pool and outdoor recreation area. Access to the existing house from the additions will be freely available via a series of stepped timber decks which will provide a physical connection between the two areas and facilitate use of both areas.

The modified design of the garage/rumpus room building is considered to be an improvement on the original consent, has been designed to better address the slope of the site and will provide a more contemporary external presentation.

The external appearance of the modified design is more representative of an extended dwelling addition than a garage or outbuilding.

Deletion of the deck at the northern end of the building will alleviate any fears of loss of privacy from adjoining allotments from this area.

It is considered that the additions will be generally consistent with the established and desired built form and character of the rural living locality.

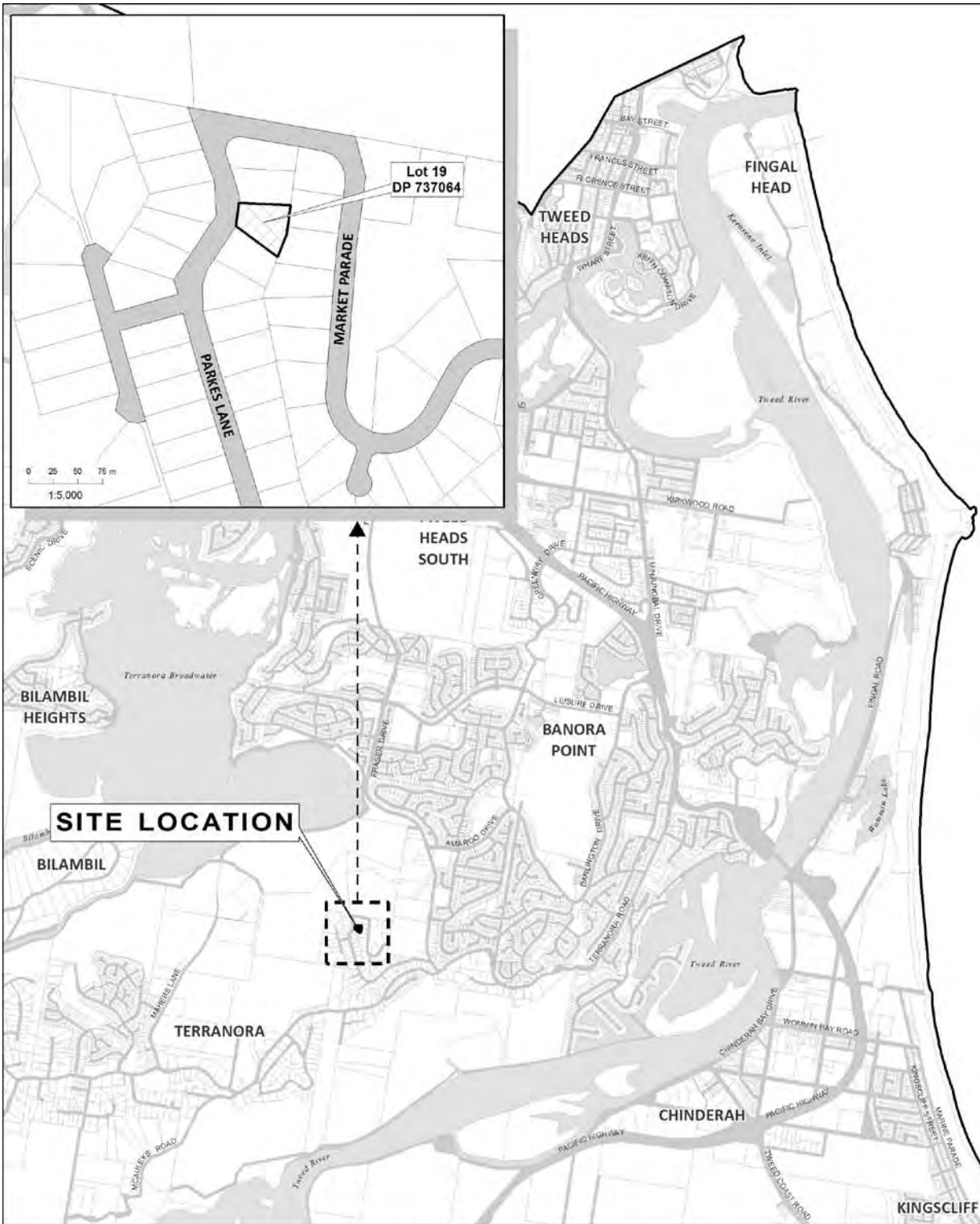
Notwithstanding that the addition will be relatively large it is considered that the slope of the allotment, improved design and existing and proposed landscaping will reduce the impact of the building on the streetscape.

Due to the slope of the allotment the building will not be highly visible from Parkes Lane and perusal of the allotments in Market Parade has revealed the presence of several two storey dwellings which impose a greater impact on the streetscape than the proposal.

Whilst the additions will be visible from Market Parade its impact on the streetscape will be minimised due to its spatial separation from the street, visual screening created by existing dwellings and landscaping and proposed landscaping along the eastern side of the building.

Roof water from the garage/studio will be disposed into an existing rainwater drainage easement which benefits the property.

SITE DIAGRAM:



Locality Plan
 Lot 19 DP 737064
 No. 54 Parkes Lane, Terranora

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Cadastre: 30 June, 2011
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 Boundaries shown should be considered approximate only.

0 0.5 1 Km
 1:40,000 A4 Portrait
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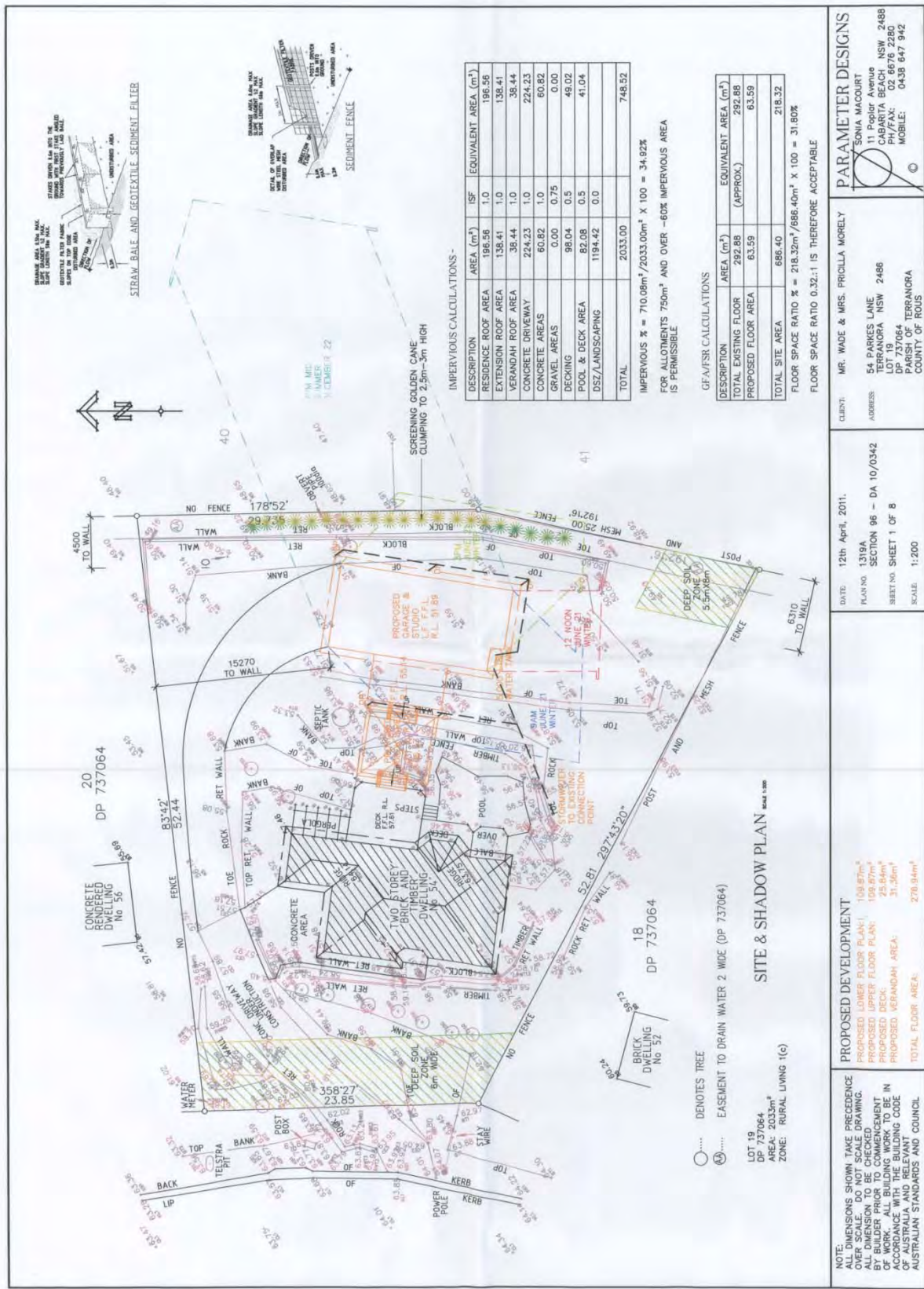
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 Horizontal Datum: Geodetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

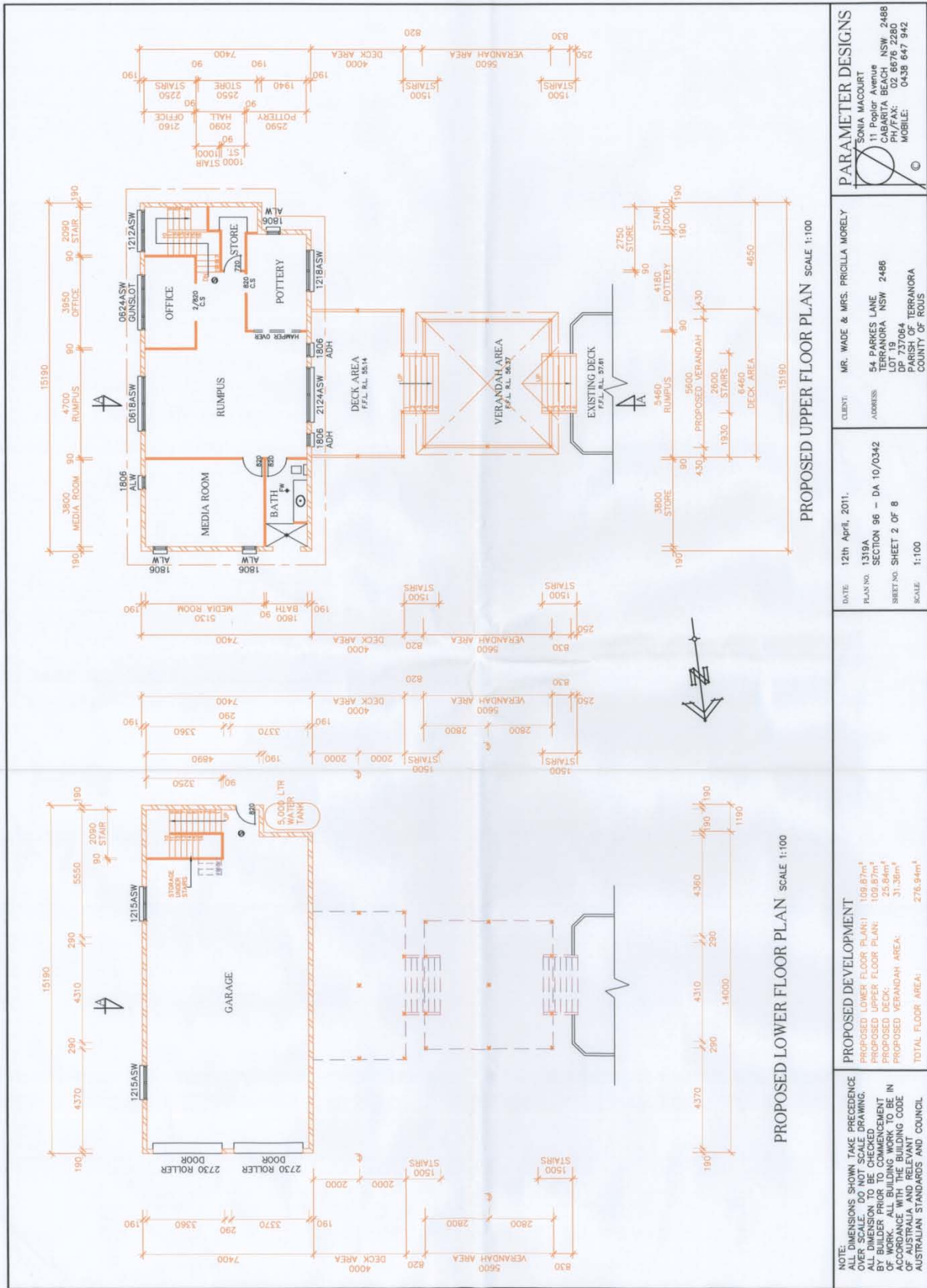
GDA

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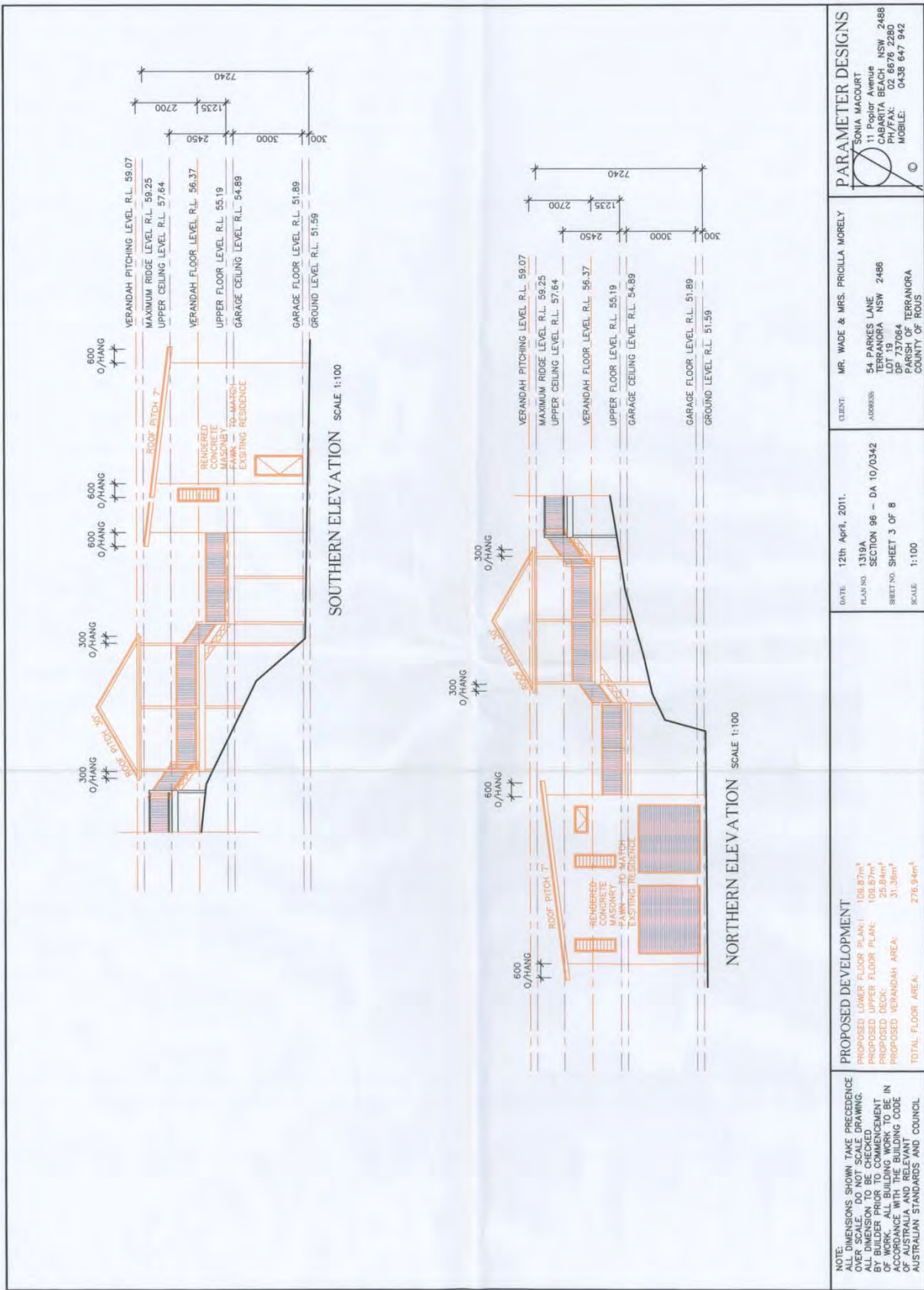
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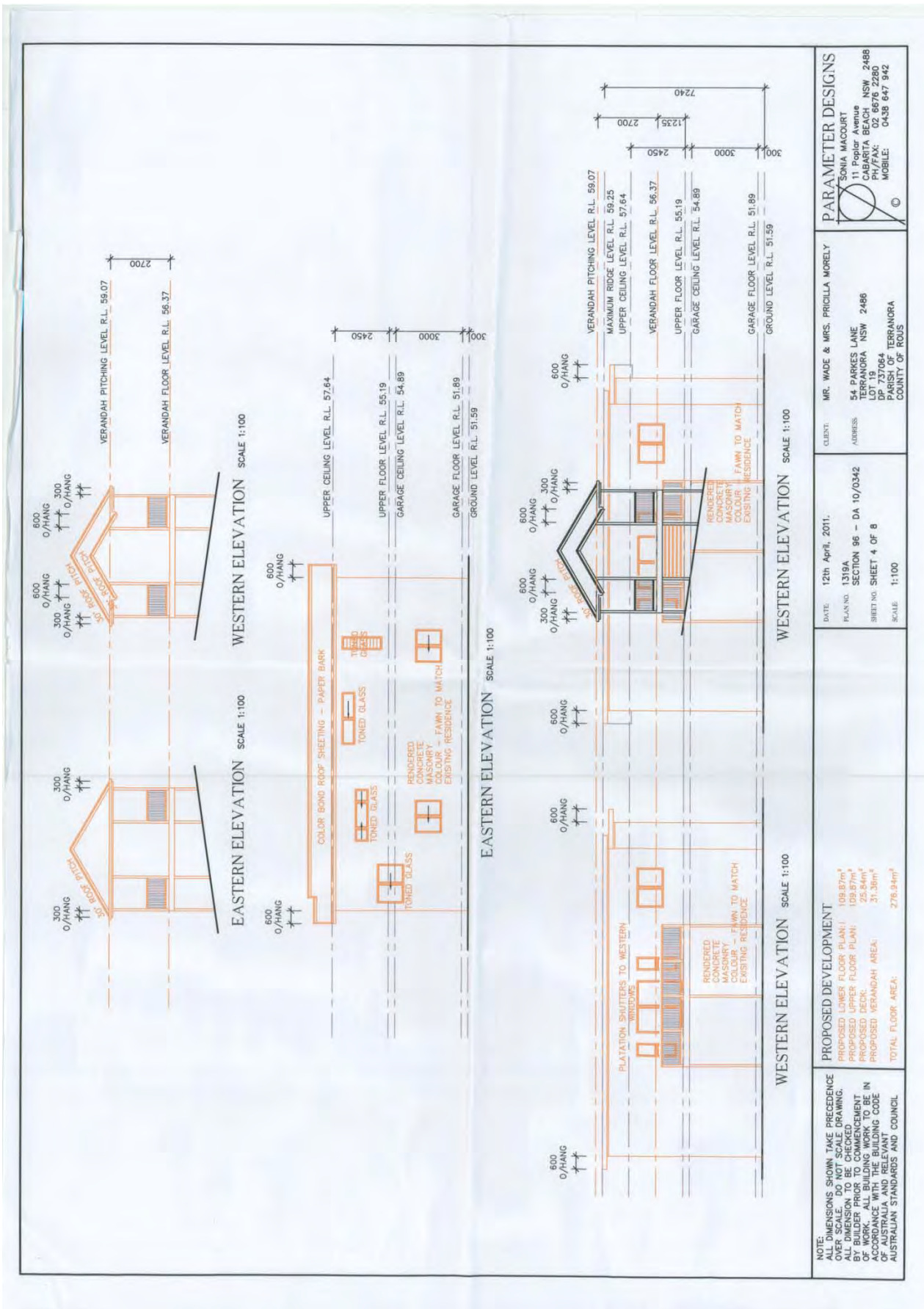
DEVELOPMENT PLANS:





