



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 20 September 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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6 [PR-CM] Department of Planning Application MP06_0153 at Lot 156 DP 628026; Creek Street, Hastings Point for a 45 Lot Residential Subdivision (Council Reference DA10/0228)

ORIGIN:

Development Assessment

FILE NO: DA10/0228 Pt4

SUMMARY OF REPORT:

The Department of Planning have received a Preferred Project Report (amended application) for a 45 lot residential subdivision at Lot 156 Creek Street, Hastings Point (Concept Plan only). Council has been provided with an opportunity to comment on this application whilst part of on public exhibition (19 August 2011 – 5 September 2011).

The original application was considered by Council on 20 July 2010. At that time Council recommended to the Department of Planning that the application be refused due to the failure of the application to adequately satisfy the significant planning, engineering and ecological issues.

The amended proposal has been reviewed by Council staff and based on this review the application is still considered to warrant refusal by the Department of Planning and Infrastructure on the following primary grounds;

- The application fails to adequately consider the sensitive ecological status of the subject site;
- The proposed subdivision layout has not been designed in response to an adequate site analysis;
- The application fails to comply with the Tweed DCP Section B23 Hastings Point;
- The application fails to adequately integrate with the existing development and would create an unacceptable amenity outcome for existing residents in the locality;
- The application includes an emergency access road which is not considered to be justified in the 7(a) Environmental Protection (Wetlands and Littoral Rainforest) zone and fails to satisfy the provisions of Clause 8(2) of the Tweed LEP 2000; and
- The application represents a massive overdevelopment of a highly sensitive site.

Accordingly it is recommended that Council advise the Department of Planning & Infrastructure that the development as proposed should be refused.

RECOMMENDATION:

That Council endorses the contents of this report relating to Major Project Application MP06_0153 at Lot 156 DP 628026, Creek Street, Hastings Point and that a copy of this report (which recommends the application be refused) be forwarded to the NSW Department of Planning and Infrastructure for their consideration.

REPORT:

Applicant: Planit Consulting Pty Ltd
Owner: Walter Elliott Holdings Pty Ltd
Location: Lot 156 DP 628026; Creek Street, HASTINGS POINT
Zoning: Part 2(e) Residential Tourist, part 7(a) Environmental Protection (Wetlands & Littoral Rainforests) and part Unzoned Land (Creek Street and unnamed Road Reserve)

THE SITE:

The subject site is located within the Village of Hastings Point in the Shire of Tweed. Within the immediate vicinity, the following elements frame the context of the site:

- The North Star Holiday Resort is directly adjacent, located on the northern side of Creek Street. The holiday park contains both permanent and temporary sites and a three storey building to the front of the site facing onto the Tweed Coast Road.
- Medium Density Apartments and attached dwellings (Hastings Cove) are located to the north east of the site adjacent to Coast Road.
- Single Detached Dwellings adjoin the site, located between Creek Street and the northern boundary.
- Cudgen Nature Reserve adjoins the western boundary of the site. The southern boundary of the property adjoins the Mean High Water Mark (MHWM) of Christies Creek that connects to Cudgera Creek and a section of State Environmental Planning Policy 14 (SEPP 14) Coastal Wetland in the south east and eastern areas of the property.

The site is largely a vacant allotment (17.77 ha) with the exception of a single house and associated driveway constructed in accordance with development consent DA07/0600 (issued by Tweed Shire Council). Construction of this dwelling has been completed and the dwelling is currently occupied.

BACKGROUND:

The subject site has had a long history of unauthorised work (earthworks and tree clearing), particularly in the western part of Lot 156 with the construction of the existing artificial waterway as well as in more recent times clearing within the 7(a) Environmental Protection (Wetlands and Littoral Rainforest) parts of the property. Despite this history there are no current outstanding compliance matters that Council are pursuing.

Development of this land has been canvassed since 2006 when the then Department of Planning sought Council input into Director General Requirements for a proposed subdivision. Since this time the Department of Planning has forwarded Council various versions of the applicant's proposal as follows:

- October 2008 - Draft Environmental Assessment (57 residential allotments and one residue allotment for a resort development).
- March 2009 - Revised Draft Environmental Assessment (38 lot residential subdivision including 5 nominated dual occupancy sites, two tourist allotments and two allotments containing integrated housing).

- April 2010 - Revised Environmental Assessment (41 lot residential subdivision including 5 nominated dual occupancy sites two tourist allotments and two allotments containing integrated housing).
- April 2011 – Draft Preferred Project Report - amended application (41 lot residential subdivision – no dual occupancies and no tourist development sites)

At every occasion Council has raised significant engineering, planning and ecological concerns with the development as proposed. Whilst the applicant has responded to engineering concerns the applicant has failed to significantly change their design or overall density to address planning or ecological concerns.

The Preferred Project Report that is currently being considered incorporates the following proposed elements;

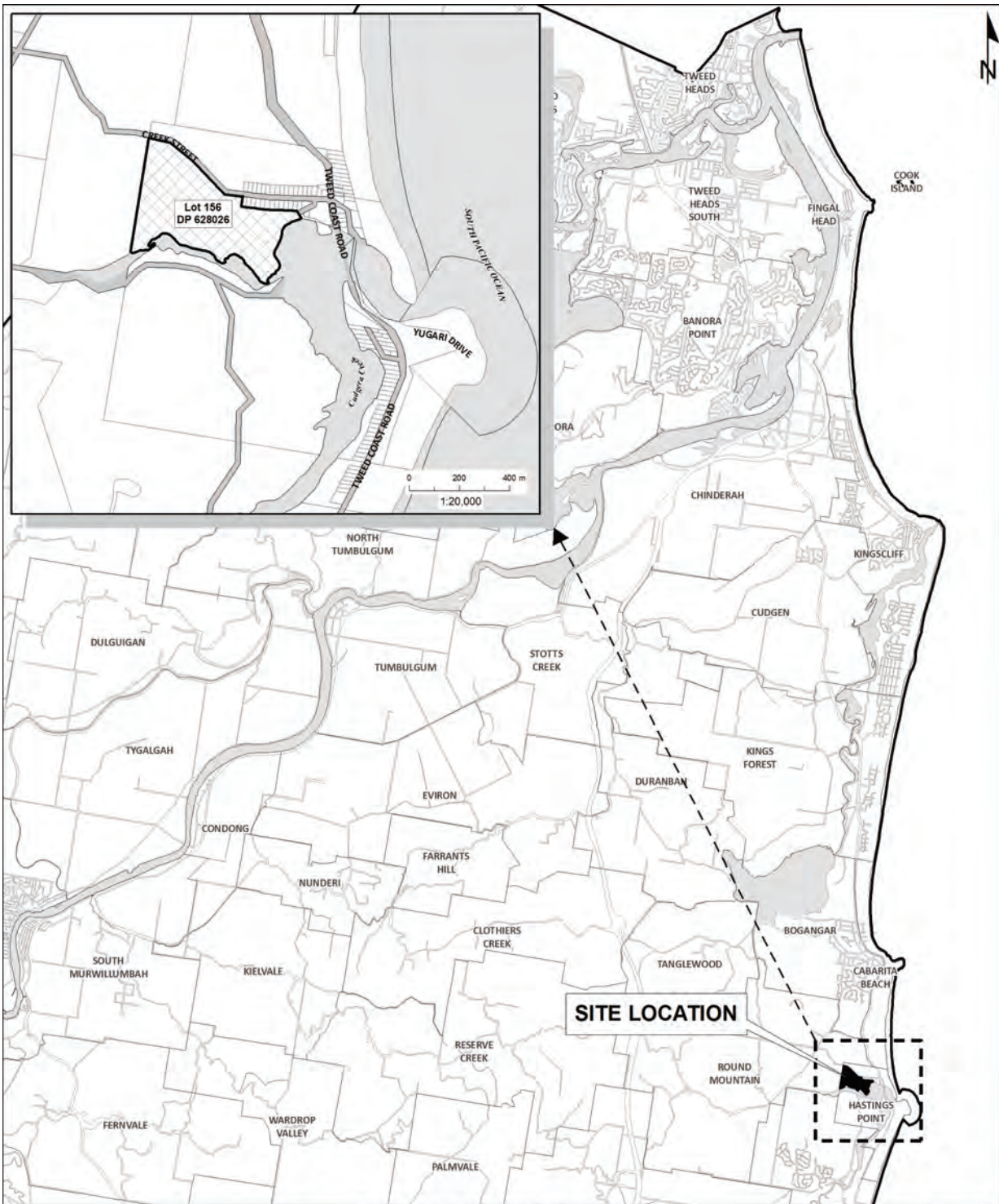
- A total of 45 residential allotments made up of 44 residential allotments (450m² to 718m²), with one large residential allotment sized 6373m² (containing the existing dwelling and the proposed emergency access road), and one residue portion which the applicant proposes to rehabilitate and dedicate back to Council. The development footprint occupies 3.66ha of the 17.77ha site.
- The 45 lot subdivision is proposed to be serviced by 3 internal access roads. Road 1 is designed as a loop road off Creek Street. Roads 2 & 3 are located off road 1 and both of these roads have been designed as cul-de-sacs.
- An emergency access road from proposed road no 1 to Creek Street. The evacuation access has now been incorporated into Lot 45, and will remain in private ownership, with a right of carriageway for emergency purposes only. Maintenance will be funded by a private sinking fund, contributed to by benefitted allotments. This emergency access way has been redesigned to bridge between existing high points, to minimise filling and achieve greater drainage for storm and flood water. DRAINS modelling provided to confirm that assuming conservative external catchments, drainage structures will not restrict Q100 flows.
- Earthworks to fill the site to above the design flood level of RL2.9m. The depth of proposed fill ranges from 0.9m to 2.4m across the site. This would require approximately 53,000m³ of fill which if undertaken over a 6-8 week period would result in 50 trucks per day (100 truck movements). The proposal incorporates fill in some parts to RL3.4m which is 500mm higher than necessary.
- An upgrade of the existing Creek Street to an urban standard.
- An upgrade of the intersection with Creek Street and Tweed Coast Road and inclusion of a refuge south of the intersection.