<p>PARAMETER DESIGNS</p> <p>SONIA MACCOURT 11 Poplar Avenue CABARITA BEACH NSW 2488 PH/FAX: 02 6676 2280 MOBILE: 0438 647 942</p>	<p>CLIENT: MR. WADE & MRS. PRICILLA MORELY</p> <p>ADDRESS: 54 PARKES LANE TERRANORA NSW 2486 DP 737064 PARISH OF TERRANORA COUNTY OF ROUS</p>
<p>DATE: 12th April, 2011.</p> <p>PLAN NO. 1319A</p> <p>SECTION 96 - DA 10/0342</p> <p>SHEET NO. SHEET 2 OF 8</p> <p>SCALE: 1:100</p>	<p>PROPOSED DEVELOPMENT</p> <p>PROPOSED LOWER FLOOR PLAN: 100.87m²</p> <p>PROPOSED UPPER FLOOR PLAN: 109.87m²</p> <p>PROPOSED DECK: 25.64m²</p> <p>PROPOSED VERANDAH AREA: 31.36m²</p> <p>TOTAL FLOOR AREA: 276.94m²</p>





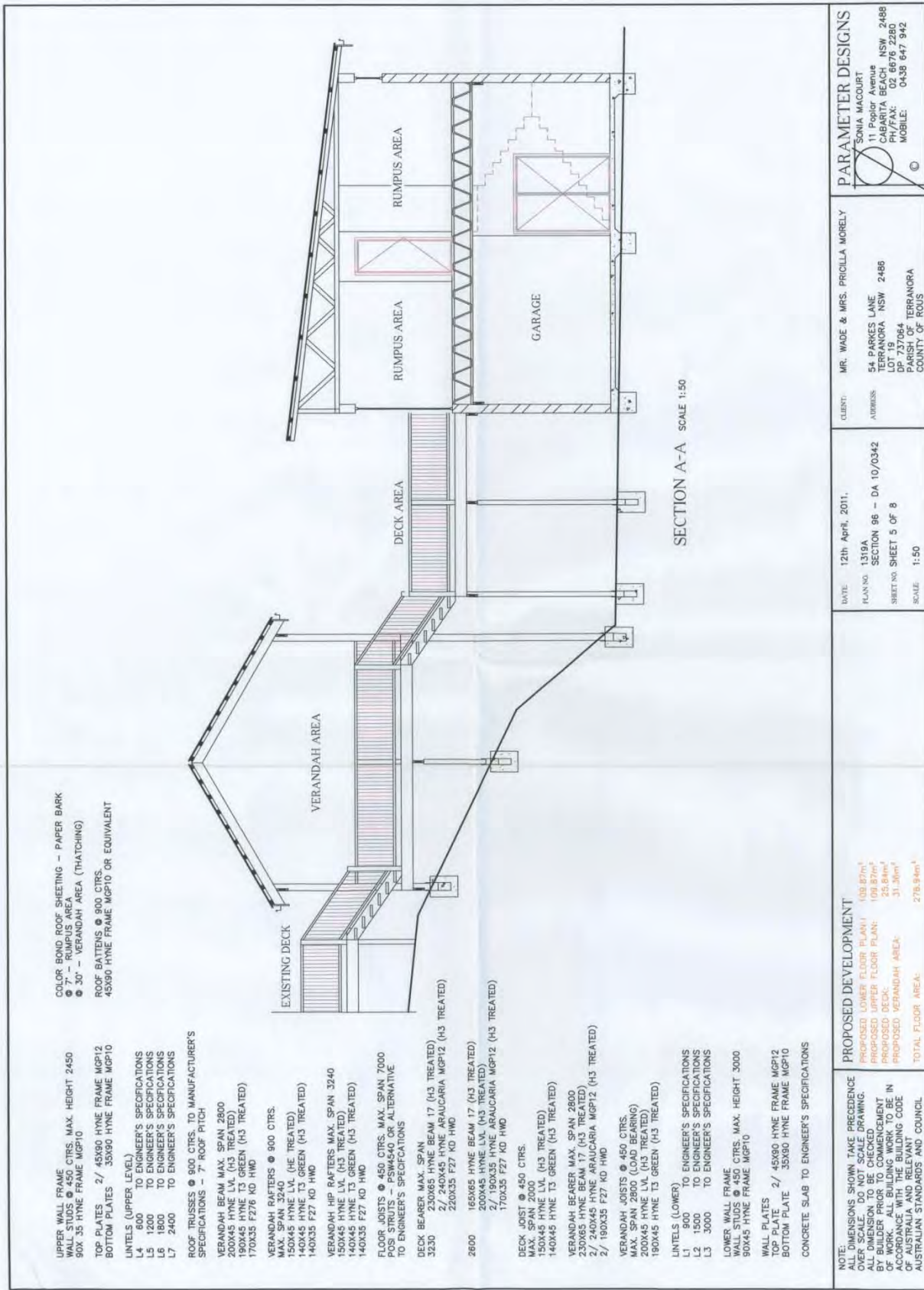
NOTE:
ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING.
ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK.
DRAWING TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL

PROPOSED DEVELOPMENT
PROPOSED LOWER FLOOR PLAN: 109.87m²
PROPOSED UPPER FLOOR PLAN: 109.87m²
PROPOSED DECK: 25.84m²
PROPOSED VERANDAH AREA: 31.30m²
TOTAL FLOOR AREA: 276.94m²

DATE: 12th April, 2011.
PLAN NO. 1319A
SECTION 96 - DA 10/0342
SHEET NO. SHEET 4 OF 8
SCALE: 1:100

CLIENT: MR. WADE & MRS. PRIGILLA MORELY
ADDRESS: 54 PARKES LANE
TERRANORA NSW 2486
LOT 19
DP 737064
PARISH OF TERRANORA
COUNTY OF ROSS

PARAMETER DESIGNS
SONIA MACCORT
11 Poplar Avenue
Coffs Harbour NSW 2468
PH/FAX: 02 6675 2280
MOBILE: 0438 647 942



SECTION A-A SCALE 1:50

COLOR BOND ROOF SHEETING - PAPER BARK
 ● 7' - RUMPUS AREA
 ● 30' - VERANDAH AREA
 ROOF BATTENS ● 900 CTRS.
 45X90 HYNE FRAME MGP10 OR EQUIVALENT

UPPER WALL FRAME
 WALL STUDS ● 450 CTRS. MAX. HEIGHT 2450
 90X35 HYNE FRAME MGP10
 TOP PLATES 2/ 45X90 HYNE FRAME MGP12
 BOTTOM PLATES 35X90 HYNE FRAME MGP10
 LINTELS (UPPER LEVEL)
 L4 600 TO ENGINEER'S SPECIFICATIONS
 L5 1200 TO ENGINEER'S SPECIFICATIONS
 L6 1800 TO ENGINEER'S SPECIFICATIONS
 L7 2400 TO ENGINEER'S SPECIFICATIONS

ROOF TRUSSES ● 900 CTRS. TO MANUFACTURER'S SPECIFICATIONS - 7' ROOF PITCH
 VERANDAH BEAM MAX. SPAN 2800
 2/ 240X45 HYNE ARAUCARIA MGP12 (H3 TREATED)
 180X45 HYNE T3 GREEN (H3 TREATED)
 170X35 F276 KD HWD

VERANDAH RAFTERS ● 900 CTRS.
 150X45 HYNE LVL (H3 TREATED)
 140X45 HYNE T3 GREEN (H3 TREATED)
 140X35 F27 KD HWD
 VERANDAH HIP RAFTERS MAX. SPAN 3240
 2/ 240X45 HYNE ARAUCARIA MGP12 (H3 TREATED)
 140X45 HYNE T3 GREEN (H3 TREATED)
 140X35 F27 KD HWD

FLOOR JOISTS ● 450 CTRS. MAX. SPAN 7000
 200X45 HYNE LVL (H3 TREATED) OR ALTERNATIVE TO ENGINEER'S SPECIFICATIONS
 DECK BEARER MAX. SPAN 3230
 2/ 240X45 HYNE ARAUCARIA MGP12 (H3 TREATED)
 220X35 F27 KD HWD

2800 165X65 HYNE BEAM 17 (H3 TREATED)
 200X45 HYNE LVL (H3 TREATED)
 2/ 190X35 HYNE ARAUCARIA MGP12 (H3 TREATED)
 170X35 F27 KD HWD

DECK JOIST ● 450 CTRS.
 MAX. SPAN 2000
 150X45 HYNE LVL (H3 TREATED)
 140X45 HYNE T3 GREEN (H3 TREATED)
 VERANDAH BEARER MAX. SPAN 2800
 230X65 HYNE BEAM 17 (H3 TREATED)
 2/ 240X45 HYNE ARAUCARIA MGP12 (H3 TREATED)
 2/ 190X35 F27 KD HWD

VERANDAH JOISTS ● 450 CTRS.
 200X45 HYNE LVL (H3 TREATED) OR ALTERNATIVE TO ENGINEER'S SPECIFICATIONS
 200X45 HYNE LVL (H3 TREATED)
 180X45 HYNE T3 GREEN (H3 TREATED)

LINTELS (LOWER)
 L1 800 TO ENGINEER'S SPECIFICATIONS
 L2 1500 TO ENGINEER'S SPECIFICATIONS
 L3 3000 TO ENGINEER'S SPECIFICATIONS

LOWER WALL FRAME
 WALL STUDS ● 450 CTRS. MAX. HEIGHT 3000
 90X45 HYNE FRAME MGP10
 WALL PLATES
 2/ 45X90 HYNE FRAME MGP12
 TOP PLATE 35X90 HYNE FRAME MGP10
 BOTTOM PLATE
 CONCRETE SLAB TO ENGINEER'S SPECIFICATIONS

<p>PARAMETER DESIGNS SONIA MACCOURT 11 Poplar Avenue CABARITA BEACH NSW 2488 PH/FAX: 02 8676 2280 MOBILE: 0438 647 942</p>	<p>CLIENT: MR. WADE & MRS. FRICILLA MORELY ADDRESS: 54 PARKES LANE TERRANORA NSW 2486 LOT 19 PARADE DRIVE TERRANORA PARISH OF TERRANORA COUNTY OF ROUS</p>	<p>DATE: 12th April, 2011. PLAN NO. 1318A SECTION 98 - DA 10/0342 SHEET NO. SHEET 5 OF 8 SCALE: 1:50</p>	<p>PROPOSED LOWER FLOOR PLAN: 109.87m² PROPOSED UPPER FLOOR PLAN: 109.87m² PROPOSED DECK: 25.84m² PROPOSED VERANDAH AREA: 31.30m² TOTAL FLOOR AREA: 278.94m²</p>
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NOTE: DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSIONS TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL

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 modifications will not be inconsistent with the aims & objectives of the plan

Clause 5 - Ecologically Sustainable Development

The proposed modification 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 modification is not inconsistent with the objectives of the zone in that it will not detract from the rural residential character of the locality.

Large dwelling houses already exist in this locality and the proposed building can be considered as an extended addition to the dwelling which due to its scale and relationship to the slope of the site will satisfy the design outcomes compatible with the objectives of the zone.

Clause 15 - Essential Services

The essential services which are currently available to the site will be adequate for the proposed modification.

Clause 16 - Height of Building

The modification will increase the height of the building from 6.6m to 7.24m.

The additional height will still satisfy the provisions of DCP A1 which permits a maximum height of 9m for dwelling houses.

As the first floor of the building contains habitable rooms the height which applies to dwelling houses is considered to be appropriate in this situation.

Shadow diagrams have been supplied which identify that the shadow cast during the winter solstice will not have a significant impact on affected properties.

Clause 17 - Social Impact Assessment

Normal domestic impacts are anticipated from the proposed modification. Additional windows are proposed along the eastern wall of the addition to service the new habitable rooms on the first floor.

A new condition of consent will be included to provide screens to the windows of the media room, rumpus room & office to protect the privacy of the adjoining allotments.

Conditions have already been imposed on the original consent which prohibits the garage being used for commercial or industrial purposes.

Clause 35 - Acid Sulfate Soils

The proposed modifications will have no increased impact on acid sulphate soils.

Other Specific Clauses

There are no other specific clauses which are applicable to this application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The modification will have no impact on nearby agricultural activities.

Clause 15: Wetlands or Fishery Habitats

The modification will have no impact on wetlands or fishery habitats.

Clause 29A: Natural areas and water catchment

The modification will have no impact on natural areas or water catchment. Conditions have been imposed on the original consent to prevent sediment runoff from the site during construction.

SEPP No. 1 - Development Standards

The proposal does not seek to vary any planning instrument.

SEPP No 71 – Coastal Protection

The site is affected by SEPP 71 however proposed modification will not be inconsistent with aims & objectives of plan.

SEPP (Building Sustainability Index: BASIX) 2004

A new Basix certificate has been submitted for the modified first floor layout.

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

The draft Tweed LEP 2010 was considered during the assessment of this proposal – the proposed modification is not inconsistent with the aims & objectives of this plan

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Chapter1 Building Types

The proposal satisfies the criteria for a dwelling house addition due to the residential nature of the building, ie garage on ground floor and habitable rooms on first floor.

The objectives of the control under this chapter relate to the relationship of the building to the character of the local area and it is considered that the proposal generally satisfies these objectives:

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

The proposal does not address the street due to the slope of the allotment downhill from the street and the location of the additions to the rear of the dwelling. The streetscape objective therefore cannot be achieved regardless of the building design.

Chapter 2 – Site & Building Design Controls

Design Control 1 – Public Domain Amenity - Streetscape

The proposal is considered to satisfy the following objectives of the control:

- To ensure the landform and topographic setting along the street is respected.
- To ensure new development is compatible with the positive characteristics of the existing streetscape.
- To ensure the development enhances the character of the existing streetscape.
- To encourage dwellings to be well designed.
- To ensure streets provide a high level of pedestrian amenity, access and safety.
- To ensure garages do not dominate the street.

The modified development by definition is a two storey dwelling addition which is within an existing rural residential area. The adjoining properties consist of single and two storey dwelling houses with related residential structures. The existing vegetation on the surrounding properties will assist in screening the dwelling house from Market Parade. Notwithstanding a condition will be included requiring that the setback areas around the outbuilding are landscaped as indicated on the submitted site plan with trees/shrubs of suitable characteristics which will lessen the impact of the development upon the surrounding properties. The increased height and modified location of the development will not have a significant on the public domain.

The increased height of the building will have no impact on public views or vistas.

Design Control 2 – Site Configuration

Deep Soil Zones - the proposed modification will have no impact on the nominated deep soil zone.

Impermeable Site Area - the proposed modification will result in a reduced building envelope and therefore will have a positive impact on the site's ability to infiltrate rainwater.

External Living Areas – the former deck at the northern end of the first floor of the addition has been deleted which will eliminate any privacy issues from this area.

The proposed modification includes a reconfiguration of the decks between the additions and the dwelling. These decks are located in excess of 15m from side boundaries and are therefore unlikely to have a significant impact on adjoining properties.

Landscaping

The original approval included landscaping along the base of an existing retaining wall on the eastern side of the additions to soften the appearance of the building.

As this retaining wall is 1.40m in height it is considered that landscaping will have limited effectiveness in screening the building and would be better located on top of the retaining wall.

This issue was raised in one of the objections to the proposal.

A new condition of consent will therefore be imposed to provide established landscaping on top of the retaining wall along the eastern side of the additions.

Topography, Cut & Fill - The building will be located on an existing retained building platform. The proposed modification will require no additional earthworks.

Design Control 3 – setbacks

Front setback - the proposed modification will have no impact on the front building setback.

Side setbacks – the side setbacks have been modified as follows:

- Northern boundary - reduced from 16m to 15.27m
- Southern setback - increased from 11m to 16m

Rear Setback - reduced from 7m to min. 4.5m. Due to the irregular nature of the rear boundary the eastern wall of the addition will actually exceed 5m for about half its length.

The proposed setbacks fully comply with the objectives of the DCP and therefore require no further assessment.

Design Control 4 - Car Parking & Access

The proposed modification will have no adverse impact on the provision of car parking on the allotment.

Design Control 5 - Height

The modification includes an increase in the height of the building from 6.6m to 7.24m to facilitate the inclusion of habitable rooms to the first floor and change in roof design from pitched to skillion.

The building will be located between 4.5m and 5m from the rear boundary which satisfies the control.

Shadow diagrams have been provided in support of the application which identify that during the winter solstice the shadow cast on the adjoining allotments will be minor and have no adverse impact.

The increased height is not considered to be out of character in the locality due to the existence of several large two storey dwellings.

Design Control 6 - Building Amenity

The proposed modification is considered unlikely to have an adverse impact on sunlight access, visual privacy, acoustic privacy, view sharing and natural ventilation.