To substantiate the proposed development the application has been supported by additional information previously not provided such as:

- Additional flood modelling undertaken by BMT WBM.

- MUSIC modelling has been conducted, with a treatment train consisting of roof water tanks and bioretention swales achieving the water quality objectives from Water By Design.
- Revised engineering plans for works within Creek Street.
- A statement from B&P Surveys to justify land tenure.
- SEPP 1 Objection for the minimum allotment size in the 7(a) where the emergency access road is proposed.
- An assessment against the Tweed DCP Section B 23 Hastings Point .
- Revised Statement of Commitments.

SITE DIAGRAM:



LOCALITY PLAN

Lot 156 DP 628026
Creek Street, Hastings Point

0 1 2 3 Km
1:100,000

Filename: z:\esri\planning\mxd\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 June, 2010

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 disclaim 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 "Dial 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.



Cadastre: 25 June, 2010
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Coordinate System - MGA Zone 56
Datum - GDA 94

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TWEED
SHIRE COUNCIL

APPLICANTS DEVELOPMENT LAYOUT:

building envelopes

SITE BOUNDARY
Total Area: 13.77ha

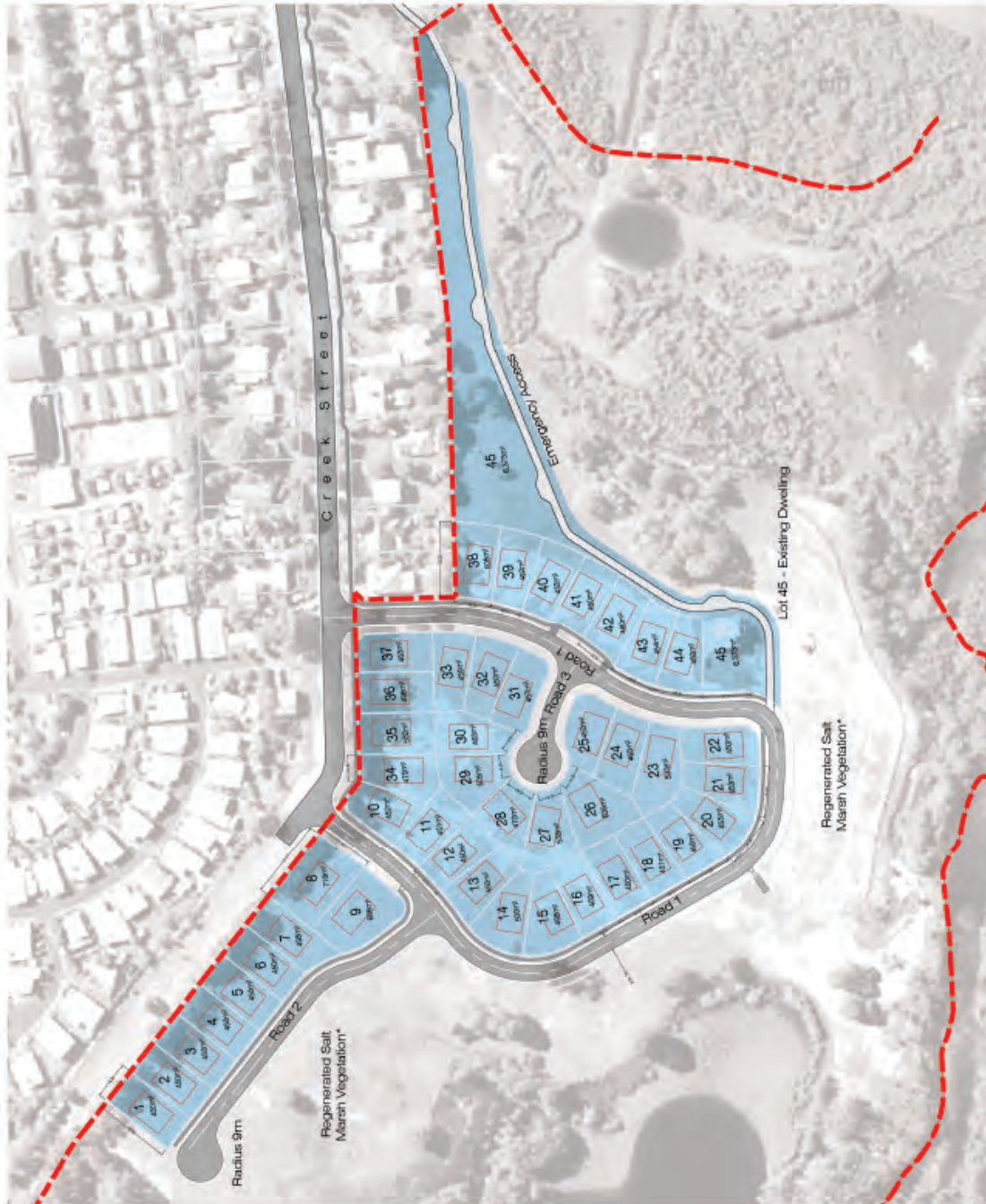
10.00 M

15.00 M

Setbacks

- 6.0 meters to front boundary
- 5.0 meters to rear boundary
- 0.9 meters to side boundary
- 3.0 meters secondary front setback to corner lots

*Refer to Rehabilitation sheet (SU) for further details on existing retained vegetation and proposed areas of regeneration



sheet six

PLANIT

CONSULTANTS

111

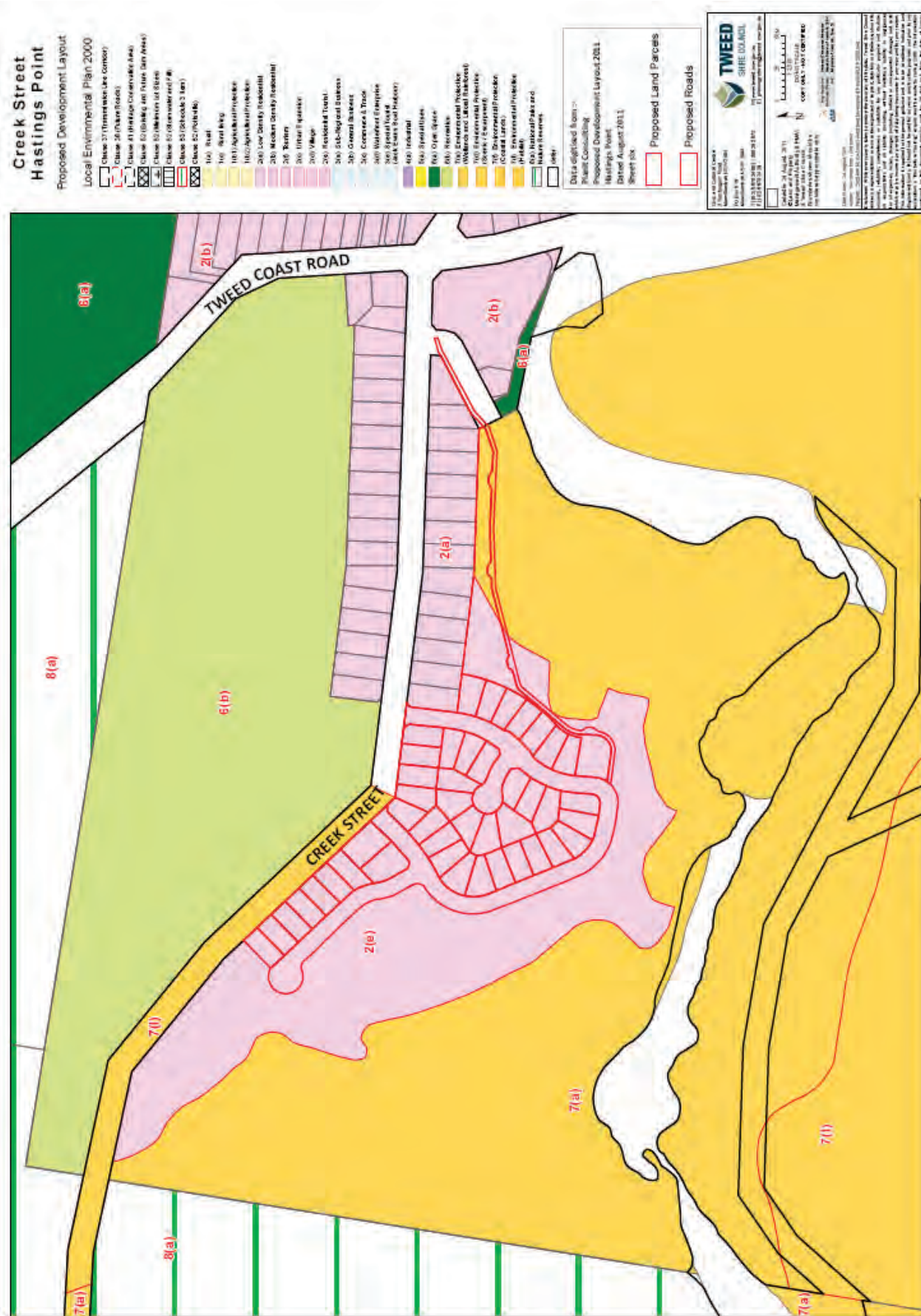


proposed development layout 2011

CREEK STREET HASTINGS POINT

Scale: mts Date: August 2011

DEVELOPMENT LAYOUT OVER TSC ZONING MAP:



DEVELOPMENT LAYOUT OVER TSC 2009 AERIAL:



ASSESSMENT REPORT:

Planning

Zoning, Permissibility, SEPP 1, and Clause 8(2) of the Tweed LEP 2000

The subject site is zoned part 2(e) Residential Tourist and part 7(a) Environmental Protection (Wetlands and Littoral Rainforest). This zoning has changed over the years with the latest alignment being finalised in 2003 (Amendment 44 to Tweed LEP 2000).

The portion of the site zoned 2(e) is approximately 7.02ha with the residue 7(a) land being 10.75ha.

The development footprint occupies 3.66ha of the site (the majority within the 2(e) component and a small section within the 7(a) zone to accommodate the proposed emergency access road).

The applicant claims that this demonstrates willingness by the proponent to acknowledge and suitably respond to the ecological value of the site. The applicant further claims that previous zonings of the site anticipated buffers to be included within the resultant zoned areas (interpreted as the 7(a) zoned portions of the site).

In this regard it needs to be very clear that Council recognises that residentially zoned land does not guarantee a developable footprint. At any point in time proposed developments need to be assessed against the applicable legislation and the general suitability of the project.

Council's previous comments about the proposed development not satisfying the objectives of the 2(e) Residential Tourist zone are still applicable. The development as proposed seeks approval for a conventional low density housing development. Council notes that Draft LEP 2010 proposes to rezone that part of the site to R1 General Residential which would eliminate the need for tourist components, however the application as proposed does not allow for a variety of housing types by incorporating a variety of allotment sizes. The applicant's settlement pattern data is acknowledged and may go some way in addressing the lack of tourist development for this site, however, it fails to recognise that the character of an area is largely dictated by the size of the allotments, the size of the street frontage, and the variety of housing types that come with a variety of allotment sizes. The existing development within Creek Street is predominantly houses on larger allotments of 735m², the proposed subdivision layout incorporating mostly 450m² blocks is inconsistent with the existing character which is meant to be retained in order to uphold the desired future character of the Creek Street precinct (as outlined in Tweed DCP Section B23 Hastings Point). Therefore the appropriateness of the proposed subdivision pattern is still disputed.

The proposed subdivision has now been lodged with a SEPP 1 Objection as proposed Lot 45 and proposed Lot 46 (residue portion) will incorporate 7(a) zoned land with an area less than 40 ha in size as statutorily required in accordance with Clause 20 Subclause 2(a) of the Tweed LEP 2000. Lot 45 proposes to have an area of 7(a) zoned land measuring 2367m² while Lot 46 proposes to have an area of 7(a) zoned land measuring 10.5ha.

The applicant has addressed the principles established by Chief Judge Preston to assess the reasonableness of the SEPP 1 Objection. Council does not concur with the applicant's assessment of the SEPP 1 Objection on the following grounds;

- The application fails to satisfy one of the objectives of the 7(a) zone which states *“to protect the ecological or scenic values of the land”*. The applicant argues that they achieve compliance with this clause as the emergency access road needs to be in this location to satisfy Tweed DCP A3 and furthermore that Council did not want to maintain such access way and therefore it must occur within Lot 45. These arguments do not demonstrate compliance with this zone objective. Tweed DCP A3 states that *“New Subdivisions – where total area of urban zoned subdivision land, including residual lots, exceeds 5 hectares the subdivision is to have high level road evacuation route(s) to land above PMF level, accessible to all allotments via (as a minimum) pedestrian access at or above design flood level not exceeding 100m in length”*. Council has not requested the proposed emergency access route (as proposed) nor previously endorsed its location. The proposed emergency access route may satisfy the provisions of Tweed DCP A3 but it fails to satisfy the 7(a) zone objective, creates an unacceptable amenity outcome for existing residents and would destroy some areas of significant ecological status. This element of the SEPP 1 objection is not supported.
- The application fails to satisfy the objectives of the Environmental Planning & Assessment Act 1979 (the Act). The applicant claims that compliance with the minimum allotment size would prohibit the use of the land thus not complying with Section 5(a) (i) and (ii) of the Act which relate to promotion and coordination of the orderly and economic use and development of land. The applicant fails to weigh up all the objectives of the Act which also include:
 - vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
 - (vii) ecologically sustainable development, and*

As discussed later in this report the subject site has a high ecological status and the development as proposed has failed to adequately consider this constraint. Therefore this element of the SEPP 1 objection is not supported.

- Chief Justice Preston notes there is a public benefit in maintaining planning controls. The applicant claims that in this instance enforcing compliance would effectively prevent the land from being developed and waste 2(e) zoned land. This comment is not concurred with. The subject site has some development potential but it must be done in response to the sensitive coastal location. The proposed subdivision is not in character with the existing environment and would have a negative impact on the amenity of the existing residents and negatively impact on the ecological status of the site. In this instance the development as proposed is not in the public interest however a more sensitive development could be investigated. Therefore this element of the SEPP 1 objection is not supported.

The applicants SEPP 1 objection is disputed on every aspect and accordingly it is recommended that the NSW Department of Planning and Infrastructure refuse the

application as the SEPP 1 objection is unfounded. The standard in this instance is not unreasonable or unnecessary.

In addition to the application requiring a SEPP 1 Objection the proposed emergency access road (best defined as a Road in accordance with Tweed LEP 2000) is an Item 3 matter within the 7(a) zone which means that the proposed road must be assessed against the provisions of Clause 8(2) of the Tweed LEP which states:

- (2) *The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:*
 - (a) *the development is necessary for any one of the following reasons:*
 - (i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
 - (ii) *it meets an identified urgent community need,*
 - (iii) *it comprises a major employment generator, and*
 - (b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*
 - (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*
 - (d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

To address (2)(a)(i) the applicant claims that the emergency access road needs to be in this location to satisfy Tweed DCP A3 and furthermore that Tweed DCP B23 restricts significant works being done to Creek Street which would operate as an alternative to the proposed emergency access road. The applicant fails to acknowledge that it is the proposed subdivision that triggers the above mentioned criteria and that an alternative development type/density may not require the same provisions. Therefore the applicant's argument in this regard is not supported.

To address (2)(b) the applicant claims that Council's intent to maintain Creek Street prohibits alternatives to the emergency access road. As stated above the applicant fails to acknowledge that it is the proposed subdivision that triggers the above mentioned criteria and that an alternative development type/density may not require the same provisions.

To address 2(c) the applicant states:

"The proposed road is minor in scale and visually has little to no impact. The emergency access road is not visible directly from either Creek Street or the significant vantage points identified in Section B23 of the Tweed Development Control Plan 2008. The visual impact of the proposal is assessed in the supplied Visual Impact Assessment.

Furthermore the areas around the proposed emergency access roadway will be planted out with a range of additional ground covers, sub canopy and canopy trees. Refer to sheet 7 of the Statement of Landscape Intent. Note, the planting modules are to be such that sight lights (sic) are maintained for residents behind. This landscaping will effectively integrate the emergency access into the surrounding area."

These comments are strongly objected to. The proposed emergency access road will comprise of a 3m concrete pavement, 0.25 gravel shoulders, 3.5m wide passing bays and will need to be filled to an average height of RL2.95m AHD with 1 in 3 batters. This is occurring next to an estuary within close proximity to existing residences facing Creek Street. The proposed emergency access road will have a negative visual impact for the residents of Creek Street. Please see below photograph showing the approximate location of the emergency access road behind existing residential properties.



Photo: Approximate location of emergency access road

This photo clearly shows that the proposed emergency access road will have a significant visual impact on the existing residences.

To address 2(d) the applicant states:

The proposal is consistent with the second stated secondary objective of the 7(a) Environmental Protection (Wetlands & Littoral Rainforests) zone. The secondary objective of the 7(a) zone is listed as follows:

Secondary Objective

- *to allow other development that is compatible with the primary function of the zone.*

The proposal is for an emergency access road partly located on land zoned 2(e) Residential Tourist and 7(a) Environmental Protection (Wetlands & Littoral Rainforests). The part currently zoned 7(a) to which the emergency access road is to be located is cleared of vegetation with exception of a variety of grass ground covers.

Reference is made to the detail terrestrial flora and fauna survey undertaken in support of this application.

The primary function of the zone is clearly to protect Wetlands and Littoral Rainforest areas from unsuitable development. As no wetland or littoral rainforest vegetation is located in this area the proposed roadway will cause no damage to any wetland or littoral rainforest vegetation and is clearly 'other development' which is compatible with the primary function of the zone.

Council's assessment of the ecological importance of this site is detailed below. Whilst part of the proposed emergency access road is proposed over cleared land the far eastern portion of the proposed road will require filling of mangroves and destruction of vegetation. This is shown from Council's GIS Imagery 2009



The proposed development does not meet the aims of the Tweed LEP 2000 and fails to satisfy the primary objective of the 7(a) zone which states *"to identify, protect, and conserve significant wetlands and littoral rainforests"*.

Tweed DCP Section B 23 – Hastings Point Locality Plan

The applicant's application now incorporates an assessment against this section of the Tweed DCP. However, this assessment is not concurred with. The applicant's assessment repeatedly states that the subdivision will not alter the character of the area, will not negatively affect existing residences and will protect the foreshore areas with little substantiating evidence. The applicant relies heavily on a visual analysis which Council considers to be significantly flawed.

The Visual Impact Assessment shows existing vegetation along the Christies Creek foreshore (vantage Points 1 and 2) with heights up to 12.5 metres from existing ground level (15.5 metres AHD), which diagrammatically suggests that there is a solid wall of vegetation capable of shielding any development on the site (as shown in the cross-sections for the same vantage points). One of the key strategies identified for the Creek Street Precinct (Tweed DCP B23) was to “Ensure that new lots do not change the view corridor”. While a few isolated trees stand above the mangroves rimming the creek, there is no continuous visual barrier to development to a height of 12.5 metres above existing ground level as suggested in the diagrams presented in the Visual Impact Assessment. While there is discussion elsewhere in the applicants Preferred Project Report regarding rehabilitation of salt march and “low quality areas” generally, there is no mention of an intention to revegetate with trees capable of reaching 12.5 metres in height; this important section of the view field and create the visual barrier as presented in the revised report.

The DCP specifically outlines the future desired character of Creek Street as follows

“4.2.2 Strategy and Desired Future Character

Creek Street is to retain its role, function and character as a quiet low scale residential street. The street is to retain its green verges, deep landscape setbacks and either no fences or low and open front fences. The termination of the Creek Street view corridor at the bend in the street protected for its existing natural and vegetated qualities.

The natural environment along the foreshore of Christies Creek is to be protected and restored where clearing and changes to the landform have occurred.

The caravan park is to retain its current use as a multi-functional accommodation and recreation area.

Buildings within the precinct are to generally be single residential dwellings with some duplexes.

Any new subdivisions; if approved, are to ensure that the Creek Street frontage; including setbacks, lot widths, building type and building style and landscaping, matches the existing street.

Any new streets; if approved, are to provide visual and physical access to public open spaces, direct visual connection to Creek Street and to the creek. The design of streets is to provide for view corridors that terminate on natural areas rather than buildings.

The design of any potential new streets and houses within flood affected areas will not result in adverse impacts to the natural and visual qualities of the precinct, nor will it affect the amenity of neighbouring lots or the views throughout Hastings Point.”

The development as proposed does not protect or restore the natural environment along the foreshore. The proposed emergency access road incorporates extensive fill within a sensitive estuarine environment. In addition the visual impact of this proposed emergency access road is unacceptable.

The proposed subdivision layout is not in character with the scale of the existing development. The proposed lot sizes of 450m² are out of character with the existing larger

lots (averaging 735m²). The allotments backing onto Creek Street are not consistent with the existing Creek St properties in regards to lot widths or size as encouraged by the DCP.

Land Tenure

Council previously stated that *“the proposal fails to adequately demonstrate that the proposed road is within the applicant’s land. Local testimony indicates that the water level from the adjoining Creek comes within 7-10m from the rear of properties in Creek Street (particularly Number 8 Creek Street). This may affect the applicant’s land parcel as the applicants boundary is dictated by mean high water mark not a hard survey line. The Department of Planning should investigate this matter further”*

The applicant’s amended report now incorporates a statement from B&P Surveys and a plan showing post 1981 site works which they claim to be the boundary of Lot 156. They claim that to completely review this mark would require extensive field survey.

Council is of the opinion that to truly establish the correct mean high water mark this extensive field survey (over a long period including both spring and neap tides) should be undertaken. This data could then be used to better establish ownership of land and true environmental buffers.

Ecology

Overview

The Development Assessment and Natural Resource Management Units of Council have jointly reviewed the amended Preferred Project Report (PPR) dated August 2011 for Major Project Application (MPA) MP06_0153 relating to a proposed 45-lot subdivision at Lot 156 DP 628026 at Creek Street, Hastings Point. The comments and discussion provided below is a distillation of ecological issues considered from both a development assessment and future ongoing land management point of view and therefore provide holistic consideration of the implications of the proposal on site ecology.

Detailed ecological comments have previously been provided at each stage of the Major Project application, such that this is the fourth set of comments submitted. On each occasion significant potential and likely impacts arising from the development have been highlighted with recommendations to substantially reduce the development footprint yet this has not occurred. This is the primary issue of ecological concern.

This analysis provides a summary re-iteration and emphasis of the ecological values of the site and the legislative and policy provisions of relevance to site ecology, the provisions of many of which are contravened or not satisfied in the proposal.

In summary, the development as proposed in the amended PPR cannot be supported from an ecological perspective for the following reasons:

1. The development is likely to result in a significant impact to threatened species through direct damage to and loss of habitat and indirect impacts associated with alteration of hydrological regimes and water quality, greatly increased lighting and noise, increased traffic, hard surfaces and potential trampling through uncontrolled access to the creek.

2. The development provides inadequate buffers to sensitive riparian areas and Endangered Ecological Communities.
3. The development is not in accordance with relevant legislation and policy as outlined below.
4. The development does not adequately consider sea level rise impacts.

The reasoning behind the recommendation that the development be refused are contained in the following pages. It is noted that the applicant has stated that ecological benefit will be derived from site restoration activities that will not be undertaken if the development does not proceed. However, the likely impacts of the development must be weighed against any benefits and in this case on balance, it is considered that negative impacts are likely to outweigh benefits that in any case are yet to be quantified and detailed. At the very least, mowing and slashing in the environmental protection zone without development consent must cease and thus regeneration evident in these areas is likely to recreate the original communities without the need for much assistance.

Ecological Value of the Site

All parts of the site that remain in a largely unaltered state are of very high ecological status and are highly sensitive to impacts arising from development. The site has a total of around 1km of creek frontage to Cudgera Creek and its' tributary Christies Creek (site is located at their confluence); both of which are "small barrier estuaries highly regarded by the local communities with substantial productivity and biodiversity values" (TCEMP 2005). The mouth of Cudgera Creek, unlike Cudgen Creek to the north and Mooball Creek to the south, does not have training walls to keep the mouth open and closes on occasion (for example in 2005). This means that pollutants have a greater ability to accumulate due to reduced tidal flushing. The water quality in this creek is already under pressure and requiring improvement, in particular from agricultural inputs upstream in Christies Creek catchment and sedimentation arising from subdivision upstream in Cudgera Creek catchment.

The western boundary of site adjoins Cudgen Nature Reserve and contains sensitive estuarine riparian environments, Endangered Ecological Communities (EECs) and threatened species and their habitats, as well as additional important habitat values including hollow-bearing trees, large active raptor nests (three in tree proposed for removal), nectar and fruiting resources including winter-flowering Eucalypts and Primary Koala Food trees proposed for removal.

The site is located within the Coastal zone in a *sensitive coastal location* as defined by SEPP 71, an *environmentally sensitive area* under the SEPP Exempt and Complying Development Codes 2008, is adjacent mapped SEPP 14 wetlands and bounded by two *environmentally sensitive areas of State Significance* under the SEPP (Major Development).

The site is mapped as:

- Key habitat - Office of Environment and Heritage mapping (most of site);
- Regional Fauna corridor: Cudgen Link (focussed on Blossom Bat and Long-eared bat) -Office of Environment and Heritage mapping (all of site);
- Key Fish Habitat (one-third of site);
- Primary and Secondary A Koala Habitat (SW corner);
- Within Koala meta-population boundary (much of site) – Tweed Coast Koala Habitat Study;

- Within 20m of mapped SEPP 14 (eastern edge);
- A Wildlife Atlas record for Black-necked Stork on the property (northern part of site);
- Surrounded by Nature Reserve to the south, west and north and estuary to the east (see Figure 3 below);
- Containing land of *very high* ecological value and *high* ecological sensitivity and
- Ranked within the top 100 (No. 28 in W1 overall category) of some 500 wetland and riverine ecosystems in the Tweed studied as part of the Comprehensive Coastal Assessment process (DEC 2006).