Sunlight Access - the modified first floor will include a rumpus room which will have a north easterly aspect, the decks between the dwelling and the dwelling addition will have a northerly aspect which will encourage the use of this area all year round in accordance with the objectives of the control.

Visual Privacy - due to the size of the rural residential allotment, the location of the additions on site and the physical separation to surrounding dwelling houses overlooking of adjoining properties will be negligible.

The modification to the consent has deleted the deck from the northern end of the first floor and included windows in the eastern wall of the first floor which now will house habitable rooms.

Due to the possibility of privacy issues from these windows it is recommended that a condition of consent be imposed to provide screens to the windows to the eastern wall of the media room, rumpus room & office.

Acoustic privacy – the previous consent was conditioned to prohibit the garage being used for commercial or industrial purposes and the proposed modification will not change this.

The first floor additions are consistent with normal residential use and as the setback to the rear boundary satisfies the control of the DCP no further consideration is necessary.

View Sharing - the increased height of the additions will have no adverse impact on view sharing from adjoining properties.

Natural Ventilation – the proposed modification will result in habitable rooms being provided on the first floor of the additions. These rooms have been provided with operable windows and therefore satisfy the control.

Building Orientation – The proposed modification to the approved building design will have no impact on the building orientation.

Building Separation - notwithstanding the modified location of the additions on the site they will still satisfy the objectives of the control in relation to ensuring privacy between living areas of dwellings on adjoining allotments.

Design Control 7 – External Building Elements

No new external building elements are proposed as part of this application.

Design Control 8 – Building Performance

A Basix certificate has been provided in support of the application.

Design Control 9 – Outbuildings.

Due to the modification to the first floor of the building to provide habitable rooms the building is now considered to be an addition to the dwelling in lieu of an outbuilding due to the physical connection of the additions to the existing dwelling.

The garage beneath the dwelling addition is consistent with a two storey dwelling addition.

Design Control 10- swimming pools

The swimming pool is existing and no change is proposed.

Design control 11 – tennis court

No tennis court is proposed.

Design control 12 – Floor Space ratio

The floor space ratio of the modified design will be 0.32:1 which satisfies the control.

A11-Public Notification of Development Proposals

Adjoining property owners were notified of the proposed modification and in response three written objections have been received.

A general précis of the objections and a response to each objection is as follows:

- *Size of building excessive and will have an adverse impact on streetscape when viewed from Market Parade*

Response – the footprint of the dwelling has been reduced in size but the height increased by 640mm.

The floor space ratio and impermeable area of the site easily satisfy the respective controls and are therefore permissible.

The height of the building also satisfies the control and when the distance from boundaries, future landscaping and size of the allotment are taken into consideration the proposed modification is considered to be acceptable.

The impact of the building on the streetscape of Market Parade is not considered to be relevant due to the spatial separation of the building from the street, screening provided by existing dwellings and existing and future landscaping.

- *No other such buildings exceed single storey*

Response - the proposed modification to provide habitable rooms to the first floor and the physical connection of the additions to the existing dwelling via a series of stepped decks renders the building being assessed as an addition to a dwelling house rather than an outbuilding.

Two storey dwelling additions are permitted in this area.

Other two storey dwellings exist in this area.

- *Building capable of being used as a dual occupancy.*

Response – the first floor of the dwelling house additions will contain a media room, rumpus room, office, pottery room, storeroom & bathroom.

No bar, kitchen or laundry are proposed in the additions which would be required for the additions to be considered as a dual occupancy.

The design of the additions is not conducive to separate residential use.

The additional rooms are required by the property owners for their particular family and hobby needs.

A condition of consent will be imposed to ensure that the dwelling house additions will not be used as a separate residence.

- *Use of office for business purposes*

Response – the Applicant is a Plumber and therefore the office located remotely from the main dwelling would be a reasonable use.

The use of a room in a dwelling for an office associated with the owners business would be exempt development under the provisions of the State SEPP (Exempt & Complying Development Code) 2008

A condition of consent will be imposed to prevent the building being used for any commercial or industrial purpose.

- *Use of garage for storage of commercial quantities of plumbing supplies*

Response - a condition of consent will be imposed to prevent this.

- *Adverse effect on amenity of surrounding area*

Response - the modifications to the approved building entails a 640mm increase in height and a 34m² reduction in the building footprint.

The impact of the building was assessed with the original building application and the proposed modifications are not considered to be likely to have any significant adverse impact on the amenity of the surrounding area.

- *The application to modify the consent should be refused and the original consent should stand.*

Response - the applicant is within their rights to submit an application to modify the consent and such application must be considered on its relative merits. The modified design is considered to be an improvement on the original design in appearance and privacy impact.

- *Additional height will overshadow adjoining property in winter.*

Response – the Applicant has submitted shadow diagrams in support of their application which identify that shadows during the winter solstice will protrude less than 2m into the rear yard of the adjoining allotment and will not overshadow the dwelling or associated outdoor recreation areas on this allotment.

- *Loss of privacy from first floor windows.*

Response – The first floor level of the dwelling house addition will now include several rooms such as media room, rumpus room, office, store, pottery room and bathroom.

Windows are proposed in the eastern wall of the first floor which may impact on the privacy of the adjoining allotments.

A condition of consent will be imposed to install privacy screens to the eastern windows prior to occupation of the building.

- *Setbacks from eastern & northern boundaries reduced resulting in greater impact on neighbouring allotments.*

Response – the setback to the northern boundary will be reduced from 16m to 15.27 m which is minor and of little consequence. The setback to the eastern boundary will be reduced from 7m to 4.5m minimum which may have a greater impact on the adjoining property however DCP A1 permits buildings to observe a 5.0 rear setback. The additions will observe a rear setback of 5m for almost half the length of the wall and when the of adjoining allotments and distance of the dwellings from the additions is taken into consideration as well as required landscaping and window screens the reduced setback is considered to be satisfactory.

- *The overall height of the building in addition to the retaining wall is excessive.*

Response - the existing retaining wall is about 1.40m high and the proposed dwelling additions will be 7.24m high. The height of the dwelling additions satisfies the maximum building height in DCP A1 of 9m.

The retaining wall is located about 2m from the rear property boundary and the additions will be located between 2.5m & 4m from the wall.

The building will therefore have a tiered appearance when viewed from the east and in conjunction with the required landscaping the overall appearance of the building will be softened.

- *Proposal is out of proportion to other dwellings in the area.*

Response - There are several large two storey dwellings in Market Parade therefore the building is not considered to be out of character with the local area. Due to the spatial separation of the building from Market Parade its impact on this street would not be significant.

- *Proposed landscaping inadequate*

Response – the proposed landscaping at the base of the retaining wall is considered to be inadequate as the retaining wall is 1.4 m high and any vegetation placed in this location would be unlikely to effectively screen the building. It is recommended that landscaping be required on top of the retaining wall where it would be more effective.

A condition of consent will be imposed to this effect.

- *The new driveway will be a hazard in wet weather.*

Response - the driveway grade is determined by the slope of the allotment and the surface integrity can be overcome by surface finishes.

- *Retaining wall & fill may not be adequate to support structure.*

Response - details from a practising structural engineer for the footings and slab will be required prior to the issue of a construction certificate.

A condition of consent will be imposed to this effect.

- *The proposal will devalue property values.*

Response - this claim is subjective and cannot be quantified.

- *Two storey shed should not be allowed.*

Response - the building is considered to be a two storey addition to a dwelling house and therefore is permissible in this locality.

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

Clause 92(a) Government Coastal Policy

The proposal is not inconsistent with the aims & objectives of the policy

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

Tweed Shire Coastline Management Plan 2005

No impact likely.

Tweed Coast Estuaries Management Plan 2004

No impact likely.

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

No impact likely.

(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

Proposal is generally consistent with the original approval. The changes to building size, height etc are not such that the integrity of the original consent is compromised,

Access, Transport and Traffic

No change from original approval.

Flora and Fauna

No impact envisaged.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Consistent with adjoining land uses.

Flora and Fauna

No impact likely

Topography

Existing building platform

Site Orientation

Generally northern orientation

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

Yes, see objections & response above.

(e) Public interest

No adverse public interest issues anticipated as a result of the modifications.

OPTIONS:

1. Approve the application
2. Refuse the application

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Each application is considered on its merits therefore no policy implications would be compromised.

CONCLUSION:

On consideration of the circumstances and after assessment of the relevant planning matters, it is considered that the proposed application to modify the consent is suitable for approval subject to conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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17 [PR-CM] Development Application DA10/0844 for a Greyhound Racing Facility at Lot 1 DP 1069561 Wardrop Valley Road; Lot 519 DP 1132400, Lundberg Drive, South Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA10/0844 Pt1

SUMMARY OF REPORT:

This report details the issues in relation to the development application for proposed Greyhound Racing Facility at Part of Lot 519 on DP 1132400 (proposed Lot 1000) and part of Lot 1 DP 1069561 (Council land). The proposed Greyhound Racing Facility includes greyhound track, club house, judging box, car parking and kennel for dogs. The proposed Greyhound Racing Facility is to be built for the Tweed Heads Coursing Club who are currently located at Border Park Raceway.

The proposed track will be a sandy loam track with three starting positions and a finish line. A barrier will be installed along the inside and outside of the track to ensure the dogs are contained within the racing track. The other proposed facilities for the greyhound facility include a club house (with bookmakers, TAB, lounge, dining, kitchen, offices, toilets, bar and staff amenities), judges box (above club house on first floor), kennel facility for the dogs and car parking areas (public and trainers).

The club currently races every Saturday with trials run up to three times a week in the mornings. The club anticipates that Greyhound Racing NSW will grant them Wednesday afternoon for their weekly race meeting. The club also intends to maintain trials at least 3 mornings a week for 2 hours at a time on average. No lights are proposed for the greyhound facility as all racing and trials will be conducted during the day with no night racing proposed.

In terms of staffing, during a race meeting the total number of staff on site would be 18 and two full time staff during the week when not running. The staff include a judge (with assistant), on course vet, starter, TAB staff, security officer, kitchen and bar staff. The average number of greyhounds per race meeting is 80 dogs, based on 10 races with 8 dogs in each race. The current attendance numbers for racing on Saturdays at Border Park ranges from 50 – 100 persons. The proposed racing schedule of Wednesday day time is in line with the Club's positioning for the television telecast rights and gambling takings. The proposed facility will not actively distract people from attending the race meetings, but large public attendance is not envisaged for the site.

Council requested further information based mainly on engineering issues on 15 March 2011. The applicant provided a response to the geotechnical issues on 14 June 2011. The information submitted did not entirely satisfy Council's concerns, however, it is recommended that the remaining engineering issues can be addressed via a deferred commencement condition.

Three deferred commencement conditions are recommended to address the following:

- geotechnical issues
- legal point of discharge by the construction of a wetland to treat for stormwater from the site
- road access to the proposed facility.

The Development Application was advertised in the Tweed Link for a period of fourteen (14) days from Wednesday 19 January 2011 to Thursday 3 February 2011.

Council received 67 submissions during the exhibition period, and 15 after the advertised period, all objecting to the application. A petition containing 1,219 signatures was also received from the group Friends of the Pound, also objecting to the proposal. It should be noted that a substantial proportion of both the written submissions and the petition signatories were received from people residing outside of the Tweed LGA, both within Australia and overseas. The main issue raised in the objections was the animal welfare concerns of the operation of the greyhound industry (breeding and destroying of Greyhounds). It is to be noted that the application is for a Greyhound racing facility, which provides racing and training facilities only, the development does not propose breeding facilities or house dogs over night. The Greyhound facility is to operate in accordance with the (but not limited to), the Greyhound Racing Act 2009 and the Office of Liquor, Gaming and Racing. The operation of the Greyhound Racing industry is not a relevant consideration for Council pursuant to section 79C of the Environmental Planning and Assessment Act, 1979.

In accordance with current legislative and policy requirement, the proposed development is permissible with development consent and is considered suitable for the site, with likely impacts on the natural and built environments to be suitably mitigated by recommended conditions.

RECOMMENDATION:

That Development Application DA10/0844 for a Greyhound Racing Facility at Lot 1 DP 1069561 Wardrop Valley Road; Lot 519 DP 1132400, Lundberg Drive, South Murwillumbah be approved subject to the following conditions:

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 12 months of the date of notification.

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

SCHEDULE "A"

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

A. Geotechnical

Geotechnical engineering certification is to be provided for proposed Lot 1000 and surrounding allotments (proposed Lots 901, 902, 903, 904 and Lot 1101 - drainage reserve) to certify that settlement has terminated and these lots are capable of being developed without the need for special construction techniques or foundation types.

The certification is to ensure the greyhound racing facility and associated service and road infrastructure can be developed without special construction techniques. Settlement plate information is to be provided with the geotechnical certification to validate settlement has stopped.

B. Stormwater treatment

A legal point of discharge is to be provided for the proposed greyhound facility. The drainage reserve or wetland (proposed Lot 1101) is to be constructed in accordance with the approved construction certificate and conditions of consent for DA02/1685 (Industrial subdivision) and Council's development and design specifications. An inspection with Council officers is required to 'sign off' on the proposed drainage reserve prior to commencement of the consent.

C. Road Infrastructure

The extension of Thornbill Drive is required to be completed in accordance with the approved construction certificate and conditions of consent for DA02/1685 (Industrial subdivision) and Council's development and design specifications. An inspection with Council officers is required to 'sign off' on the proposed road infrastructure, prior to commencement of the consent.

SCHEDULE B

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

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos BDYM10C prepared by P Hurcombe and dated 19/11/2010, Plan Nos T101378 prepared by Kelley Covey and dated 09/12/2010, Plan Nos DA.0000, DA.1001, DA.2100, DA.2101, DA.3101, DA.3102, DA.3201 prepared by Sparc and dated 20/12/2010, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

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

[GEN0135]

4. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

5. For events larger than 160 people in attendance, a Traffic Management Plan is to be submitted to Council's General Manager or Delegate for approval prior to the event. Such a plan would detail additional car parking facilities and other transport measures that will be provided so that the event does not adversely impact upon the local area.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. The developer shall provide 109 parking spaces (comprising 96 spaces for the general public and staff and 12 car/trailer spaces for greyhound trailers) including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCC0065]

7. **Section 94 Contributions**

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges 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:**

32.07 Trips @ \$1166 per Trips \$37,394

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

S94 Plan No. 4

Sector9_4

[PCC0215/PSC0175]

8. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads (trip one way)

\\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP2:	3.772 ET @ \$11571 per ET	\$43645.80
Sewer Murwillumbah:	6.146 ET @ \$5560 per ET	\$34171.80

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

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

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

[PCC0265/PSC0165]

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

[PCC0285]

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

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

12. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

13. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

- (a) All building materials used below Council's design flood level must not be susceptible to water damage.
- (b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (c) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

14. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[PCC0735]

15. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: -

(a) Vehicular access

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

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

16. Permanent stormwater quality treatment shall be provided in accordance with the following:

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

(b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.

(c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

(d) Specific Requirements to be detailed within the Construction certificate application include:

- (i) Shake down area along the haul route immediately before the intersection with the road reserve.
- (ii) Water Sensitive Urban Design principles are encouraged for the proposed greyhound track.

[PCC1105]

17. 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]

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

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

[PCC1155]

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

[PCC1195]

20. Prior to issue of construction certificate the applicant is to submit an 'Application for Plan Approval Fit-out Details', with appropriate fees, and to be granted Council approval for the fit-out of the premises.

[PCCNS01]

21. The car parking driveway entrance is to be redesigned in accordance with AS2890.1 – Part 1: Off street car parking. The carparking driveway entrance as shown has poor delineation from Thornbill Drive with unnecessary vehicle conflict points, as three carparking aisles converge at one location. The re-design of the car park entrance is to address the above design issues.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

- 22. 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]

- 23. 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]

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

[PCW0245]

25. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

26. 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]

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

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

29. 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]

30. 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]
31. 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]
32. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.
[DUR0415]
33. During filling operations,
- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
 - All fill and cut batters shall be contained wholly within the subject land.
 - All topsoil to be respread and the battered areas around the track are to be grassed and landscaped within 2 weeks of the fill being placed.
[DUR0755]
34. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.
[DUR0815]
35. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.
[DUR0985]
36. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.
[DUR0995]
37. 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]

38. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material eg. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 meters.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

39. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

40. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.

[DUR1515]

41. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

42. During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation.

[DUR1575]

43. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

44. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
[DUR1875]
45. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.
[DUR1905]
46. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.
[DUR1925]
47. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.
[DUR1955]
48. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".
[DUR2195]
49. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.
[DUR2445]
50. 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]
51. 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]

52. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

53. 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]

54. 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]

55. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water.

[DUR2595]

56. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

[DUR2685]

57. Construction of the facility shall be undertaken in accordance with Section 6.0 of the Environmental Noise Impact Report prepared by CRG Traffic & Acoustics Pty Ltd dated November 2010 (crgref: 10343a report)

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

58. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

59. A noise management plan including recommendations from Section 6.0 of the Environmental Noise Impact Report prepared by CRG Traffic & Acoustics dated November 2011 (creref: 10343a report) shall be prepared and submitted to the satisfaction of the General Manager or his delegate which details how noise from onsite activities will be managed and controlled, so as to prevent the generation or emission of intrusive noise. Such a management plan shall be submitted and approved prior to the issue of the occupation certificate.

[POC0125]

60. 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]
61. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.
[POC0225]
62. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.
[POC0475]
63. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.
[POC0615]
64. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124.
[POC0625]
65. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.
[POC0635]
66. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.
[POC0745]
67. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.
[POC0755]
68. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.
[POC0985]
69. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.
[POC1045]

70. Prior to issue of an occupation certificate, certification from an appropriately qualified acoustic consultant shall be submitted detailing that the construction of the facility has been undertaken in accordance with Section 6.0 of the Environmental Noise Impact Report prepared by CRG Traffic & Acoustics Pty Ltd dated November 2010 (crgref: 10343a report).

[POCNS01]

USE

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

[USE0125]

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

[USE0175]

73. Hours of operation of the business are restricted to the following hours unless otherwise approved by the Director Planning and Regulation:

- * 7:00am to 6:00pm seven days per week.
- * All deliveries and pickups relating to the business are to occur within the approved hours.

[USE0185]

74. Lighting to illuminate the greyhound racing track is not permitted. All externally mounted security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

75. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact Report prepared by CRG Traffic & Acoustics Pty Ltd dated November 2010 (crgref: 10343a report) and approved noise management plan.

[USE0305]

76. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

77. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements.

[USE0845]

- 78. All wastes shall be collected, stored and disposed of in accordance with the Waste Management Plan prepared by Mark Rigby & Associates Pty Ltd dated December 2010 approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.**
- [USE0875]
- 79. The premises shall be maintained in a clean and tidy manner.**
- [USE0965]
- 80. Clinical veterinarian wastes shall be separated from the general waste stream and disposed via a clinical waste collection and disposal service. Suitable arrangements shall be made for the collection and disposal of clinical wastes to the satisfaction of the General Manager or his delegate.**
- [USE0995]
- 81. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.**
- [USE1035]
- 82. All activities shall be carried out in accordance with the requirements of the NSW Office of Liquor, Gaming and Racing (OLGR).**
- [USE1085]
- 83. Approval is granted for one (1) race meeting per week and three (3) trials per week only, with any departures being subject to the approval of the Director Planning and Regulation. The proposed three trials per week should be confirmed prior to the issue of an occupation certificate.**
- [USENS02]

REPORT:

Applicant: Landsolve Pty Ltd
Owner: Tweed Central Pty Ltd
Location: Lot 1 DP 1069561 Wardrop Valley Road; Lot 519 DP 1132400, Lundberg Drive, South Murwillumbah
Zoning: 4(a) Industrial and 1(a) Rural
Cost: \$5,600,000

BACKGROUND:

The land is described as proposed Lot 1000 and has an area of 4.95ha. The site is part of Lot 519 DP1132400, Lundberg Drive, South Murwillumbah and is included within stages 7 – 11 of the existing approved layout plan for Tweed Valley Enterprise Park. The application also includes part of Council land described as Lot 1 DP 1069561.

The proposed Lot 1000 (4.95ha) is proposed for a Greyhound Racing Facility. A Section 96 application has been lodged at the same time to amend the existing Development Consent DA02/1685 to amend the approved layout to allow for the proposed Greyhound Racing Facility site. This application is to be determined under delegation.

The site has been extensively filled to approximately RL9.0m AHD in accordance with the approved construction certificate for the industrial estate. Currently the site is devoid of vegetation being recently filled and adjacent lands to the south are low lying and swampy. The perimeter of the site is to be vegetated in accordance with the vegetation management plan, however a landscape plan has been submitted with this application.

The proposed development is located off Thornbill Drive. The road is yet to be completely constructed. Thornbill Drive is an industrial collector road with upright kerb and guttering in good condition. The road has been partially constructed with road subbase to the proposed greyhound site, although sealing, kerb and guttering will be required. A deferred commencement requiring the completion and sign off of Thornbill Drive is required to provide adequate access to the proposed facility.

The development application also states that Council had previously agreed to dedicate an area of land to the rear of current lots 1000 and 1001 in return for road connection from the estate to adjacent Council land (Lot 1 DP 1069561).

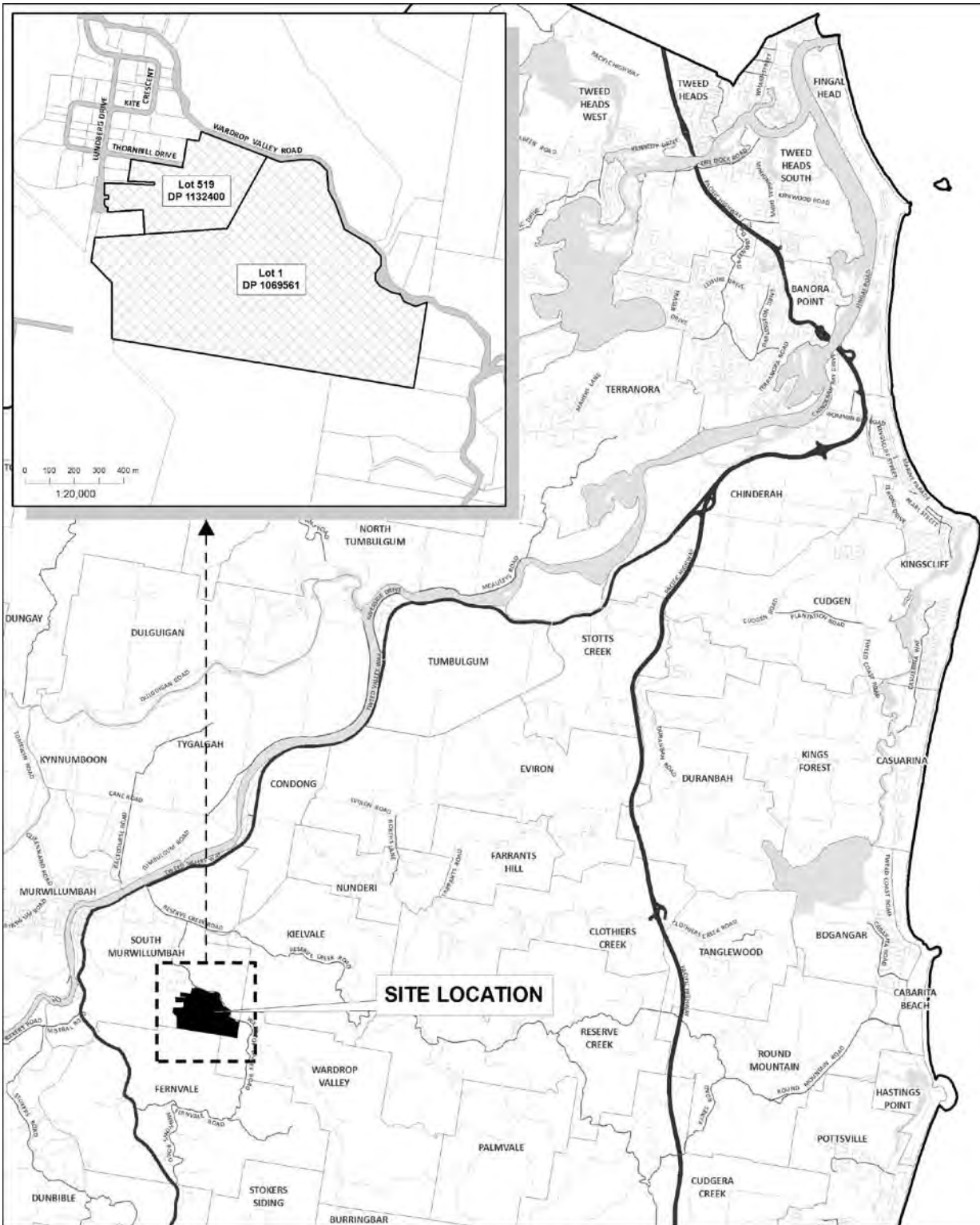
Council resolved on the 5 September 2006 that:

- "1. Council approves the boundary adjustment at Wardrop Valley between Lot 1 in DP 1069561 owned by Council and 2 in DP 1069561, owned by Les & Jim Dickinson;*
- 2. Council resolves that the transaction falls within "special circumstances" in relation to Council's Disposal of Land Policy;*
- 3. All necessary documentation be executed under the Common Seal of Council."*

A Section 96 application (DA02/1685.24) has been lodged to amend Development Consent DA02/1685 with an amended consent plan detailing both the through road connection from Thornbill Drive and the land to be dedicated from Tweed Shire Council. A condition of consent has been applied to DA02/1685.24 to address the boundary adjustment in which 0.162ha of land within Lot 1 DP 1069561 will be dedicated into the industrial estate upon the linen plan being issued for the future stages of the estate in return for through road connection from Thornbill Drive.

Council requested further information based mainly on engineering (geotechnical) issues on 15 March 2011. The applicant provided a response to the engineering issues on 14 June 2011. The information submitted did not entirely satisfy Council's engineering concerns, however, it is recommended that the geotechnical issues can be addressed via a deferred commencement condition.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 1069561 Wardrop Valley Road;
 Lot 519 DP 1132400, Lundberg Drive, South Murwillumbah

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Cadastra 05 April, 2011
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 Boundaries shown should be considered approximate only.



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Drawing schedule

- DA.0000 Cover Page
- DA.1001 Site plan
- DA.2100 Floor Plan - Clubhouse & Judges Box
- DA.2101 Floor Plan - Kennels
- DA.3101 Elevations - Clubhouse & Judges Box
- DA.3102 Elevations - Kennels
- DA.3201 Sections
- DA.7001 Perspective

development data

- address lot 1000 industry central estate
- total site area 4.95ha
- building areas schedule**
- club house = 555m²
- judges box = 55m²
- kennels = 338m²
- machinery = 117m²
- plot ratio**
- building area/site area = 2.24%
- carparks provided = 87



Proposed coursing club location

Industry Central Estate

locality plan



source: www.neamap.com
(not to scale)



issue	date	revision
G	20-12-10	revised DA submission
F	20-12-10	revised DA submission
E	18-12-10	DA submission
D	08-12-10	change in roof form
C	01-09-10	minor changes
B	23-07-10	locate building

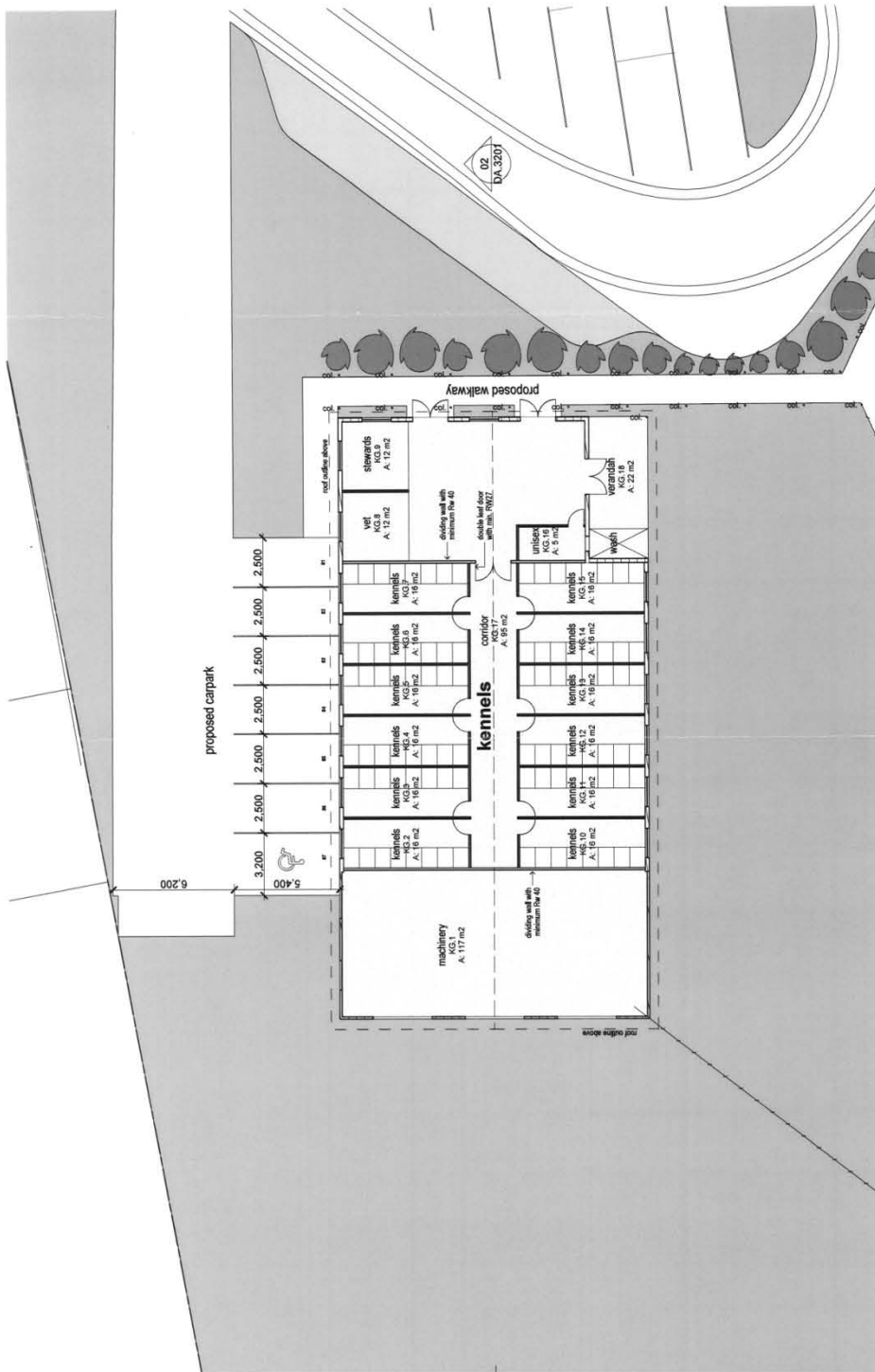
job no.	1029
drawing no.	DA-0000
issue	G

drawing title Cover Page
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01 Ground Floor Plan - Kennels
SCALE 1:200

- Notes:
- All doors and windows of the Kennel Building be rated to achieve a minimum R_w 27
 - A solid wall be constructed between the kennel cage area and the machinery roof and the kennel cage area and the roller end of the building to achieve a minimum rating of R_w 40
 - A louver door be installed between the Kennel cage area and the Vet / Stewards end of the building to achieve a minimum rating of R_w 27
 - Kennel Building roof/ceiling should be constructed to achieve a minimum R_w rating of 45
 - Kennel Building roof / ceiling should be constructed to achieve a minimum R_w rating of 43

ISSUE	DATE	REVISION
B	20/12/10	Revised DA submission
A		Initial

0 1m 2m 5m 10m
 scale 1:200
 date 20/12/2010
 drawn mhw
 job no. 1029
 drawing no. DA-2101
 issue B

drawing title Floor Plan - Kennels
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1 external perspective

issue	date	revision
D	16-12-10	DA submission
C	05-12-10	change in roof form
B	01/11/10	preliminary perspectives

job no.	1029
drawing no.	DA,7001
issue	D

drawing title Perspective
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed facility is consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The scale of the proposed development does not contravene the four principles of ecological sustainable development. The development results in:

- a) no irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

Clause 8 - Zone objectives

The land to which this application relates is zoned 4(a) Industrial under the provisions of this plan.

The objectives of this zone are as follows:

“Primary Objective:

- *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 facility is defined as a ‘recreation facility’ and is permissible with consent. The proposed Greyhound Racing facility obtains the objects of the zone as the industrial nature of the existing estate will be retained, the proposed Greyhound Racing Facility will facilitate economic activity and employment generation to the local area, and the facility is considered suitable for the site and surrounding landuses.

Clause 15 - Essential Services

The site is able to be adequately serviced with water and sewerage facilities. Appropriate conditions are recommended.

Clause 16 - Height of Building

The site is affected by a three storey height limit, with the development proposing a two storey development with a maximum building height of approximately 6.8 metres. The proposed facility would be appropriate in terms of height and scale in an industrial estate.

Clause 17 - Social Impact Assessment

Section A13 of Council's DCP identifies the development types which must be accompanied by a Socio-Economic Impact Statement. However, the development is not greater than 1,000m² GFA as listed within clause A13.5 (club/recreation facility greater than 1,000m²) and the development is not listed as designated development as identified under section 77A of the Environmental Planning and Assessment Act 1979.

Social impacts created during the construction phase can be adequately mitigated by recommended conditions limiting hours of construction and implementing measures to minimize dust, water, air and noise pollution will mitigate these impacts.

The applicant states the following positive social and economic impacts associated with the proposal are:

- Approximately 100 direct full time equivalent employment positions will be created during the construction phase of the facility, which will extend over a period of 1 year. Indirect employment opportunities generated are estimated at 230, based on the multiplier of 2.3.
- Construction costs for the Greyhound Racing Facility are estimated at \$5,600,000.00.
- In terms of the greyhound racing facility during race meetings 18 employment positions would be created, 2 full time permanent employment positions also created during the week and 1 permanent caretaker. Indirectly approximately 160 employment positions will be created through the dog trainers, vets, greyhound suppliers, dog products, transport, tote and racing industry, catering, local suppliers, etc. This would create economic benefits for the local economy in the order of \$8 million per annum.
- The greyhound racing facility will provide an additional recreation facility to the local community and will be freely accessible to the general public.
- The club will install security cameras throughout the facility and also engage a security officer for race meets.
- The club supports a number of sporting clubs and charities. The 2 major fund raising races are held for the Tweed Heads Hospital and Coolangatta Surf Life Saving Club.
- Direct economic contribution of greyhound racing in the Richmond Tweed region is estimated by Access Economics to be \$9.5 million.
- Total employment attributable to greyhound racing in the Richmond Tweed region is 108 full time equivalents.
- The operator of the racing facility (THCC) will continue to implement responsible gambling and serving of alcohol practices (as per the liquor licence) and comply with relevant Greyhound Racing NSW requirements and

statutory requirements of the Department of Communities (office of liquor, gaming and racing). All staff members serving alcohol at the club will have the appropriate qualifications in the responsible serving of alcohol. To the knowledge of the existing operations manager the club has never had a complaint against its liquor licence. A copy of the clubs Liquor Licence is included within the development application.

- Under the required Greyhound Racing License the club will have to implement a responsible gambling system, which includes signs and material to inform person where to get help. A copy of the clubs Certificate of Registration of a Greyhound Racing Club is included within the development application.

The proposed development is considered to generate social and economic benefits to the local economy during the construction and operational stages.

Clause 34 Flooding

The site is identified as being prone to flooding with a designed flood level of is RL 5.6m AHD, however, due to extensive earthworks raising the site to an approximate RL 9.0m AHD the area which the proposed facility is to be located is no longer prone to flooding. Flooding is not a constraint for the proposed development.

Clause 35 - Acid Sulfate Soils

The application was reviewed by Council's Environmental Health Services Unit in relation to acid sulphate soils. It is concluded that acid sulfate soils were adequately assessed and managed during assessment and construction of the approved subdivision (DA02/1685). No further impacts or consideration are required.

Clause 39A Bushfire protection

A portion of the site is identified as being prone to bushfire and within bushfire buffer zones, however, the location of the proposed facility is not located within the bushfire or bushfire buffer zones. The site has also been cleared of vegetation and there is no significant vegetation stands adjacent to the sites.

It is therefore submitted that the proposal is not likely to be affected by bushfire and does not raise any significant issues having regard to the nature of the proposed land use (greyhound racing facility).

Clause 47 – Advertising Signs

No advertising signs are proposed as part of this application. The application states that future applications will be lodged for advertising signs for the greyhound racing facility.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The subject allotment is part of an industrial subdivision that has been approved adjoining agricultural land. The adjoining land is mapped as being of regional significance (prime crop of pasture land).

The outlined proposed Greyhound racing facility will not restrict the future or current use of the surrounding rural land.

Clause 47: Principles for Commercial and Industrial Development

The proposal occurs within an existing 4(a) Industrial zone with all relevant services available to the site. The subject site is adequately located within the existing local and regional road networks. The proposal is therefore considered to comply with the objectives of clause 47 of the NCREP.