Relevant Legislation and Policy

Relevant legislation and policy is listed and discussed below in relation to the development.

- Section 5A of the EP&A Act requires consideration of the potential for a significant impact on threatened species, populations and ecological communities. In relation to the Koala (Primary habitat and source population boundary mapped on the site); the Bush Stone-curlew (known to roost and potentially breed on the site), Saltmarsh, Swamp Sclerophyll Forest and Subtropical Coastal Floodplain Forest Endangered Ecological Communities, it is considered that insufficient analysis in terms of both direct (loss of habitat) and indirect (changes to hydrological regimes through filling and hard surface areas, greatly increased noise and lighting in a presently quiet and relatively dark environment) impacts have been insufficiently considered to be confident that a significant impact can be avoided.
- *SEPP 14 Coastal wetlands* requires that works involving draining, constructing a levee, filling or vegetation clearing are designated development. Whilst the development does not propose such action directly on the mapped wetland, such works are proposed (clearing of vegetation for bridging) within 20m of the mapped boundary. In a wetland environment containing acid sulfate soils and where excavation is proposed, impacts on the mapped wetland area will be difficult to avoid.
- *SEPP 44 Koala Habitat* requires a Koala Plan of Management to be produced for 'core' Koala habitat. Whilst the number of Primary Koala food trees may not represent 15% of the site, insufficient survey has been undertaken to exclude Koala usage of the site and Primary Koala food trees are proposed for removal. The Tweed Coast Koala Habitat Study (Biolink 2011) has highlighted that Koala aggregations remaining on the Tweed Coast are already regarded as below the minimum viable populations size and are at real risk of extinction within the next three Koala generations in the absence of active intervention. An application to the Scientific Committee to list the Tweed Coast Koalas as an Endangered Population under the Threatened Species Conservation Act 1995 is currently in preparation. The first workshop towards improved habitat and connectivity focussed on how to increase habitat area and/or carrying capacity, and improve potential for recruitment, dispersal and genetic exchange. The south western area of the site provides an essential connection between known populations at Koala Beach and Primary Habitat in Cudgen nature reserve, yet is not considered from a Koala habitat perspective. Further analysis is required in this regard.

- *Tweed LEP Clause 25* requires that wetlands are preserved and protected in the environmental and economic interests of the area of the Tweed and Council must consider disturbance of native flora and fauna as a result of intrusion by humans through a management plan. No management plan has been provided and these impacts have not been well considered. The Preferred Project Report states that 'foreshore access should be controlled and minimised to protect the riparian vegetation' yet no mitigation measures were provided (apart from providing a single access point to the lagoon) to prevent access to the creek. A plan is required to prevent uncontrolled access to the creek and damage to riparian vegetation, particularly saltmarsh including such matters as; erection of fencing during restoration period, signage, inspections of restoration area to identify any tracks and remediation of informal tracks Conflict exists between managing restoration areas (particularly saltmarsh which is very susceptible to trampling) and allowing public access to the creek, and this conflict has not been resolved within a management plan.
- *Tweed LEP Clause 31* requires that consent not be granted unless the development is compatible with any coastal, estuary or river plan of management; will not have a significant adverse effect on scenic quality, water quality, marine ecosystems or biodiversity of riverine and estuarine ecosystems and adequate arrangements for public access are provided where appropriate. The development footprint conflicts with the Tweed Coast Estuaries Management Plan in that 50m buffers are not consistently provided and the matters listed insufficiently considered.
- *Tweed DCP A5 Subdivision Manual* requires a minimum 50m buffer to Coastal Wetlands. The emergency access road is proposed within the 50m buffer to SEPP 14 wetlands. The DCP section also requires a 50m buffer to major creeks (including Cudgera Creek and major tributaries). Further, it requires that Ecologically Significant Vegetation (includes riparian vegetation and EEC's) are to be preserved and the layout must allow small stands of vegetation and individual trees to be retained. The development requires removal of individual and stands of Ecologically Significant Vegetation. The DCP states that it must be ensured that development does not result in pollution or adversely affect waterways, yet the relevant stormwater and erosion and sediment control management plans allow some for pollution to occur into the creek. Given the sensitive nature of this site this level of pollution needs to be reduced by increasing the buffers which would allow for greater infiltration before reaching the Creek. Finally, it requires that land containing "core Koala habitat" can only be developed in accordance with a management plan. Given the source population mapping of the Tweed Coast Koala Habitat Study 2011 and the presence of Primary and Secondary A Koala habitat on the site, it is considered that insufficient survey has been undertaken to conclude that the site is not core Koala habitat.
- The *NSW Coastal Design Guidelines* specify that "setbacks may need to be marked and their vegetation preserved. Setbacks should where possible be increased to 100m or more where they are adjacent to ecologically sensitive areas or in situations where the coastal erosion hazard requires greater distance." Buffers are as little as 15m in two important areas on the site, one of which is intended to contain a road and associated batters.

- *Department of Primary Industry's (Fisheries) Policy and Guidelines Aquatic Habitat Management and Fish Conservation 1999* requires a buffer of "at least 50 metres wide, increasing to 100 metres or more where they are adjacent to ecologically sensitive areas". As previously stated buffers are as little as 15m to riparian vegetation.
- The "*North Coast handbook for avoiding and reducing rural land use conflict and interface issues*" (Final Draft) 8 October 2007 prepared by Rob Learmonth, Rik Whitehead, Bill Boyd, Stephen Fletcher, in consultation with the North Coast Land Use Conflict Project Working Group, sets a minimum buffer distance of 100 metres between residential areas and wetlands and 50 metres between residential areas and native vegetation / habitat.
- *DECC Guidelines for development adjoining nature reserves* require consideration and avoidance of adverse impacts on DECC estate arising from development, including stormwater impacts. Given the input of stormwater (freshwater with pollutants) into saltmarsh areas and the overlap of saltmarsh into the adjoining Nature Reserve (now visible with revised mapping), this matter is likely to be contravened.

Amended PPR Assessment

The Major Project Application and Preferred Project Report were not supported due to the likely and potential negative impacts the proposal would have on significant conservation and recreational values of Cudgera and Christies Creek. Issues of concern included:

- inadequate treatment and discharge of site stormwater;
- the unknown impact of extensive site filling and subsequent altered hydrology on groundwater dependant floodplain communities of significant conservation value;
- the size of the development footprint and resultant inadequate buffers to Endangered Ecological Communities (EEC), riparian vegetation and Christies Creek; regarded as overdevelopment of such a sensitive site.

This review of impacts to flora and fauna for the recently submitted Amended Preferred Project Report for this site has been based on the following:

- A review of the Amended Preferred Project Report August 2011, Proposed Development Layout August 2011, Ecological Assessment Addendum August 2011 and Engineering Impact Assessment August 2011;
- An inspection of the site on 25 August 2011 where the proposed emergency evacuation route and entire riparian and adjacent areas were examined in detail;
- Revised site-specific mapping of saltmarsh (2009) and other vegetation communities on the Lot 156 site recently provided to Tweed Shire Council. This mapping was initially undertaken by Murray and James in 2001 and formed a data source for the Tweed Vegetation Management Strategy 2004, however, the level of detail within the mapping at a site specific level was lost during vegetation layer formation due to the scale used. The site specific layer was updated in 2009 using aerial photography interpretation. This has been relied upon in preference to the vegetation mapping provided in the MPA, due to the coarseness of and observed omissions in the MPA vegetation mapping (see Figure 1 below).

- Revised mapping of Koala meta-population (source population) boundaries and Koala habitat categorisation at a scale able to provide site-specific detail. This mapping was available only in Adobe Acrobat format when the previous PPR comments were submitted (see Figure 2 below).



Figure 1: Revised site-specific mapping of saltmarsh (2009) and other vegetation communities



Figure 2: Koala activity and linkages around the site.