Clause 82: Sporting fields or specialised recreation facilities

An acceptable level of public access is available to the proposed Greyhound racing facility, within the existing road network.

SEPP No. 64 – Advertising and Signage

No advertising signs are proposed as part of this application. The application states that future applications will be lodged for advertising signs for the greyhound racing facility.

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

Draft Tweed Local Environmental Plan 2010

The site is located within the IN1 General Industrial Zone. The proposed Greyhound Racing Facility would be defined as Recreation Facilities (Major) and as such is listed as prohibited development.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The Club plans to hold a race meeting every Wednesday afternoon and trials at least 3 mornings per week for 2 hours. The proponents expect that an average of 80 greyhounds will race during each meeting. Each race meeting would be operated by approximately 18 staff. Two staff members would operate the facility during the week when racing events are not being held. Current public attendance numbers range between 50 and 100.

The proposed development provides a total of 98 on site car parking spaces comprising of 79 spaces for the general public and staff officials, 12 car / trailer combinations for greyhound trainers and 7 spaces located adjacent to the greyhound kennel facility to be located at the southern end of the site. Access to the site will be gained via a single driveway in Thornbill Drive. Area is available on site for additional parking if required.

The proposed car parking complies with Council's car parking requirements.

Council's Traffic Engineer assessed the application and did not raise any objections subject to conditions.

Council's Traffic Engineer's comments are provided below:

- *“Even though only a conceptual design at the moment, the carparking driveway entrance as shown has very poor entry delineation from Thornbill Drive with unnecessary vehicle conflict points as there are three carpark aisles meeting at one location. Carparking is to be designed in accordance with AS 2890.1.*
- *Thornbill Drive at the development frontage shall have a carriageway width sufficient to enable a vehicle to pass a right turning vehicle into the racing facility's driveway without encroaching over the carriageway centreline (i.e. a 13 metre carriageway width).*
- *The anticipated usage of the greyhound racing facility should be conditioned within any consent (i.e. one race meeting per week and three trials per week) with any departures being subject to the approval of the Director Planning and Regulation. The proposed three trials per week should be confirmed with the applicant.*
- *A Traffic Management Plan prepared by a competent traffic consultant should be submitted to the Director Planning and Regulation for approval where more than 160 persons are expected to be in attendance.*
- *Discontinuing Lundberg Drive with a cul-de-sac is less desirable from a road connectivity perspective than the original subdivision layout, however a road reserve link will still be provided at the allotment boundary with the balance of Lot 1 DP 1069561 to the east.*
- *TRCP applies - to be averaged over a seven day week.”*

Appropriate conditions are recommended to address the comments above.

A3-Development of Flood Liable Land

The site is identified as being prone to flooding with a designed flood level of is RL 5.6m AHD, however, due to extensive earthworks raising the site to an approximate RL 9.0m AHD the area which the proposed facility is to be located is no longer prone to flooding. Flooding is not a constraint for the proposed development.

A4-Advertising Signs Code

No advertising signs are proposed as part of this application. The application states that future applications will be lodged for advertising signs for the greyhound racing facility.

A11-Public Notification of Development Proposals

The Development Application was advertised in the Tweed Link for a period of fourteen (14) days from Wednesday 19 January 2011 to Thursday 3 February 2011(public holidays excepted).

Council received 67 submissions during the exhibition period, and 15 after the advertised period, all objecting to the application. A petition containing 1,219 signatures was also received from the group Friends of the Pound, also objecting to the proposal. It should be noted that a substantial proportion of both the written submissions and the petition signatories were received from people residing outside of the Tweed LGA, both within Australia and overseas. The main issue raised in the objections was the animal welfare concerns of the operation

An assessment of the submission is provided in section (d) of this report.

A13-Socio-Economic Impact Assessment

Section A13 of Council's DCP identifies the development types which must be accompanied by a Socio-Economic Impact Statement. However, the development is not greater than 1,000m² GFA as listed within clause A13.5 (club/recreation facility greater than 1,000m²) and the development is not listed as designated development as identified under section 77A of the Environmental Planning and Assessment Act 1979.

Social impacts created during the construction phase can be adequately mitigated by recommended conditions limiting hours of construction and implementing measures to minimize dust, water, air and noise pollution will mitigate these impacts.

The applicant states the following positive social and economic impacts associated with the proposal are:

- Approximately 100 direct full time equivalent employment positions will be created during the construction phase of the facility, which will extend over a period of 1 year. Indirect employment opportunities generated are estimated at 230, based on the multiplier of 2.3.
- Construction costs for the Greyhound Racing Facility are estimated at \$5,600,000.00.
- In terms of the greyhound racing facility during race meetings 18 employment positions would be created, 2 full time permanent employment positions also created during the week and 1 permanent caretaker. Indirectly approximately 160 employment positions will be created through the dog trainers, vets, greyhound suppliers, dog products, transport, tote and racing industry, catering, local suppliers, etc. This would create economic benefits for the local economy in the order of \$8 million per annum.
- The greyhound racing facility will provide an additional recreation facility to the local community and will be freely accessible to the general public.
- The club will install security cameras throughout the facility and also engage a security officer for race meets.

- The club supports a number of sporting clubs and charities. The 2 major fund raising races are held for the Tweed Heads Hospital and Coolangatta Surf Life Saving Club.
- Direct economic contribution of greyhound racing in the Richmond Tweed region is estimated by Access Economics to be \$9.5 million.
- Total employment attributable to greyhound racing in the Richmond Tweed region is 108 full time equivalents.
- The operator of the racing facility (THCC) will continue to implement responsible gambling and serving of alcohol practices (as per the liquor licence) and comply with relevant Greyhound Racing NSW requirements and statutory requirements of the Department of Communities (office of liquor, gaming and racing). All staff members serving alcohol at the club will have the appropriate qualifications in the responsible serving of alcohol. To the knowledge of the existing operations manager the club has never had a complaint against its liquor licence. A copy of the clubs Liquor Licence is included within the development application.
- Under the required Greyhound Racing License the club will have to implement a responsible gambling system, which includes signs and material to inform person where to get help. A copy of the clubs Certificate of Registration of a Greyhound Racing Club is included within the development application.

The proposed development is considered to generate social and economic benefits to the local economy during the construction and operational stages.

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

Clause 92(a) Government Coastal Policy

Not applicable to the application.

Clause 92(b) Applications for demolition

The does not require demolition.

Clause 93 Fire Safety Considerations

Appropriate conditions are recommended.

Clause 94 Buildings to be upgraded

Not applicable to the application.

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

Not applicable to the 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

Context and Setting

The site is surrounded by industrial land to the north, east and west, with rural land located to the south. The proposed development is considered appropriate in relation to the surrounding landuses.

Access, Transport and Traffic

Due to the anticipated frequency of racing meets, training sessions and staff members, the proposed development is considered not to create an adverse impact on the local road network, with adequate access provided to the site.

The proposed development provides a total of 98 on site car parking spaces comprising of 79 spaces for the general public and staff officials, 12 car / trailer combinations for greyhound trainers and 7 spaces located adjacent to the greyhound kennel facility to be located at the southern end of the site. Access to the site will be gained via a single driveway in Thornbill Drive. It is to be noted that additional parking can be provided.

The proposed car parking complies with Council's car parking requirements.

Flora and Fauna

The applicant submitted a Landscape Plan prepared by Scenetics (Appendix F) with the application.

The applicant states the following:

- The landscape proposal for the site will endeavour to reinforce the vegetation character of the surrounding area and provide scenic amenity, whilst being cognisant of the requirements for a development of this nature. Visibility across the track is paramount therefore the area within the track perimeter will be grassed with no trees or garden areas proposed.
- The landscape design will recognise factors such as visual impacts from Wardrop Road to the north and east, and as such will incorporate plantings of native tree and shrub species to batters along the north-east and south-east boundaries to provide screening elements.
- The proposed carpark areas will include canopy shade trees at approximately one tree per six car spaces with low shrub planting to the carpark aisle ends. Low shrubs will be incorporated around the kennel and clubhouse buildings and along pathways. Scattered trees will be planted in lawn areas to the west of the track to allow viewsheds to the rural lands and distant hills.
- The Development Consent Condition 11A (DA02/1685), requires landscaping and rehabilitation in accordance with the vegetation Strategy. The Vegetation Strategy lists only six species for this part of the subdivision, it is considered that the proposed plant palette offers a more structured and varied list of native plants and will enhance the existing vegetation communities within the surrounding area.

The submitted landscaping plan appears satisfactory, however, further detail is required in terms of plant numbers/densities.

Suitable conditions are recommended in relation to the landscape plan.

Stormwater

Council's flooding and stormwater engineer provided the following comments on 4 March 2011 in relation to drainage for the site;

"The application proposes to treat runoff from hardstand areas with appropriately sized Humeceptors prior to discharge to the public domain at 2 discharge points.

The preliminary stormwater management plan shows discharge from the kennel area car park and the race track to a drainage easement through lot 903 which ultimately leads to a yet to be constructed wetland.

Therefore it will be necessary to impose a condition of consent on the s96 approval (DA02/1685) requiring construction of the wetland in advance of the greyhound racing facility.

Water sensitive urban design principles would also be appropriate for this development."

Suitable conditions are recommended by Council's Flooding and Stormwater Engineer.

Flooding

The site is identified as being prone to flooding with a designed flood level of is RL 5.6m AHD, however, due to extensive earthworks raising the site to an approximate RL 9.0m AHD the area which the proposed facility is to be located is no longer prone to flooding. Flooding is not a constraint for the proposed development.

Noise

The proposal is supported by an Environmental Noise Impact Report (ENIR) prepared by CRG Traffic & Acoustics Pty Ltd dated 17 November 2010. The facility is proposed to focus on television races with limited attendances by the public (anticipate 50-100 individuals). Racing is proposed every Wednesday afternoon with an average of 80 dogs with trials 3 mornings per week for 2 hours. No dog housing is proposed overnight. Proposed operating hours including waste and collection deliveries are limited to 7am to 6pm seven days per week.

The ENIR aims at assessing potential noise impacts upon adjacent sensitive receivers with the closest dwelling located approximately 580m from the proposal. The ENIR has been prepared in general accordance with the NSW EPA Industrial Noise Policy. The report recommends that noise impacts can be adequately managed with the implementation of acoustical treatments and management principles including; restrictions on operating hours, structural acoustical treatments incorporated into the construction of the holding kennels and restrictions on amplified PA speakers.

Suitable conditions are recommended by Council's Environmental Health Officer.

Wastewater

The facility will be connected to Council's sewer infrastructure.

Suitable conditions are recommended by Council's Trade Waste Officer.

Solid Waste

The proposal is supported by a Waste Management Plan prepared by Mark Rigby & Associates Pty Ltd dated December 2010 and is considered adequate to manage solid waste generated by the facility. Condition to be applied to ensure veterinarian medical waste is collected and disposed of by a licensed clinical waste contractor in accordance with the Protection of the Environment Operation (Waste) Regulation 2005.

Suitable conditions are recommended by Council's Environmental Health Officer.

Acid Sulfate Soils

The subject site is located within land identified as Class 3 and 5 acid sulfate soils. Bulk earthworks were completed during construction of the approved industrial subdivision (DA02/1685). Minor land forming will be required to level the track, road construction, stormwater management and connection to services. Acid sulfate soils were adequately assessed and managed during assessment and construction of the approved subdivision. Council's Environmental Health Officer advised that no further impacts or consideration are required.

Contaminated Land

Contaminated land considerations were undertaken during assessment of the industrial lot subdivision (DA02/1685). Council's Environmental Health Officer advised that no further considerations required.

Food

The proposed plans indicate the clubhouse will include a kitchen and bar facility. Limited construction details have been submitted. Conditions to be applied to ensure detailed fit out plans are prepared and submitted prior to issue of construction certificate.

Lighting

Any lighting for the proposed facility may have significant impacts on adjacent residential land uses. The applicant indicates that lights to illuminate the racing track are not proposed and will be appropriately conditioned.

The likely impacts generated by the proposed facility are considered to be adequately mitigated with recommended conditions.

Water Supply

Council's reticulated potable water supply is available to the area. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

Sewer

Council's reticulated sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards.

Please note the following comments from Council's Water & Sewer Engineer;

"This proposal for the construction of a Greyhound Racing Club on Thornbill Drive South Murwillumbah will result in changes to the approved design of the future stages of the existing industrial estate.

This will impact both planned water supply and sewerage.

Water Supply:

It was proposed that the main in Thornbill Drive would continue to the east then south and west along future roads to join the existing 250mm diameter main in Lundberg Drive. As the through road will not be constructed under this proposal, but will result in two cul-de-sacs this through main will not be possible. The proponent has proposed to construct a main from the southern cul-de-sac through a 3m wide reserve to Thornbill Drive thus providing some looping but resulting in a cul-de-sac loop at the eastern end of Thornbill Drive. A future connection from the eastern end of Thornbill Drive will be able to service a potential Council development of land immediately east of the subject site.

There is no objection to this proposed loop main but it is noted that the northern 3m wide reserve will also accommodate a 900 diameter stormwater drain. 3 m is not considered wide enough to accommodate both sets of infrastructure and it is requested that the northern section be widened to 5m. (This has been included as a condition of consent for DA02/1685).

Sewerage:

It had been envisaged previously that the sewer that would service the southern road would continue through to the Council owned land to provide a sewer connection. That may be able to service some of it by gravity. With the Greyhound track in this location, it would not be able to provide that connection as previously anticipated, making it almost certain that the development of the Council land would require the provision of a small pump station should Council proceed with development of that land. It is noted however that the advice minuted from DAP was that the sewer in Thornbill Drive should be aligned for easy extension into the Council site. It should also be noted that at least some of the Council land would have required a pump station regardless of the Greyhound Club proposal as the constraints of grading of the sewers would not permit the sewer to reach the Council site at a depth that could service the whole site.

As such, there is no objection from the perspective of sewerage.

A trade waste application shall be necessary for the kitchen facilities and for the kennel building.

The assessment of Section 64 charges will be based on the normal criteria for the club house using food preparation, bar, amenities and office space (with some discount of office space given only two staff except on race meeting days), and an allowance for the kennel building. This allowance will include the toilet, wash bay and I assume the kennel floor will be connected to sewer when it is washed out.”

Suitable conditions are recommended in relation to water sewer.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is located within an approved industrial subdivision, surrounded by industrial land to the west, north and east, with rural land located to the south.

Flora and Fauna

The site does not contain any flora or fauna.

Topography

The site has been filled to approximately RL9.0m in accordance with the approved construction certificate for the industrial estate. The site is mostly level, however, The falls from an RL 9.0m AHD to approximately RL3.0m AHD in the southern portion of the site. Appropriate batters and relevant conditions have been applied to the proposal.

Earthworks/Landforming

Bulk earthworks have been generally completed for the majority of the industrial subdivision. The remainder of the subdivision is yet to be completed (stages 7-11 civil construction works).

Levels for proposed Lot 1000 range from RL 11.0m along the northern boundary of the site to RL 3m in the southern most part of the site. Earthworks will be required to ensure the track is level, plans titled 'Industrial Estate Murwillumbah' prepared by Kelley Covey and dated 9/12/10 show a 1 in 3 batter up to 5m high along the southern half of the proposed greyhound track. Council's development and construction design specifications allow for a batter up to 5m in height on Industrial land.

Other earthworks will be required to complete the construction of Thornbill Drive, completion of the wetlands or drainage reserve on proposed Lot 1101 and connection of services to the proposed greyhound track and facilities.

Heavy haulage is applicable to the development and a condition of consent requiring the batters to be topsoiled and grassed within 2 weeks of placing the fill material.

Geotechnical Issues

The site has a known history of geotechnical concerns in terms of the suitability of the site for the proposed land use. Additional information was requested and received from the applicant to address these concerns. Due to a number of remaining concerns, it was considered appropriate to include deferred commencement conditions to address the geotechnical issues.

Geotechnical engineering certification is to be provided for proposed Lot 1000 and surrounding allotments (proposed Lots 901, 902, 903, 904 and Lot 1101 - drainage reserve) to certify that settlement has terminated and these lots are capable of being developed without the need for special construction techniques or foundation types.

The certification is to ensure the greyhound racing facility and associated service and road infrastructure can be developed without special construction techniques. Settlement plate information is to be provided with the geotechnical certification to validate that settlement has stopped.

The site is considered suitable for the proposed facility subject to recommended conditions.

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

The Development Application was advertised in the Tweed Link for a period of fourteen (14) days from Wednesday 19 January 2011 to Thursday 3 February 2011.

Council received 67 submissions during the exhibition period, and 15 after the advertised period, all objecting to the application. A petition containing 1,219 signatures was also received from the group Friends of the Pound, also objecting to the proposal. It should be noted that a substantial proportion of both the written submissions and the petition signatories were received from people residing outside of the Tweed LGA, both within Australia and overseas.

The email petition from the Friends of the Hound web site, stated the following objection:

*"We, the undersigned, **object** to the proposed Greyhound Racing Facility at Murwillumbah (DA10/0844).*

Our concerns focus mainly on the significant welfare issues for Greyhounds due to a poorly regulated commercial racing and betting industry that exploits mass numbers of these animals and generates a mass wastage (of thousands upon thousands of healthy young dogs) every year. There is a huge focus on animal welfare around the world, with the plight of Greyhounds gaining much attention internationally, nationally and locally, with Greyhound racing facing a global decline.

We understand that there are also economic and social implications, with little or no benefit to the community at large, and therefore request that the proposed development of a Greyhound track at Murwillumbah be rejected.

We thank you for taking careful consideration of our concerns and objections."

An assessment of the submission is tabled below:

Issue	Comment
Noise of dogs/speakers	The proposal is supported by an Environmental Noise Impact Report (ENIR) prepared by CRG Traffic & Acoustics Pty Ltd dated 17 November 2010. The report recommends that noise impacts can be adequately managed with the implementation of acoustical treatments and management principles including; restrictions on operating hours, structural acoustical treatments incorporated into the construction of the holding kennel box and restrictions on amplified PA speakers. Conditions to be applied.
Lighting	No lighting is proposed, all racing and training proposed during the day, not at night.

Issue	Comment
The Greyhound Racing Industry/Breeding and destroying of dogs/animal welfare	It is to be noted that the application is for a Greyhound racing facility, which provides racing and training facilities only, the development does not propose breeding facilities or house dogs over night. The greyhound facility is to operate in accordance with the (but not limited to), the Greyhound Racing Act 2009 and the Office of Liquor, Gaming and Racing. The operation of the Greyhound Racing industry is not a consideration for Council pursuant to section 79C of the Environmental Planning and Assessment Act, 1979. The animal welfare concerns raised are in the submissions are noted but however, are not a planning consideration for Council. Council's considerations are in relation to the landuse, not the greyhound racing industry and welfare of the dogs outside the boundaries of the site. Legislation is in force to ensure the welfare of the animals is maintained during the operation of the facility on the site.

It is to be noted that Council received

(e) Public interest

The proposed development is considered not to negate the public's interest, subject to recommended conditions.

OPTIONS:

1. Approved the application subject to recommended conditions.
2. Refuse the application and provide reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is permissible with development consent and is considered suitable for the site, with likely impacts on the natural and built environments suitably mitigated by recommended conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au 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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18 [PR-CM] Equestrian Pad Compliance Matter- Lot 7 DP 826941 No. 308
Tomewin Road, Dungay

ORIGIN:

Development Assessment

FILE NO: PF5510/1295 Pt2

SUMMARY OF REPORT:

Council last considered a report on the equestrian pad on 19 April 2011 and resolved as follows:

"In respect of the compliance matters relating to Lot 7 DP826941, that Council seeks negotiations with the owners of the subject property to secure voluntary remedies as referred to in section 5.4 of this report."

Section 5.4 referred to above is as follows:

5.4 Other Options

There may be some value in seeking a voluntary undertaking from the Colby's to minimise the obstruction to flood flow. This could include:

- (a) An undertaking to remove the electricity pole edging on the equestrian pad and replacement with an edging that has less impact on flood flow.*
- (b) An undertaking to keep the areas between the shed and the house and the shed and the equestrian pad free of obstructions (stockpiles, parked vehicles etc).*
- (c) An undertaking to not undertake any filling between the shed and the house and between the shed and the equestrian pad at any future time.*

The owners advised on 18 May 2011 they do not wish to enter into voluntary undertakings with Council.

RECOMMENDATION:

That:

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Council takes no further action and advises the owners accordingly.**

REPORT:

On 6 June the owners were written to again requesting reconsideration of Council's request for voluntary undertakings or Council would consider commencing appropriate proceedings for construction of a shed without approval.

The owners responded via their solicitors on 8 June 2011 as follows:

"We are instructed our clients' farm shed is exempt development (SEPP (Exempt and Complying Development Codes) 2008). However, in the event Council views the matter otherwise, we hold instructions to accept service of process."

Air photographs indicate that the shed was constructed between 2000 and 2004 which is prior to the SEPP quoted by the owner's solicitor. Council Exempt DCP prevailed at the time and the size limit for sheds to be exempt was 100m². The shed is approximately 150m². The size limit in the SEPP is 200m², accordingly it is likely that a shed similar to the existing shed would be exempt development if being constructed today.

It has been at least seven years since the construction of the shed and combined with the provisions of the SEPP that currently exempts similar sheds and given the passage of time it is unlikely that action to remove the shed would be successful.

It should also be noted that Council received legal advice indicating that success in having the equestrian pad removed would be unlikely.

The Director Engineering and Operations advises:

"Whilst there has been no modelling of the impacts of the equestrian pad and the unapproved shed on flood behaviour, it is likely that the combined effect of these two works would have some impact on southward movement of floodwaters, which could in turn impact on localised flood levels of Dungay Creek and adjacent land. The adjacent landowners believe that these impacts are significant and have cited flood behaviour in 2008 as an example."

"In the absence of any voluntary reduction of flood plain obstructions by the owners of Lot 7 DP826941, the likely impacts on flood levels and the likely impacts on neighbours will remain."

OPTIONS:

1. Take no further action and advise the owners accordingly.
2. Instruct Council's solicitors to commence proceedings to remove the equestrian pad.

Option 1 is recommended given previous legal advice.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Legal costs would be incurred if council resolved to take legal action. Consultants would also need to be engaged.

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 (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. **Confidential Attachment** - Council report of 19 April 2011 relating to Equestrian Pad Compliance Matter - Lot 7 DP 826941 No. 308 Tomewin Road Dungay (ECM 35600476)
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19 [PR-CM] Tweed Development Control Plan Section B24 - Area E Urban Release Development Code

ORIGIN:

Planning Reform

FILE NO: GT1/LEP/2000/10 Pt6

SUMMARY OF REPORT:

This report provides an update on the progress of the Tweed Development Control Plan, Section B24 – Area E Urban Release Development Code (“the Code”), and seeks Council’s endorsement to proceed to the statutory public exhibition.

Area E has been recognised for many years by both Tweed Shire Council and the NSW Department of Planning and Infrastructure as an important strategic site for urban land release to accommodate future housing needs through the planned supply of about 1632 lots, catering for an additional residential population of about 4,000 people.

In accordance with the Local Environmental Plan gazetted for this site in 2007, Council’s planning and engineering staff are preparing 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 has been prepared as a Section of the Tweed DCP 2008, titled *Area E Urban Release Development Code* (“the Code”). The Code represents the most detailed level of the strategic planning framework and seeks to guide the future development of the Area E release area through a variety of strategies and development controls.

As part of the preparation process, Council’s Planning Reform Unit (PRU) staff has worked with the landowners of Area E to undertake extensive landowner consultation, which comprised of three intensive participatory workshops hosted at Tweed Heads.

The Draft Code is now presented in four sections, three covering the whole of the release area and a final section specifically addressing the three distinct ‘precincts’ of Area E. This format is considered to enable the local community to identify with guidelines and controls customised to the unique features, characteristics and specific contextual issues of these distinct precincts.

In recognition of the intricacies, constraints and ‘uniqueness’ of Area E, and in response to the outcomes of the landowner workshops, a number of controls have been specifically tailored and provide greater detail to the generic standard requirements of the Tweed DCP s A1 Residential and Tourist Development Code. These strategies, objectives and controls are discussed within this report.

The Code has attempted to address landowners and the Council officers concerns through a detailed investigation of the sites opportunities and constraints by utilising various contemporary best practice planning processes that include:

- Constraint and Site Analysis
- Developing steep sites analysis and interpretation

- Built form and design-lead solutions to balance environmental protection, open space and the built environment.

The Draft Code is now considered to be ready for formal public exhibition, providing the general public the opportunity to review the Code and provide comment. Public exhibition of the Code would also enable the Code to best integrate into the Part 3A Major Project Application before the Department of Planning and Infrastructure.

RECOMMENDATION:

That:

- 1. The report on Tweed Development Control Plan Section B24 – Area E Urban Release Development Code be received and noted.**
- 2. Tweed Development Control Plan Section B24 – Area E Urban Release Development Code be publicly exhibited for a minimum period of 30 days, in accordance with section 74E of the *Environmental Planning Assessment Act 1979*.**
- 3. Following public exhibition the Draft Tweed Development Control Plan, Section B24 – Area E Urban Release Development Code, having regard to matters arising from the public consultation and any submissions received, a further report be submitted to Council.**

REPORT:

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

The site was largely a composite of rural and agricultural zones prior to the Gazettal of the Tweed Local Environmental Plan 2000 – Amendment No. 10 in October 2007, which resulted in urban and environmental zones comprising:

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

The purpose of the LEP amendment was to give effect to the Tweed Urban Release Strategy 1991 which identified the land as an urban release / expansion area.

The LEP amendment was guided by the detailed site investigations that were undertaken as part of a local environmental study, which resulted in the identification and location of appropriate zones, as well as the need for specific provisions. Clause 53D was borne out of that process and was gazetted in the following terms:

53D Specific provisions for Terranora Urban Release Area E

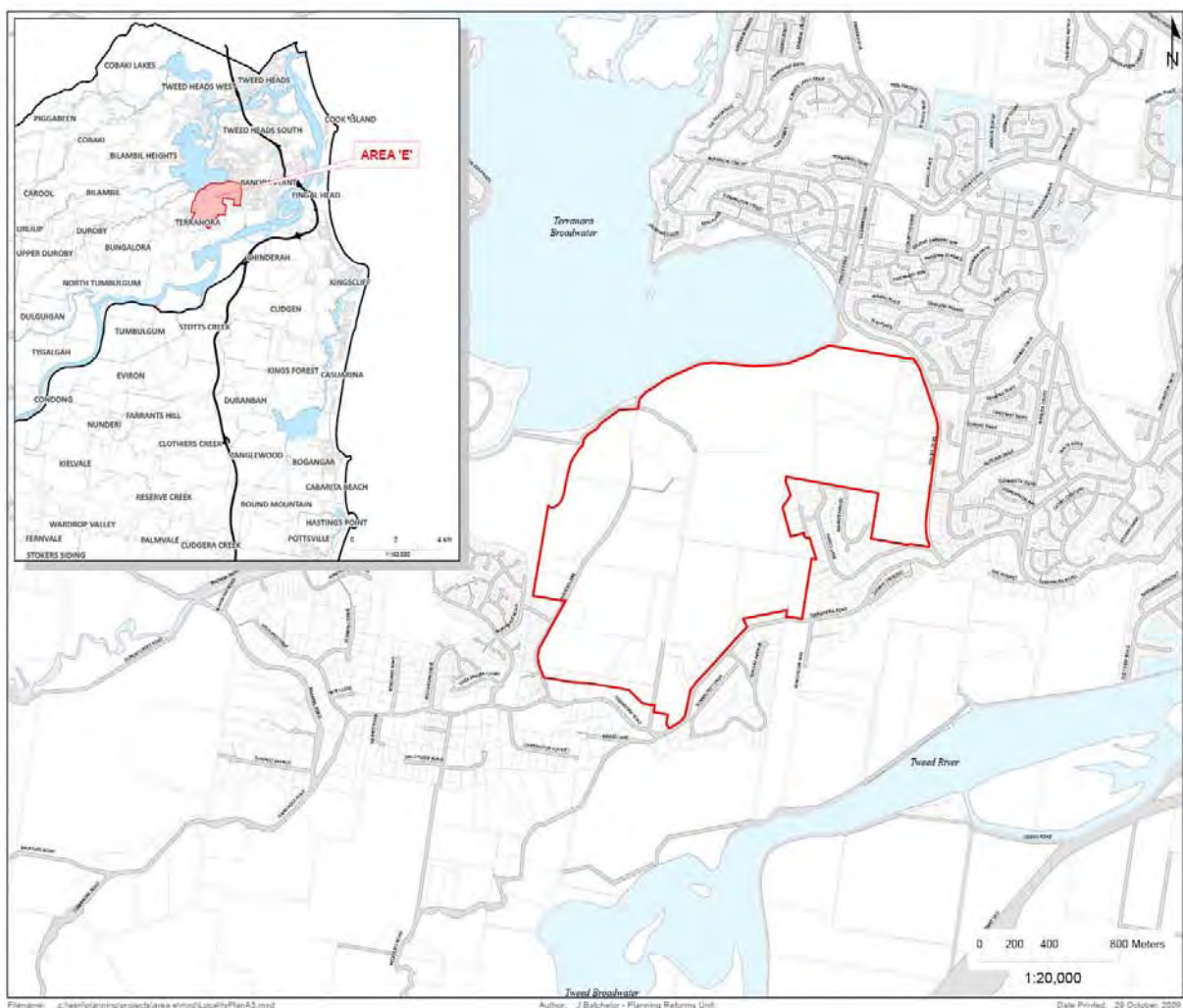
- (1) This clause applies to the land known as Terranora Urban Release Area (Area E), as shown edged heavy black and coloured on the map marked "Tweed Local Environmental Plan 2000 (Amendment No 10)".
- (2) The object of this clause is:
 - (a) to ensure a development control plan has been developed for the land to which this clause applies to avoid ad hoc development, and
 - (b) to ensure that issues relating to contaminated land are dealt with to a sufficient level to meet the requirements of *State Environmental Planning Policy No 55 - Remediation of Land*, and
 - (c) to ensure that any wetlands in the area are restored and protected and breeding habitat for salt water mosquitoes and biting midges is minimised, and
 - (d) to ensure that the management of urban stormwater is consistent with the *Tweed Urban Stormwater Quality Management Plan* adopted by Council, and
 - (e) in respect of subclause (5), to require assistance towards the provision of the following infrastructure, facilities and services to satisfy needs that arise from development on land to which this clause applies, but only if the land is developed intensively for urban purposes:
 - (i) regional transport infrastructure,
 - (ii) education facilities and services provided by the State,
 - (iii) health facilities and services provided by the State,
 - (iv) facilities and services provided by the State for the purposes of emergency services.

- (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.
- (4) The consent authority is not to consent to subdivision of land to which this clause applies or to other development on that land unless the consent authority is satisfied that:
- (a) any likely contaminants within the soil, surface water and groundwater as a result of previous land uses have been identified, and
 - (b) an effective testing regime has been implemented, that takes into account the hydrology of the land, to identify hotspots of contamination in accordance with any relevant guidelines issued by a government department or public authority, and
 - (c) appropriate thresholds and criteria have been used in the assessment of any potential contamination, and
 - (d) any contamination of the land does not pose a significant threat to human health or the environment, and
 - (e) if contamination has been identified, an adequate monitoring program will be implemented in relation to the contamination of the land.
- Note:** *Clause 7(1) of State Environmental Planning Policy No 55 - Remediation of Land sets out other matters that must be taken into account by a consent authority.*
- (5) Despite any other provision of this plan, the consent authority must not grant consent to the subdivision of land to which this clause applies, that is within Zone No 2(c), if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the commencement of this clause, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of infrastructure, facilities and services referred to in subclause (2)(e) in relation to that lot.
- (6) Subclause (5) does not apply:
- (a) to any lot within a special contributions area within the meaning of Division 6 of Part 4 of the Act, or
 - (b) to any lot identified in the certificate as a residue lot, or
 - (c) to any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utilities, education facilities, or any other public purpose, or
 - (d) to a subdivision for the purpose only of rectifying an encroachment on any existing allotment.
- (7) *State Environmental Planning Policy No 1 - Development Standards* does not apply to development for the purposes of subdivision on land to which this clause applies.
- (8) Nothing in this clause affects the application of *State Environmental Planning Policy No 55 - Remediation of Land* to land to which this plan applies.

Of particular relevance to the current Draft Code is Clause 53D (2)(a) and (3)(a), which require that a DCP be prepared to both avoid “ad hoc” development and prior to the consent authority consenting to the development of land the subject of this clause.

In pursuance of those provisions and the enablement of progress toward a sustainable site responsive development a locality based DCP, the Draft Area E Urban Release Code (“the Code”), has been prepared for the release area, in consultation with the landowners.

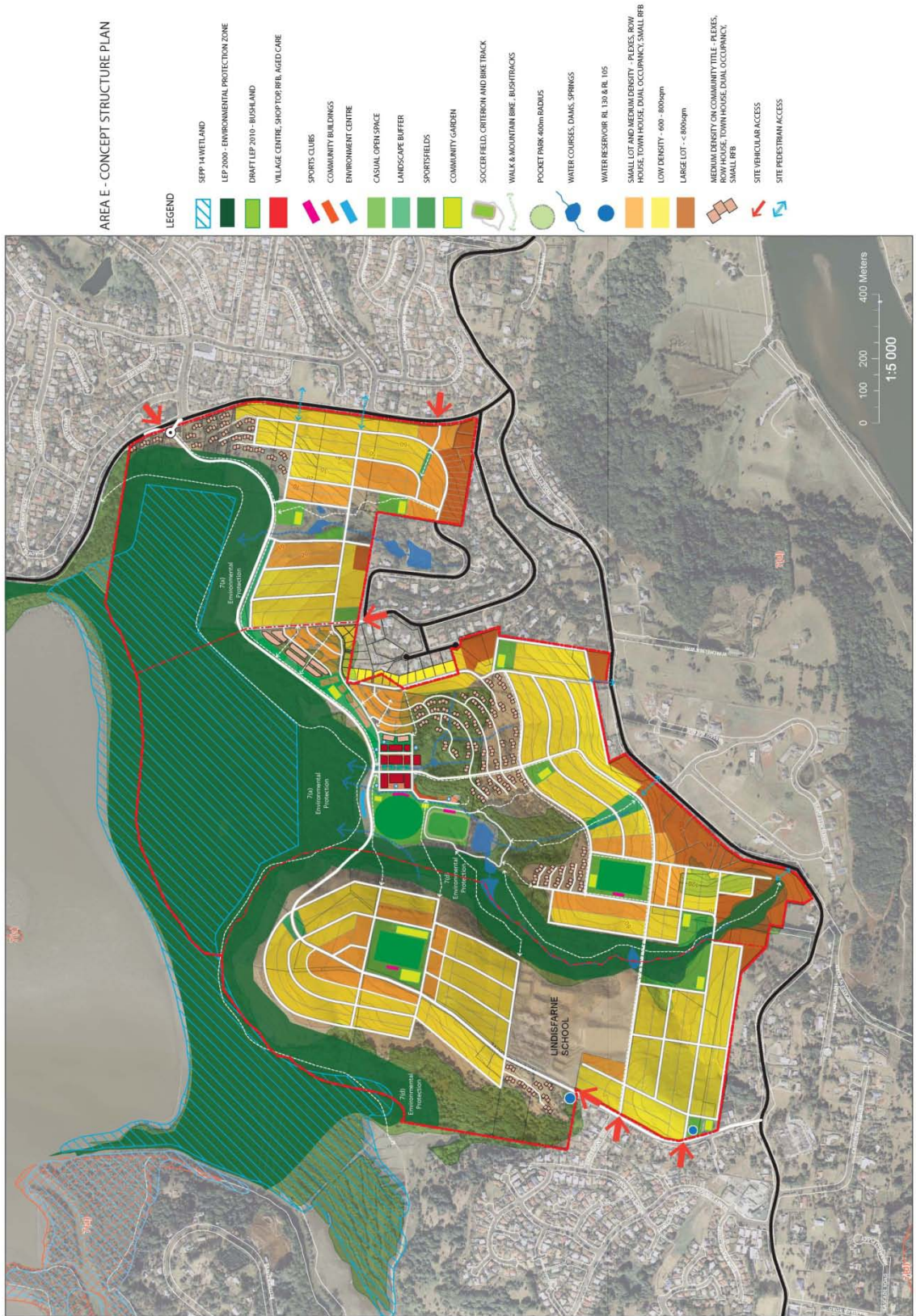
Following the detailed investigations, site planning and landowner consultations, the Draft Code has reached a stage where it is suitable for public exhibition. This is a critical stage of the drafting process, enabling broader community opinion to inform the evaluation of the concepts, strategies and approach taken in the plan and the general level of acceptance.