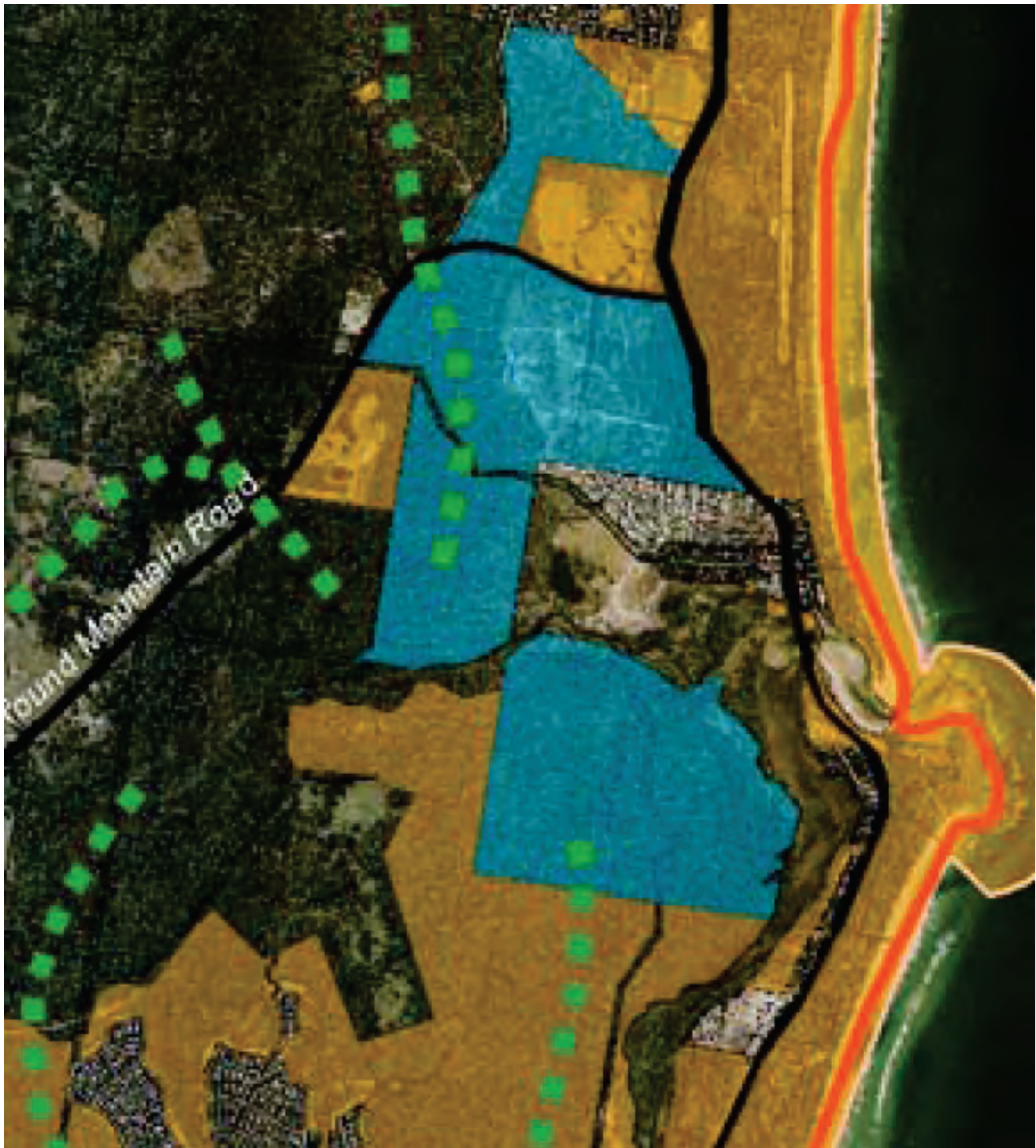


Figure 3: Nature Reserve/Crown/Council surrounding the site.

A review of the submitted information has identified that there has been no change in, or reduction of, the development layout and footprint. Some changes in construction and operational aspects of the development which reflect on flora and fauna issues are recognised including:

- Acknowledgement that the whole site provides potential habitat for the threatened Bush-stone Curlew and commitment to 40km/hr internal speed limit and banning cats and dogs from the development.
- Consideration of vegetation along Creek Street as an 'arguable' EEC Swamp Sclerophyll Floodplain Forest, and an additional commitment that revegetation would be undertaken on site to compensate for the loss of trees from Creek Street at a ratio of 10:1.
- Proposed bridging of the emergency evacuation across a drainage pathway at the eastern extent of the site.
- Reduced footprint due to upgrade of Creek Street.
- Water Sensitive Urban Design (WSUD) measures (rainwater tanks and bioretention and grassed swales) to treat stormwater runoff in order to meet the required pollution reduction targets.

Whilst the above changes in construction and operational aspects of the proposal are acknowledged, this review of impacts to flora and fauna at the Lot 156 site reiterates the following key areas of concern which have not been resolved to date. It is on the basis of these issues that the amended Preferred Project Report is not supported.

Consideration of specific issues

Emergency access road

This component of the development is inappropriately located within a 7(a) Environmental Protection zone, and within an area mapped as key fish habitat and within 50m of mapped SEPP 14 wetland. Upon inspection of the proposed alignment it was noted that clearing of vegetation would be required within the unformed Council owned road reserve. The alignment inspection identified areas of Swamp Oak Floodplain Forest EEC, mangroves and saltmarsh species located within the unformed Council Owned road reserve and path alignment. Further, the proposed emergency evacuation path would traverse tidally inundated areas of Christies/Cudgera Creeks (bridged) and is located immediately adjacent or possibly extending into areas of Coastal Saltmarsh EEC and/or Mangrove Forest. As the proposed emergency evacuation path is likely to impact upon significant estuarine vegetation and is inappropriately located within a 7(a) Environmental Protection zone, it is not supported.

Discharge and treatment of site stormwater

It is acknowledged that WSUD has been incorporated into the Amended PPR to improve the quality of stormwater that would be discharged from the site into Christie and Cudgera Creeks. However significant concerns still remain including:

- All new stormwater outlets would discharge stormwater directly into existing saltmarsh areas or proposed saltmarsh construction areas. Five new stormwater outlets would be located *within* the proposed 15m buffer to existing or proposed

saltmarsh construction areas. These saltmarsh rehabilitation areas would be significantly compromised by the discharge of stormwater.

- The quantity of stormwater discharged from the site would increase considerably (greater than 50% increase in 5 year event) when compared to the current (pre-development) site stormwater runoff. No comparison has been made for smaller events. These concentrated and increased flows will be directed into existing saltmarsh areas or proposed saltmarsh construction areas. No measures have been taken to mitigate these increased and concentrated stormwater flows except to provide stormwater flow dissipaters on outlets.
- Even with the stormwater quality improvements that have been modelled as a result of the proposed use of WSUD measures, there would still be a net increase in pollution from the site to Christies and Cudgera Creeks. Modelling has demonstrated that WSUD measures would reduce Total Suspended Solids, Total Phosphates and Total Nitrates by approximately 85%, 70% and 45% respectively. However residual pollutants would still enter receiving waters. This further emphasises the need for appropriately sized and vegetated buffers to ensure they can fulfil the capacity of removing residual pollutants from stormwater.
- The impact that altered hydrology is likely to have on groundwater dependant and estuarine ecosystems on and adjacent the site remains a concern.

Proposed Saltmarsh Construction

The Saltmarsh Construction Report (Sainty and Associates March 2011) is deficient in its assessment of saltmarsh on site and disregards threatening processes which are likely to affect both the health of existing saltmarsh and success of proposed saltmarsh construction efforts. Whilst the concept of preserving existing saltmarsh and reconstruction of additional saltmarsh on Lot 156 is supported, the Sainty and Associates report is considered inadequate for the following reasons.

It fails to consider key threats to saltmarsh including altered hydrology, sea level rise and stormwater. Impacts resulting from concentrated stormwater discharge into existing and proposed saltmarsh construction areas are not considered even though discharge of stormwater into saltmarsh is known to alter salinity regimes, increase nutrient levels, facilitate the spread of introduced species and in the case of extended stormwater inundation, result in the dieback of saltmarsh species and alteration in species composition.

The likely impact of sea level rise is also not adequately considered. A proposed 15m buffer, compromised by the inclusion of stormwater infrastructure, would provide inadequate space for the landward migration of saltmarsh with sea level rise. The Sainty report suggests that "lifting" saltmarsh may be a possibility as sea level rises, however, such action is considered impractical (presumably requiring harvesting of saltmarsh and holding this whilst the land is filled, then replacing), of an unknown outcome (no previous research or monitoring of such actions has been provided) and costly to the community given the land will be under Council control.

The Sainty and Associates report also acknowledges the presence of only a single area of saltmarsh on the site, whereas extensive areas of saltmarsh occur on the Lot 156 site. Any saltmarsh rehabilitation report should undertake an analysis of current and future impacts as a result of the proposal to this vegetation community across the entire site, to ensure its future management and viability.

The Sainty report states that natural colonisation, patch planting and/or total planting would be used to construct approximately 1ha of saltmarsh. If planting is employed using donor areas of saltmarsh on the site, the impact to the donor site needs to be assessed. Research has shown that donor saltmarsh sites may take many years to recover and their viability may be compromised.

Inadequate buffers

Consideration of the intent of all relevant legislation and policy relating to coastal estuarine foreshores has shown that the following outcomes are expected:

- protection and enhancement of the riparian zone;
- maintaining or improving water quality;
- consideration of visual amenity, coastal processes, the appropriateness of public access and of the dedication of riparian zones as public land.

To achieve such aims requires a buffer between any development and the estuary including its' associated riparian communities. Buffers to waterways are specifically required by Tweed LEP (Clause 31), but it is only within the Tweed DCP A5 Subdivision; Tweed Coast Estuaries Management Plan; Department of Industries and Investment (Fisheries) *Policy and Guidelines: Aquatic Habitat Management and Fish Conservation 1999* and the Department of Water and Energy's *Guidelines for controlled activities: Riparian Corridors* that specific widths between any development and the creek bank are discussed. With regard to the subject site on Cudgera Creek, the widths in order of documents listed above are 50m; 50m; 50m to 100m; and 40m.