KEY COMPONENTS OF THE CODE

Indicative Structure Planning

FIGURE 1 – AREA E INDICATIVE STRUCTURE PLAN



An essential element of the Code is the articulation of best practice design concepts and strategies through a variety of detailed structure planning principles. By way of example, the Draft Code espouses:

- providing the orderly and efficient use of residential land on a highly constrained site which attains the 'vision' and strategies identified for the release area, detailed within the Code;
- an overriding landscape character strategy that fosters urban development within Area E in the form of compact settlements, interspersed within the dominating natural landscape, that respects and showcases the wetland areas, vegetated valley and escarpment, and important ridgelines;
- maintaining and respecting the landform characteristics – buildings and civil works designed to landform to minimise the impact on Tweed's iconic landscapes;
- the identification and retention of green breaks, important feature and stands of trees as well as important view fields;
- encouraging subdivision design that maximises solar orientation and access to prevailing breezes through responsive street layout and lot configuration to reduce energy consumption and to capitalise on creating desirable living environments;
- through the promotion of varied lot sizes and housing types, capitalising on medium density and integrated housing opportunities, responding to the changing demand through changes in demography and social profile;
- integrating roads with open space, pedestrian and cycleway paths to achieve maximise accessibility, connectivity and site permeability;
- to encourage proactive implementation of water sensitive urban design principles into the whole of design; and,
- ensure that a holistic approach to thorough site planning acknowledging and designing for constraints like bushfire, flood and steep land.

Broadwater Parkway

Previous reports to Council in April and June 2011 identified some of the complexities of planning for the Area E site. The natural and physical constraints combined with the highly fragmented land ownership compound the difficulty for all parties in resolving the equitable distribution of costs and provision of essential services, in a way that can allow the area to be developed in an orderly and timely fashion.

The design and construction of the Broadwater Park Way, which will provide the primary trunk road access linking Mahers Lane to Fraser Drive, has proved particularly contentious and remains as the least settled aspect of the draft planning. However, there is sufficient confidence in the preliminary investigations and proposed road alignment to allow the Draft Code to proceed. As with any development control or locality plan of this kind the detailed site and design works will need to be undertaken independently and most likely as part of a future development application. Preliminary indicative illustrations are more than sufficient for guiding this later work by providing the overarching strategic intentions.

Council staff has investigated several potential road alignments at a desktop level of assessment to enable a suitable indicative road alignment to be included in the Draft Code and was based on high level assessment of:

- the sites topography;
- the areas environmental protection zoning and corresponding buffer areas
- the impact on existing residential properties; and,
- the need for a future road to integration with the existing road network.

The indicative alignment of the future Broadwater Parkway is based on the desirability criteria of avoiding existing residential properties where possible and environmentally sensitive land. The alignment in Figure 2 below is used in the Draft Code to indicate an alignment incorporating those desired criteria.

The alignment, funding and construction of Broadwater Parkway present a significant challenge to the development of Area E. It is anticipated that the alignment of Broadwater Parkway will provide a focal point for discussion throughout the public exhibition process as landowners both within and external to the release area raise their concern with the general alignment, as has occurred through both the landowners workshops and the public exhibition of the Part 3A Major Project development lodged by Metricon with the Department of Planning and Infrastructure for a subdivision within the Area E site.

The public exhibition will provide an opportunity for the landowners and community to ventilate their concerns in an open forum, which will further feed into and contribute to the plan preparation.

In respect of the Part 3A Major Project application, the applicants have recently submitted an alternative alignment immediately north of the subject land for consideration. The identified alignment transverses within both Environmental Protection zone and the Urban Expansion zone, however Council officers have raised both engineering and environmental concerns to this alignment. Accordingly, it is not considered appropriate to deviate from the alignment shown in Figure 2.

In light of all the site constraints, the Code has progressed on the basis of the alignment displayed in Figure 2, as it is viewed as the best option considering triple bottom line sustainable development principles. It is acknowledged that this alignment will likely require the compulsory acquisition of at least one property and result in amenity impacts to nearby existing residences.

Development Density and Diversity

An ongoing element of community interest in Area E has been the residential density of the release area. Area E is positioned between the suburban Banora Point with lot sizes predominately 600-850m² in size, Terranora Village, where lot sizes are typically 850m² and the rural residential area of Terranora, where lots are predominately over 2,000m². As a result, Area E plays a role in balancing the existing residential context, whilst providing for key growth targets that are established through the Far North Coast Regional Strategy, providing smart or intelligent growth that capitalises on the opportunities to maximise a balanced residential usage that attain the objectives the Council's strategic policies.

Through the LES process, members of the Terranora community sought to ensure any rezoning of Area E include a minimum lot size of 800m². The LES however was ultimately adopted with an average lot size for residential dwellings of 800m², resulting in an intended residential yield of 1793 dwellings (1,550 lots for dwellings, 243 medium density units).

The site analysis work undertaken within the preparation of the Code identified a series of opportunities and constraints for urban development. This analysis resulted in the Structure Plan within the Code, which details the following residential targets and mix:

	Mahers Lane Precinct	Central Precinct	Fraser Drive Precinct	Total
Large Lot Residential (Lots >800m ²)	2	20	20	42
Suburban Lot Residential (Lots between 450 – 800m ²)	425	239	181	845
Small Lot and Medium Density (Lots between 250 – 450m ² and medium density development at a general rate of 1 unit per 333m ² of site area)	127	101	155	383
Neighbourhood Plan Housing	24	259	67	350
Shop-Top & Village Centre Residential	0	179	0	179
Total	578	798	423	1799

Table 1 – Dwelling Density and Typology Targets

The development targets established within Table 1 generate a future population yield of 3,907 people when using the latest ABS and Council adopted household occupancy rates.

Whilst the Code details a greater range of lot sizes and smaller lot development than envisaged within the LES, the dwelling targets are very similar (1793 in the LES, 1799 in the Code) as a result of the Codes more detailed analysis of the sites opportunities and constraints. The Code also provides a holistic approach to ensuring a quality urban form supporting infrastructure such as structured and casual open space, retail development, informal open space, green belts and buffers and community infrastructure.

The dwelling density and mix provided within the Code is considered to provide an appropriate response to the site's characteristics, the strategic objectives established – particularly the Far North Coast Regional Strategy 2006 and the Tweed Urban and Employment Land Release Strategy 2009, and will integrate positively into the wider residential fabric.

Built Form

Building Height in the Village Centre

The Code enables a variety of residential development immediately within the village centre and its surrounds. Within the heart of the Village Centre, residential development is encouraged to frame the main street within a mixed use development form. Such development would include non-residential uses at street level, with residential development above.

Within the Core of the village centre, the Code provides opportunities for approximately 20,000m² of residential GFA, across three levels, producing a target of 179 units. The three levels of residential development combine with a single level of non-residential use predominately throughout, to produce a 4 storey village centre. To maintain consistency with the provisions of the Standard Instrument Order 2006 as they relate to measuring building height, the maximum building height within this Code is 15 metres.

This control increases the permissible building height by 1.4 metres from the current Tweed Development Control Plan – Section A1 controls for mixed use development, being 13.6m

and would necessitate a Planning Proposal to amend the Tweed LEP. The additional 1.4 metres of potential building height is considered appropriate within the context of the Area E village centre for the following reasons:

- Assist in creating an active and vibrant hub with a strong mixture of landuses and accommodate types
- The village centre is located at the lowest developable point of the site and is surrounded by steeply sloping, bush-clad land. Accordingly, the additional height is not considered to impact upon views from future surrounding development within Area E as they will be positioned at a much higher elevation.
- The village centre is disconnected and is not highly visible from existing residential settlements. It is unlikely that existing development or public vantage points will capture anything other than visual glimpses of the village centre, viewed from several hundred metres away. As such, the additional 1.4 metres in potential building height will unlikely be noticeable or result in impacts.
- Any design within the village centre will need to have careful consideration to the Materials Guide and Scenic Protection and Views sections contained within the Code.

Other variations to Section A1 – Residential and Tourist Development Code

In addition to building height, the Code proposes alternate building setback controls to the more generic, shirewide controls contained with Section A1. A summary of the variations within the Code are detailed as follows:

Development Type	Proposed within Code			Section A1 Controls			Comments
	Minimum Lot Size	Minimum Front Setback	Minimum Side Setback	Minimum Lot Size	Minimum Front Setback	Minimum Side Setback	
Dwelling House on a medium density lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback
Dwelling House on a suburban lot	--	4m	--	--	6m	--	Garages setback >5m from front setback
Attached Dual Occupancy on a medium density lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback
Attached Dual Occupancy on a suburban lot	750m ²	4m	--	900m ²	6m	--	Garages setback >5m from front setback
Attached Dual Occupancy on a large lot	1200m ²	--	--	900m ²	--	--	
Detached Dual Occupancy on a medium density lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback
Detached Dual Occupancy on a suburban lot	750m ²	4m	--	900m ²	6m	--	Garages setback >5m from front

Development Type	Proposed within Code			Section A1 Controls			Comments
	Minimum Lot Size	Minimum Front Setback	Minimum Side Setback	Minimum Lot Size	Minimum Front Setback	Minimum Side Setback	
							setback
Detached Dual Occupancy on a large lot	1600m ²	--	--	900m ²	--	--	
Row House, Townhouse, Villa or Soho on a medium density lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback
Row House, Townhouse, Villa or Soho on a suburban lot	--	2m	Zero	--	6m	900mm	Garages setback >5m from front setback

Table 2 – Variations from Tweed DCP – Section A1

- *Minimum Lot Sizes*

The Code seeks to vary the minimum lot sizes in two predominant areas, the first being to reduce the size requirements for attached and detached dual occupancy on 'suburban lots', the second, to increase the minimum size on large lots.

Reduced lot sizes for dual occupancy development on suburban lots has been pursued through the Code to assist the development of Area E in meeting the dwelling diversity targets established within the NSW Far North Coast Regional Strategy 2006, being a 60/40 split of residential dwellings to multi-dwelling housing development. The reduced lot size is also seen to make a (albeit small) contribution toward housing affordability by increasing housing diversity and reducing land costs.

The increased lot sizes for dual occupancy development on large lots have been pursued to reflect the constrained nature of large lot sites within Area E. Predominately, large lots have been identified on steeply sloping land, land with limited or poor vehicular, pedestrian and cycleway access or land which adjoins existing large lot development. In these instances, it is not considered appropriate to enable development density at the same rate of predominately constrained land.

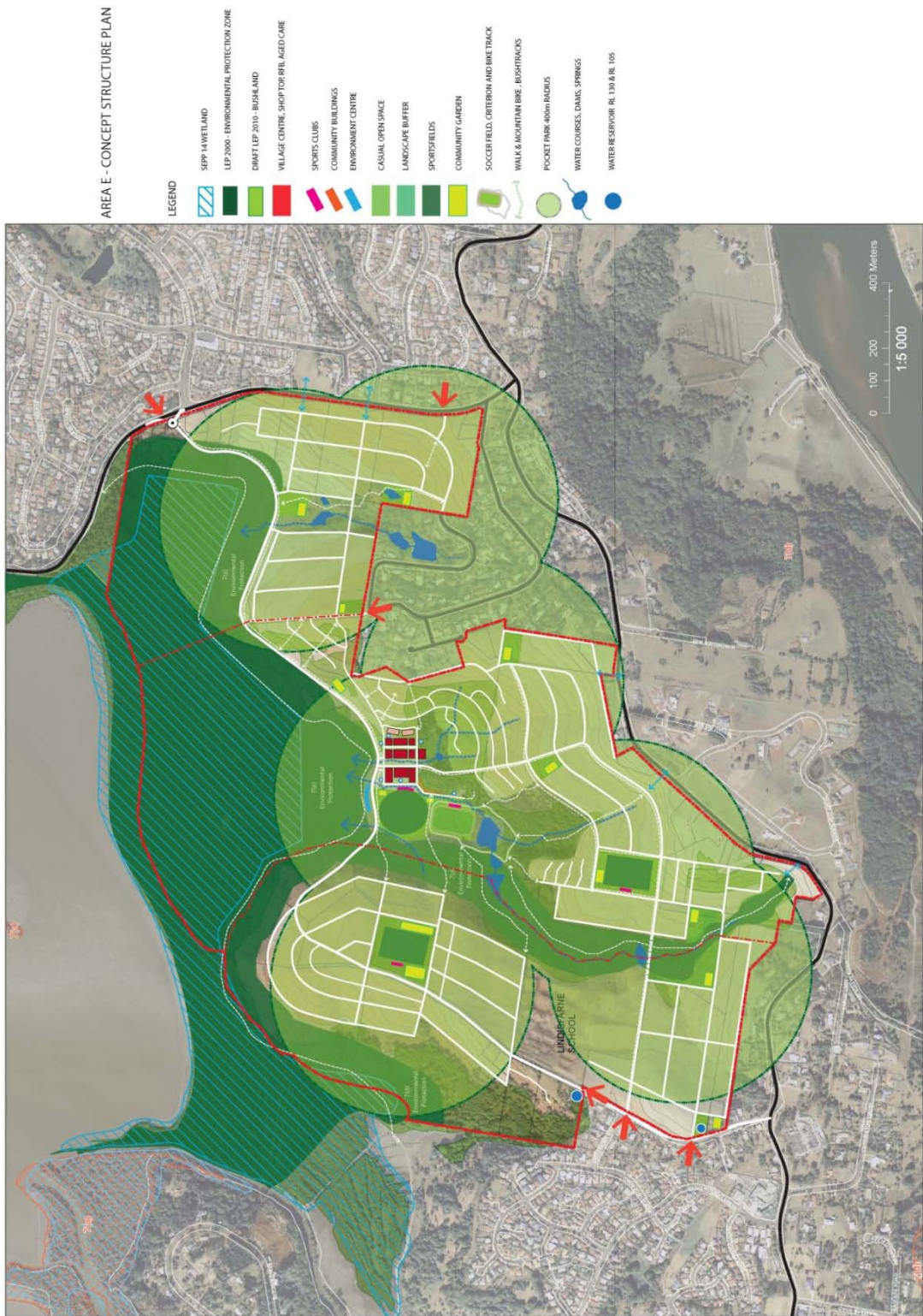
- *Front and Side Setbacks*

Reduced front and side setback provisions have been pursued within the Code to assist and create opportunities for development to best integrate with the landform of Area E. Under this scenario, the elevation level changes of the site can be absorbed within the future built form as opposed the level changes solely taking place on the boundary of each site through benching. This method often results in a more attractive streetscape; buildings that are better designed to the site's context and reduced boundary interface issues. The reduced setbacks are considered to result in a built form that can better respond to the sites topography and should be pursued through public exhibition of the Code.

Environment & Recreation

The Code contains a number of strategies relating to environment, open space and recreation. A diagrammatic response to the strategies within the Code is provided through Figure 3.

FIGURE 3 – OPEN SPACE AND ENVIRONMENTAL LAND



A snapshot of the key objectives are as follows:

- Ensure the provision of a structured open space facility within the Area E Urban Release Area through the provision of approximately 2.39ha of structured open space within the Village Centre by way of two playing fields, 1.26ha by way of a singular full sized playing field in the central precinct (southern/southwestern area) and 1.26ha by way of a singular full sized playing field in the western precinct.
- Enable investigations into the delivery of alternate forms, uses and facilities for public open space; Examples of potential sport facilities include road and mountain biking facilities, walking/running trails, along with sport facilities that embody a smaller, or, a series of smaller footprints, or not requiring a flat surface such as BMX or skateboarding facilities.
- The proximity of the Market Parade and Glen Ayr Drive open spaces presents the opportunity to form an open space/environmental linkage.
- To ensure the protection and preservation of 'edges', biodiversity and amenity values of areas of environmental significance, including wetlands, drainage channels and remnant vegetated areas.
- Provide opportunity for community gardens and road verge gardens as a legitimate use of open space that contributes to health and well-being, positive social interaction, community development, environmental education and local food security.
- To preserve and protect land of high ecological significance from urban development.
- To encourage the embellishment of land with high environmental qualities
- To provide for the rehabilitation and enhancement of degraded habitat and ensure that comprehensive rehabilitation plans form part of any future development applications or masterplans.
- Minimise urban development at the southern end of 7(d) Environmental Protection land to large lot residential to limit disturbance, or restrict wildlife corridors that may be possible to the south.

Scenic Protection and Views

The Code provides strategies and recommendations regarding scenic protection and views that seek to implement tangible outcomes through the Tweed Scenic Evaluation Study 1995. Specifically this is addressed through by maintaining the natural setting of the Broadwater with appropriately placed development. Strategies include:

- *Retain and enhance key visual character components;*
- *Realise and retain key visual character components of the site through a contemporary urban structure and built form; and*
- *Provide view sharing and maintenance of view fields*

Section 94 Plan

The Code will be accompanied by a Section 94 – Developer Contributions Plan, which will cost and equitably distribute the cost of works generated by the development. A draft Section 94 Plan will be reported to Council in the upcoming months.

MAJOR PROJECT UPDATE

Post the update contained with the June council meeting, relevant Council officers have held an additional meeting with the applicant, to discuss components of their application. Discussions and information submitted thus far suggests a modified subdivision layout that better reflects Council's bulk earthworks policies and removes infrastructure, with the exception of the future Broadwater Parkway from the environmental protect zone. With the exception of Broadwater Parkway, which is discussed earlier in this report, Council is awaiting further detail in order to provide any advice on the suitability of the amendments, other than encouraging compliance with Council's existing controls. Upon the receipt of further detailed information, further review will be undertaken by Council staff.

Whilst both Council staff and the developer are working to create a positive outcome for the site, no other items of significance have occurred since the June update.

CONCLUSION:

The draft Code has been prepared on the basis of extensive landowner consultation and having regard to the site conditions. The project has reached a stage where the principles, ideas, and controls within the Code need to be 'tested' for their level of acceptance within the broader community.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Council report of 21 June 2011 (ECM 35607922)
2. Draft Tweed Development Control Plan 2008, Section B24 – Area E Urban Release Development Code:

Part 01 (ECM 35702891)

Part 02 (ECM 35700691)

Part 03 (ECM 35702889)

Part 04 Structure Plan (ECM 35701744)

Part 04 Area Specific Mahers Lane (ECM 35702896)

Part 04 Area Specific Central Precinct (ECM 35704925)

Part 04 Area Specific Fraser Drive (ECM 35702876)

20 [PR-CM] Tweed City Centre Vision, Local Environmental Plan and Development Control Plan

ORIGIN:

Planning Reform

FILE NO: GT1/LEP/2006

SUMMARY OF REPORT:

This report seeks Council's endorsement for the re-exhibition of the Draft Tweed City Centre Plans.

The initial public exhibition of the Draft LEP and accompanying Vision Plan and Development Control Plan occurred between 27 January to 30 April 2010, during which 57 submissions were received.

The Draft Plans were prepared by the Department of Planning and Infrastructure's (DoPI) in conjunction with Council staff and their consultant, JBA Urban Planning.

Following a review of the submissions and amendment by the DoPI the Plans are suitable for re-exhibition.

This report addresses the key amendments to the Plans as agreed between the DoPI and Council staff. The DoPI has requested that the Plans be re-exhibited for the prescribed statutory period of 28 days and Council staff consider the request to be reasonable.

Request was made through public submission that a public hearing be held in respect of the Draft Plans. Council may, in accordance with s 68(1)(b) of the EP & A Act 1979, consider that the issues raised in a submission are of such significance that they should be the subject of a public hearing before the Council decides whether, and if so, what alterations should be made.

The two dominant issues raised comprise building height and the reliance on current planning investigations opposed to the wholesale adoption of the previous Council (not State Planning) endorsed Masterplan 2004, notwithstanding that there are similarities.

The building height issue has been largely addressed by way of proposed amendment to the Draft LEP and DCP, which reduces the previously proposed building heights to those more in-line with the current Tweed LEP, and as such does not warrant consideration by way of a public hearing. In any event it would be more practical to permit a re-exhibition and re-evaluation by the public of those amendments prior to considering the need for a hearing.

In relation to the earlier masterplan it was generally agreed by DoPI and Council staff that based on the masterplan's currency and in light of changes in available information over the preceding five years, it should not be relied upon as a single basis for informing the new planning. The evaluation of the locality and preparation of a new masterplan through the

Draft LEP and DCP, which are based on newer and broader investigations and data, particularly relating to climate change, transport infrastructure, and changes in State Policy, comprises a better practice.

This report recommends that a public hearing not be held; that the need for a public hearing, should it arise by request from the re-exhibition of the Plans, be reassessed at that stage and on the basis of the amendments proposed.

RECOMMENDATION:

That:

- 1. A public hearing under s68 of the Environmental Planning and Assessment Act 1979 not be held in relation to the issues raised by way of submission to the Draft City Centres Local Environmental Plan (2009) on grounds that the issues raised by way of submission are not of such significance that they should be the subject of a public hearing before Council decides whether and, if so, what alterations should be made.**
- 2. Council endorses the concurrent statutory re-exhibition of the Draft Tweed City Centre Vision, Local Environmental Plan (2011) and Development Control Plan in accordance with Section 66 and Section 74E of the Environmental Planning and Assessment Act 1979, for the prescribed period of 28 days.**
- 3. A report under Section 68 of Environmental Planning and Assessment Act 1979 addressing any public submission received and consequential amendments to the Draft Plans be prepared following the public exhibition.**

REPORT:

Council's Planning Reforms Unit (PRU) along with their consultant, JBA Urban Planning and the NSW Department of Planning and Infrastructure's Centres and Urban Renewal Team, prepared a suite of strategic planning documents for Tweed Heads and Tweed Heads South comprising a; Draft Local Environmental (standard instrument order) Plan, Development Control Plan and Vision document. These were identified within the 4 year priority actions of the *Tweed 4/24 Strategic Plan* and as a requirement of the then NSW State Government's planning initiatives.

The drafting of the plans was completed in late 2009 and public exhibition occurred between 27 January and 30 April 2010. This represented a total exhibition period of 95 days opposed to the 28 day statutory requirement.

The exhibition Draft Plans were supplemented with explanatory material prepared by Council staff, who were also available at public workshops held at; Murwillumbah, Burringbar, Uki, Tyalgum, Pottsville, Kingscliff, and Tweed Heads, to help explain both the changes to the State planning laws and those of the Draft Plans. More than 350 people took the opportunity to visit the display and talk with staff. The information packages included; a Users' Guide, Zone Comparison Tables and a series of Fact Sheets, which generally received positive feedback from the community.

Documentation was on public exhibition for the duration of the public exhibition period and could also be accessed on-line via Council's web site 24 hours a day. In addition, CDs were prepared for those with computer access but limited internet access and hard copies were provided to the more remote or without computer access, on request. In all about 150 CDs and 100 information packs were requested.

To further encourage public participation submissions were also accepted by email as well as the more traditional methods, which attracted more than 450 submissions as a combined total for both the Draft Tweed LEP 2010 (Shirewide LEP) and the City Centre Draft Plans.

Key Issues raised in Relation to the City Centres LEP

The following table identifies the main issues raised and a brief description of the proposed action/amendment.

Issue	No. of submissions	Action
Objection to the proposed increase in building heights	33	Maximum building height provisions reviewed and a general reduction of permissible heights made.
Impact on airport operations	1	Reduction in building height to reflect airport requests, inclusion of additional clause relating to airport operations
The lack of new infrastructure provision to support the increase in population	12	Post exhibition, building heights across the study area have been reduced, limiting an upper (theoretical maximum) population growth of about 1,000 – 1,500 people above the current planning provisions under the Tweed LEP 2000. This level of growth can be accommodated within existing infrastructure.
Limited objection to specific zone changes	3	Zone changes have occurred post exhibition within the Razorback precinct as requested within the submissions
Dissatisfaction as to the method of public exhibition	5	As detailed within this report, the public consultation of the draft plans was extensive and significantly exceeded both the statutory requirements and Council's general practice.
Objection to the special area controls detailed within the DCP.	4	Senior urban designers from DoPI's urban renewal team have reviewed the proposed special area controls and provided comment that the prescribed controls were considered satisfactory, subject to amendment of those relating to Tweed City Shopping Centre, which have been effected.
Objection to specific building height and floor space ratio controls	3	Senior urban designers from DoPI's urban renewal team have reviewed the proposed fsrs and provided comment that the prescribed controls was considered satisfactory, except in relation to the Tweed Heads Bowls Club where amendments have been made.

Proposed Amendments to the Plan

Several areas of the Plan have been amended as a result of the public submissions, these are addressed below.

Zoning Amendments

Environmental Protection

Post further review by Council's Natural Resource Management Unit and submissions received from NSW Department of Environmental, Climate Change and Water (DECCW), zoning changes have been made to redefine the boundary areas land zoned environmental protection, which has generally led to an increase in protected land.

These amendments generally occurred in the following areas:

- Vegetated areas adjoining Eden Street and Tweed Terrace on Flagstaff Hill.

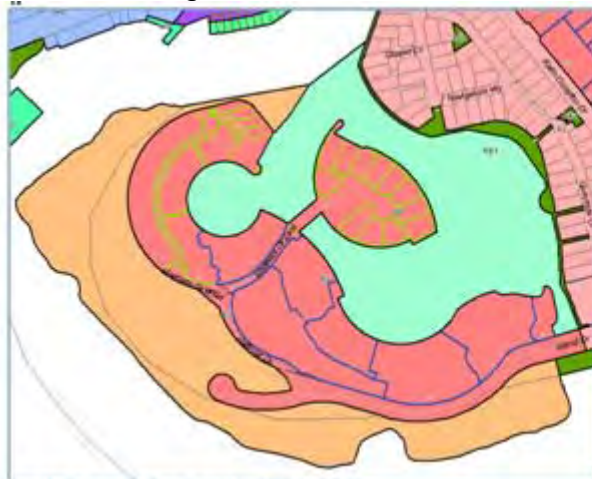


Draft Tweed City Centre LEP 2011



Tweed LEP 2000

- Vegetated areas to the immediate South of 'The Anchorage Islands'



Draft Tweed City Centre LEP 2011



Tweed LEP 2000

- Razorback Ridge Reserve



Draft Tweed City Centre LEP 2011



Tweed LEP 2000

Zoning Schedule



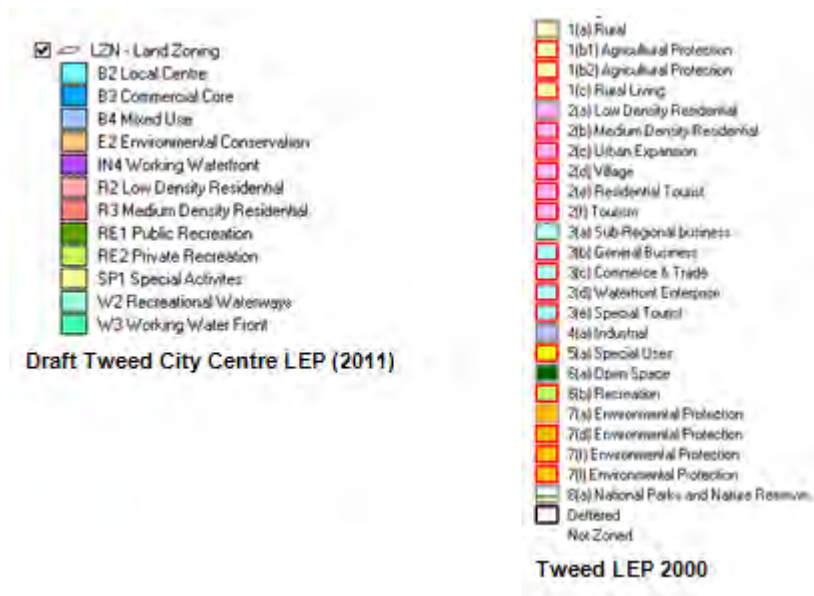
Zoning of residential land on Razorback Hill

Submissions were received objecting a change in zoning of properties from 2(b) Medium Density zoning to R2 Low Density Residential under the exhibited Draft Plan. On review of the character analysis and Draft DCP provisions for the area the DoPI have recommended retaining the existing medium density zoning. Council staff agree with the recommendation.

The Draft LEP zone map has been amended to reflect the zoning under the Tweed LEP 2000.



Zoning Schedule



Height of Buildings

The exhibited building heights were widely discussed during the exhibition period and within the submissions received. Figure 1 (also provided with Attachment 2) represents the Height of Buildings Map contained within the draft Plan.

A summary of the building height changes includes:

- No increase in building heights across the locality (with the exception of the Tweed Heads Bowls Club site, specifically discussed further in this report)
- Reduction in permitted building heights for elevated land on Flagstaff Hill.
- Reduction in permitted building heights west of Stuart Street and north of Bay Street.
- Reduction in building height along Thomson Street.
- Maximum building height before any prescribed permitted 'bonuses' of 49.5m AHD.

Essentially, the proposed amendments pare back the increases in building height sought under the exhibited plan meaning that the draft plan more closely resembles the current zoning under Tweed LEP 2000. What remains is a more limited opportunity to increase height and density through a suite of bonus provisions pertaining to a very limited number of identified key sites.

The current vision of Tweed through the Tweed LEP 2000 with its relatively lower scale city form, when compared to the neighbouring Gold Coast, will remain fundamentally the same, which assist in retaining Tweed's distinctiveness when compared to the neighbouring Coolangatta. This was identified as an important public issue through the public submissions received.

Opportunities are still available within the Plan to obtain a greater building height than 49.5m AHD by virtue of cl. 6.9 – Design Excellence (local). This provision is designed to encourage a greater level of design excellence to establish landmark buildings on key sites within the Tweed City Centre. One of the criteria for triggering cl. 6.9 is that development must have a capital value of more than \$2m, be located on an identified key site and/or achieve a height in excess of 35m. This would trigger the need for an architectural design competition.

The clause enables the consent authority to grant up to 10% more building height and floor space ratio than those otherwise prescribed. The identified mapped 'Key Sites' include:

- Lot 703 of DP 877250 Coral Street
- Lot 1 of DP 777183, Wharf Street (Twin Towns Services Club)
- State and Council land bordered by Stuart Street, Stuart Lane and Bay Street
- Centro/Tweed Mall Shopping Centre
- 'Civic Precinct' comprising Council offices, Southern Cross University, Tweed Heads Bowls Club and Saint Cuthbert's Anglican Church
- All parcels on 'Monastery Hill'
- Lot 30 of DP 1084807 - The 'Von Bibra' site
- Lot 1 of DP1014402 - The former 'Scott's Fruit Market' site;

The general reduction of building height also reduces the potential population growth likely to be accommodated over and above that under the Tweed LEP 2000.

Whilst the Plan states a target of 7,000 more people, this target is derived from previous ABS statistics relating to existing population numbers. Accordingly, this target relates to a growth of 7,000 people to the existing (current) population. A desktop review by Council staff has concluded that this target results in an upper population growth limit of between 1,000 – 1,500 people - above that achievable under the Tweed LEP 2000. The previously exhibited Plan provided substantially higher population growth potential than the revised Plans.

The reduction, although disappointing from the view of generating a more walkable and public transport oriented city with a capacity to generate new investment, nevertheless goes some way to meeting the targets and expectations for the City Centre as outlined within the NSW Far North Coast Regional Strategy 2006.

FIGURE 1 – HEIGHT OF BUILDINGS MAP



Tweed Heads Bowls Club

A submission was received from the Tweed Heads Bowls Club which detailed their preference to review building heights for their site. The submission also canvasses their preference for an independent feasibility study for their land, as foreshadowed in the Draft Vision document.

The site is located within the Civic/Campus Precinct and has an approximate existing ground level of less than 3m AHD. Chapter 8 of the Draft Vision document identifies that:

'In the interim of the finalisation of the Council's Tweed Valley Floodplain Risk Management Study to determine the extent and impacts of climate change sea level rise planning benchmarks, the increased development densities are proposed only on the elevated city centre land over 3.5m AHD.'

Accordingly, the development standards identified within the draft LEP (i.e. zoning, height of buildings, FSR etc.) were based upon a general translation of the current controls into the standard template, and it was not seen to be an opportunity for circumventing or 'fast-tracking' any changes outside of the ordinary planning process.

The exhibited Height of Buildings Map nominated a 10 metre maximum height for the site. The issues raised by the Club was that it did not accurately reflect the existing development and therefore was aligned to the Tweed LEP as it would otherwise lead to a prohibited use, that is, buildings in excess of 10m. Council staff agree that this is a sound basis for making a further amendment.

The amended Height of Buildings Map, which is based on the standard set of heights used throughout the Tweed, reflects a permissible height of 13.6m.

While the Club's preference to uplift the development potential of the site it is noted, any changes in the planning scheme to facilitate a change would need to be made independent of the Draft City Centres LEP. It would also need to occur following the completion of the Draft Tweed Valley Floodplain Risk Management Study, which arose from the Council's Flood Risk Management Policy of December 2007; this latter Policy prohibits any increase in development potential in the interim.

Inclusion of additional clauses

Gold Coast Airport Limited (GCAL) as a key stakeholder were consulted and subsequently raised several issues with the Standard Instrument (local environmental plans) Order 2006 and the proposed building heights under the Draft LEP.

The Obstacles Limitation Surface (OLS) relating to Gold Coast Airport is 49.5m AHD across the entire Tweed City Centres study area. Buildings can encroach into this controlled airspace with the approval of GCAL and the Minister for Australian Department of Infrastructure, Transport, Regional Development and Local Government.

GCAL raised specific concern that the draft LEP did not highlight or identify the need for this approval, requesting the inclusion of a local clause relating to avoidance of obstacles within the prescribed airspace.

Following extensive consultation with the State Government GCAL was successful in bringing about amendment to the standard instrument and model clauses. In response to their issues the DoPI has responded by amending the building heights in the Draft LEP to affect a maximum height of 49.5m AHD, consistent with the OLS.

As detailed above, there remains a limited potential to increase height on key sites. GCAL have not raised an issue with this on the basis that the relevant airspace encroachment approvals will need to be sought and that the LEP does not advocate the higher limit as of right.

Refinement of existing provisions

Amendments to the Standard Instrument Order 2006

On 25 February 2011, the *Standard Instrument (Local Environmental Plans) Amendment Order 2011* (the amendment) was made. The objective of the order was to improve the efficiency of delivering LEPs through better clarifying the intentions of the zones, to update clauses and improve the land-use terms and how they relate to each other (parent/child terms). A copy of the DoPI's circular relating to the amendment is attached (refer Attachment 4).

Generally, the latest amendments are considered to provide overall improvements to the Standard Instrument Order 2006, resulting in a more legible document. The Draft LEP has been amended to incorporate the statutory changes in accordance with the advice of Parliamentary Counsel.

It is noteworthy that the latest amendment reaffirms the State Government's position in relation to several important matters. In particular the method for calculating height of building remains at being taken from the existing ground level. This is distinct from the Tweed LEP 2000, which takes its measure from finished ground level. This is not seen to be a significant issue in relation to the Tweed City Centres LEP and any additional height that may be required to offset any required site filling can be achieved through the provisions of the LEP, where warranted following merit assessment.

In addition, the template amendments have limited the ability for councils to prohibit restricted premises and bulky goods premises within the B2 – Local Centre, B3 – Commercial Core and B4 – Mixed Use zones. The effect of these changes can be best managed through amendments to the Tweed DCP and will need to be investigated when resources permit.

Roads

Following concerns raised by DECCW and Council's engineering unit, the land-use tables within the Draft LEP have been amended to change 'Roads' from a 'Permitted without Consent' use to 'Permitted with Consent'. The changes do not affect the permissibility of roads per se but it does result in a change in the level of assessment required to construct or modify roads by the private sector. Pursuant to both the LEP and State Infrastructure SEPP Council's statutory requirements would remain substantially unchanged from those currently operating.

Design competition

Clause 6.9(4) of the Draft City Centres LEP provides that an architectural design competition is required for any development having a capital investment value of more than \$2m on the land identified on the Key Sites Map. Concerns were raised about the application of the provision to internal renovations and refurbishments.

Clarifying that this provision is not intended to capture internal works Clause 6.9(4) of the Draft LEP was amended to read as follows:

“Development involving the erection of new buildings or external alterations to an existing building having a capital investment value of more than \$2m.

CONCLUSION:

The Tweed City Centre is a unique and diverse place and will face many new challenges as new development occurs and as the population increases.

Among those challenges is maintaining a sense of place and identity that Tweed residents identify with and value. Achieving a balance of new development and retaining the identifiable character requires careful long-term planning, with the ability to translate the ‘vision’ into a tangible set of tools that are legible across a broad sector of the community and professions.

Long-term planning is essential not only for managing the look and feel of the City Centre but for providing certainty for investment both at the private and public level, whether through new businesses, housing or necessary infrastructure.

The amended draft Plans have taken all relevant factors into consideration, including public opinion, and are designed to foster the growth of the Tweed City Centre as a contemporary multi-functional centre focused on providing integration of employment, residential and recreational uses in a liveable and vibrant urban environment.

The draft LEP, DCP and Vision are seen to be a balanced response to the diverse views and issues facing the future development and growth of the City Centre. The suite of Plans have progressed to a point where they are now suitable for re-exhibition.

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 (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. Draft Tweed City Centre Vision (ECM 35602634)
 2. Draft Tweed City Centre Local Environmental Plan 2011 (ECM 35603650)
 3. Draft Tweed City Centre Development Control Plan (ECM 35603676)
 4. Planning Circular PS 11-011 (ECM 35603731)
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