It is noted that Council has previously accepted reduced buffers down to a minimum of 20m in Hastings Point, however, this applied only to infill development where medium density zoning objectives could not be achieved as two-thirds of the site was covered by a 50m buffer and asset protection zones and setbacks were required beyond. This is not the case here as the site is regarded as a Greenfield development and a reasonable development footprint remains once the 50m buffer is applied (See Figure 1 above).

Given:

- the significance of the site, including its proximity to state significant wetlands and;
- uncertainties with regard to climate change; and
- lack of formal public access for this part of the creek;

a 50m wide buffer of densely planted local native vegetation is the minimum acceptable riparian buffer for the site to enable ecologically sustainable development and compliance with all relevant legislation.

According to Figure 1 above, which shows a 50m buffer to mapped areas of saltmarsh and other riparian vegetation (but does not include mapping of large areas of mangrove forest), there is considerably overlap between the development footprint and a 50m development buffer. The current application is able to achieve this minimum whilst retaining a reasonable development footprint.

A minimum 50m estuarine riparian buffer is specified in the Tweed Coast Estuaries Management Plan 2004 – 2008 for Cudgen, Cudgera and Mooball Creeks. This document specifically refers to the Creek Street development site with an action stating “*adhere to minimum 50m buffer zone of riparian vegetation to remain intact on new development sites*” and performance measures including “*specified areas on the Creek Street property rehabilitated*” and “*any future development on the Creek Street property does not negatively impact on rehabilitated area, existing vegetation, riparian buffer zone, aquatic habitats, and associated fauna*”

Accordingly, the amended Preferred Project Report is not supported as the development footprint extends considerably into the required minimum 50m buffer to riparian vegetation of Christies Creek.

Council in its submission on the Preferred Project Report stated a reduced buffer to areas of Saltmarsh EEC on the western side of the development could be considered acceptable, provided 1ha of saltmarsh was created to compensate for indirect impacts to this community. This decision has been reconsidered, and a minimum 50m buffer is now recommended, based on:

- the inadequacies in the Saltmarsh Construction Report which bring into question whether 1ha of saltmarsh can be constructed and maintained on site, with the threats of sea level rise, altered hydrology and stormwater discharge not considered;
- management of site stormwater including proposed discharge of concentrated stormwater flows within the 15m buffer of existing saltmarsh and proposed saltmarsh construction areas; and
- A site inspection which revealed that ongoing slashing/mowing of Saltmarsh and other regenerating riparian communities is occurring, suggesting vegetation mapping provided in the Major Project Application may be too coarse to accurately reflect the boundary of riparian vegetation (and hence buffer distances). Consequently updated (2009) mapping of Saltmarsh and other vegetation communities on the Lot 156 site has been used to determine buffer distances in relation to the development footprint.

Flooding, Stormwater & Roadwork's

Previous versions of the applicant's proposal were considered unsatisfactory having regard to flooding, stormwater management and roadwork's (particularly in relation to the proposed upgrades to Creek Street).

The following table sets out the issues that were unresolved by the previous version of the preferred project report, the applicant's response in the amended preferred project report, and a revised assessment of the matters, for the consideration of Council and the Department of Planning and Infrastructure.

Issue	PPR Response	TSC Assessment	Action
1. Flooding			
i. Request flood impact assessment results for additional scenarios: a) the 100 year ARI event (current day conditions) for the	Additional flood modelling undertaken by BMT WBM. Refer Addendum Report (Appendix E). Consultants have updated the TSC	The additional model runs show little or no adverse flood impact. For catchment dominated events a marginal improvement in peak flood levels is even achieved. The consultants were questioned on these observations and it is apparently due to proposed drainage	The applicant's consultants have utilised the best and most current flood model that is available for the Hastings Point area to demonstrate that

Issue	PPR Response	TSC Assessment	Action
<p>catchment dominated flood only (assuming MHW ocean conditions).</p> <p>b) the June 2005 flood event.</p>	<p>model with latest ground level survey provided by the applicant.</p> <p>Post development scenarios include Creek Street upgrade and drainage works (within level of resolution of the model).</p> <p>Results confirm no significant flood impacts for Q100 MHW case, and some localised minor impacts for the June 2005 scenario. Additional perimeter drainage has been designed to counter these impacts (refer separate Opus report).</p>	<p>and reshaping works adjacent to the creek and environmental areas, which allow for increased flows around the development compared to pre-development conditions.</p> <p>Local residents have provided Council officers with a number of photographs of recent storm and flood events, which dispute the inundation patterns shown on the flood mapping, particularly for the June 2005 event. The residents believe that these photos provide evidence that the areas shown to be dry in the flood mapping were inundated to a significant level in the June 2005 flood.</p> <p>The consultants were questioned on these observations, and a comparison was made between the digital elevation model (DEM) used for the TSC model, based on 2007 airborne laser scanning (ALS) data, and the ground survey data provided by the applicant. These were shown to correlate well. The 2005 event was used as a calibration event for Council's Coastal Creeks Flood Study. This calibration modelling was within 120mm of an observed point obtained by BMT WBM from a Creek Street resident adjoining the development site. While this discrepancy would affect the inundation extent given the flat nature of the site, the residents' observations of flood depth do not correlate with the calibrated flood modelling.</p>	<p>the proposed filling and associated development will not adversely impact on local flood behaviour and neighbouring properties.</p> <p>This issue has been adequately addressed, subject to the Department of Planning and Infrastructure's consideration of resident submissions opposing the accuracy of the flood modelling.</p>
<p>ii) Provide additional modelled scenarios to explore options to rectify changes in flood behaviour due to history of site alterations.</p>	<p>Not addressed</p>	<p>It is considered that as the development is required to undertake various rehabilitation works within environmental areas, and given the past history of floodplain modification, options for reopening flow paths within the site to benefit local flooding behaviour should be explored.</p> <p>This request has repeatedly been ignored by the applicant.</p>	<p>Additional flood modelling is recommended, however only if such works are considered feasible given the ecological and environmental constraints of the area.</p>
<p>2. Stormwater Management</p>			
<p>i. External Stormwater Catchment Plan (Figure 14.0 Opus Engineering Impact Assessment Statement) is</p>	<p>Catchments within the caravan park have been maintained as per previous submissions, with minor changes resulting from on site</p>	<p>While the issue of catchment boundaries and flow direction has not been corrected in the amended PPR, sensitivity analyses run for the design of drainage structures provides reassurance that worst case stormwater flooding scenarios can be</p>	<p>Amended plans have not been provided, however the issue has been otherwise addressed by downstream drainage design.</p>

Issue	PPR Response	TSC Assessment	Action
unacceptable and must be amended in accordance with credible survey investigation of the external catchments for both minor and major storm events.	survey. A sensitivity analysis was conducted on the catchments, to divert catchment EA towards Creek Street instead of further west, effectively doubling flows from the caravan park, for design of transverse drainage structures for the emergency access way.	adequately catered for in the subdivision design.	
ii. Culvert design through emergency access way to be reassessed based on outcomes of external catchment review above.	Emergency access way redesigned to bridge between existing high points, to minimise filling and achieve greater drainage for storm and flood water. DRAINS modelling provided to confirm that assuming conservative external catchments, drainage structures will not restrict Q100 flows.	<p>The extent of drainage structures is such that with no significant changes to upstream catchments or flow paths, the emergency access road will not cause increased risk of flooding to Creek Street properties.</p> <p>The potential conflicts regarding the access road's location within the environmental protection zone and the amenity of the structure in proximity to Creek Street residences is assessed by Council's planner as detailed above.</p>	Culvert / bridge design satisfactory, from an engineering perspective.
iii. Provide MUSIC modelling results to demonstrate that the stormwater treatment concept will achieve Council's interim stormwater quality objectives for percentage reductions in TSS (80% minimum reduction from untreated urban source node), TP (60% minimum reduction from untreated urban source node) and TN (45% minimum reduction from untreated urban source node) in accordance with Water By Design Guidelines.	MUSIC modelling has been conducted, with a treatment train consisting of roof water tanks and bioretention swales achieving the water quality objectives from Water By Design.	<p>MUSIC modelling results provided, demonstrating compliance with current best practice.</p> <p>Concerns have been raised by local residents and their associates that the Water Cycle Management Plan does not adequately deal with the increased volume of runoff that will result from the development, and how this can be mitigated prior to discharge to environmental areas. This has been discussed above under the ecological comments.</p>	Stormwater quality adequately addressed from an engineering perspective.
3. Road Works			
i. No engineering details of Creek Street upgrade are provided. Of particular relevance to the flooding and	Existing vertical geometry of Creek St to be retained, to ensure existing flow paths and drainage is not altered. Upgraded	<p>Submitted details are generally satisfactory (this matter is discussed in more detail below under the heading General Engineering).</p> <p>Local objectors have raised an issue</p>	Road upgrade generally supported by Council's Engineering & Operations Division, and revised

Issue	PPR Response	TSC Assessment	Action
stormwater issues are any increases in the height of the road formation, and concepts for road drainage, including stormwater quality control.	cross section consists of 7.5m wide seal with infiltration swales (not continuous).	that the proposed road upgrade is contrary to the Hastings Point Local DCP (B23), which seeks to retain the existing road "character". DCP-B23 requires works in Creek Street to comply with a street scaping plan developed with community and stakeholder input. This is yet to be prepared.	engineering plans are considered satisfactory from an engineering perspective.
ii. The preliminary earthworks and erosion control plan does not include any sediment basins.	Proposed to construct perimeter bund around construction area, to contain all internal runoff during construction. Basin sizing provided with plans.	Approach has in principle support, provided it is designed to deal with design storm events, and has adequate measures in place to deal with the discharge of "clean" water and events that exceed the basin capacity.	This issue can be conditioned should the Department of Planning and Infrastructure decide to approve the application.
iii. Creek Street / Tweed Coast Road intersection design is inadequate for the following reasons:	Intersection design amended to comply with relevant standards. Refer Figure 11.0.	Refer below	Refer below
a) It does not show the existing pedestrian refuge in the correct configuration or location. It is currently located immediately north of Creek St (approximately 10m from centreline), not 45m north as shown in the plans.	Existing refuge shown in correct location on Figure 11.0.	Issue resolved	Issue resolved
b) The relocation of the pedestrian refuge further away from Creek St (approximately 55m from centreline) is not supported, as pedestrians whose main desire line is to the south and east (down Peninsula St to the beach and creek) are unlikely to deviate so far to the north and will cross in an unsafe manner closer to the intersection. A more suitable location closer to the intersection must be investigated.	Revised refuge location to the south of the intersection proposed. Requires widening of the road pavement to the west, amended kerb and gully pit locations, and relocation of footpath to avoid existing power pole.	Submitted details generally satisfactory, subject to detailed design. Refuge relocation must include provision of street lighting in proximity to the crossing point.	Issue resolved

Issue	PPR Response	TSC Assessment	Action
c) The proposed refuge design does not comply with AS1742 / Austrroads standards as it does not achieve the minimum median dimensions and conflicts with the provision of the right turning lane.	Refuge provided in accordance with AS1742.	Submitted details generally satisfactory, subject to detailed review of proposed line marking.	Issue resolved
d) The relocation of the eastern kerb line on Tweed Coast Road may create conflicts with existing driveway accesses and services. Further details, including proposed driveway long sections must be provided.	No changes to eastern kerb now proposed.	Issue resolved	Issue resolved
e) The proposed construction of footpath along the northern side of Creek St is questioned, as the southern side would seem a more logical location, and ties into the existing footpath network.	Footpath proposed along southern side of Creek St to tie into existing Tweed Coast Road footpath. Footpath meanders to avoid existing vegetation, services and drains.	Submitted details are generally satisfactory from an engineering perspective. Local objectors have raised an issue that the proposed footpath is contrary to the Hastings Point Local DCP (B23), which seeks to retain the existing road "character". DCP-B23 requires works in Creek Street to comply with a street scaping plan developed with community and stakeholder input. This is yet to be prepared.	Footpath plans generally supported by Council's Engineering and Operations Division, and the revised engineering plans are considered satisfactory from an engineering perspective.
f) The design of road realignment and footpath works on the north-western corner of the Creek St - Tweed Coast Road intersection requires further detail to take into account the prevailing landform and existing services in this location, and detail the extent of retaining structures required.	Relocation of footpath to southern side of Creek Street reduces works on this corner. Retaining wall still requires modification.	Submitted details are generally satisfactory.	Issue resolved, subject to detailed design.

Issue	PPR Response	TSC Assessment	Action
g) The design of the road and footpath realignment on the north-eastern corner of the Peninsula St - Tweed Coast Road intersection requires further detail to take into account the prevailing landform in this location, and detail the extent of retaining structures required.	No significant works proposed on this corner.	Issue resolved	Issue resolved
h) The plan is at an incorrect scale.	Amended Figure 11.0	Issue resolved	Issue resolved
iv) The emergency access shall be contained within a separate allotment which is to be managed and maintained by equal share by each of the benefitting lots within the subdivision, and not by Council. The application must provide an adequate management regime, linked to land titles, which will ensure the maintenance of the emergency access in perpetuity. Transverse drainage easements, benefitting Council, will be required at each culvert location.	The evacuation access has now been incorporated into Lot 45, and will remain in private ownership, with a right of carriageway for emergency purposes only. Maintenance will be funded by a private sinking fund, contributed to by benefitting allotments. Refer amended statement of commitments.	Generally satisfactory, can be conditioned.	Issue resolved

The proponent has generally satisfied the previous request for information in the amended Preferred Project Report to address the engineering and infrastructure issues raised.

Whilst Council's Engineering and Operations Division is now satisfied with the amended plans, the recommended engineering solutions cause conflict for Council's Planning and Ecological considerations. On review of these conflicts holistically it is considered that the application warrants refusal specifically having regard to the inappropriateness of the emergency access road and the inappropriateness of the environmental buffers to a highly sensitive ecological environment. In addition the engineering solutions for the width and design of pavement within Creek Street and the proposed cement footpath may be contrary to the adopted Tweed DCP Section B23 Hastings Point. In this regard Council's Strategic Planners have advised that:

The exact alignment of the carriageway, footpath, and any other street scaping improvements should be determined, as noted in the Tweed DCP Section B23 Hastings

Point (Page 101), through the development of a detailed streetscape plan undertaken in consultation with the community and stakeholders.

It has always been the objective of DCP B23 to maintain the character of Creek Street. Works to Creek Street could have a significant impact on the streetscape and character of Creek Street.

The Department of Planning and Infrastructure need to request a streetscape plan which will serve the functional and safe carriage purpose but with a lesser impact on the character of the street than that which may otherwise arise from applying the current road design standards in isolation of any consideration of the purposes and objectives of the adopted Plan. On that note the extensive public consultation and engagement culminating in the Plan's objectives, as endorsed by Council, is a paramount consideration for any works. It is also essential that a method or standard to be applied to a development (including road works) is not inconsistent with the Council's adopted Planning Policy.

A more holistic approach to the road reservation treatment is required in sensitive areas, such as Creek Street, and particularly where the importance of the area has been clearly identified and articulated in a plan that has been developed with notable input and assistance of the community. Achieving this may well require additional steps and would likely include, in the case of a single large development that necessitates a road reconstruction and enlargement, a contribution toward or the preparation of both a road reserve treatment (streetscape) plan and / or a monetary contribution/works in kind contribution toward the actual works. We acknowledge that public roads must provide safe passage but in cases such as this their design must no occur in a vacuum of broader policy considerations developed in consultation with both the community and their elected representatives. The engineered design solutions must be responsive to the changing needs and demands of the community and the preservation of the Tweed's natural / urban landscape assets, which is a key aim of both the Tweed DCP Section B23 and which is founded upon the objectives of the State Government's regional planning policy; Far North Coast Strategy / North Coast Urban Design Guidelines.

Therefore should the Department of Planning and Infrastructure wish to approve this application an engineering solution needs to be achieved that meets the objectives contained within Tweed DCP Section B23 Hastings Point as well as the technical standards of Tweed DCP Section A5 - Subdivision Manual and the associated design specifications.

Infrastructure

Water Supply

The latest PPR appears to acknowledge that Council has advised that the 100mm water main in Creek Street is inadequate for the proposed development but does not appear to specifically commit to upgrading the main.

Consequently, should the Department of Planning and Infrastructure want to approve the development a specific condition would be required stating that the point of connection to Council's Water main is to the 250 mm diameter main at the intersection of Tweed Coast Road and Creek Street. To get the further DA or CC, the applicant will have to determine the

size of the main required, provide justification for that size and provide a separate main from the point of connection.

Wastewater

The latest PPR does not specifically address the concern that there may not be adequate fall to connect the most distant lots to sewer by gravity in the text, merely asserting that the development will be serviced by gravity. A detailed check of the drawings in the Engineering Report shows that Lot 1 will have a surface level of 3.4m AHD, in which case the previous concern is alleviated.

In regards to the adequacy of the existing sewerage system Council staff undertake routine maintenance on the biological odour filter bed installed at the Creek Street Pump Station. The mulch that absorb odour is replaced annually and is loosened and turned after six months to ensure it remains effective. There is not a capacity issue in relation to the incorporation of this 45 lot development into the sewerage system at this location, having been allowed for in our reviews of the capacity of the treatment plant and the conveyancing system.

Water Supply Demand Management Requirements

The Statement of Commitments includes commitment to mandate the provisions of Council's Demand Management Strategy through use of 5000L minimum size tanks and 160m² minimum connected roof area, using the water for toilet flushing, laundry cold water and outdoor uses, as requested previously.

Emergency Access Driveway

Detail of the Emergency Access Lane appears to have been refined to indicate that the existing pavements and access areas to Council's existing sewer pump station are not impeded, however, it shows fill and a bridge structure over a sewer manhole and sewer lines. Details of this construction and how the conflict is to be resolved would be required at either the further DA or CC stages were the Department to approve the application.

S64 Development Charges

Normal conditions relating to S64 Development Charges should be included if the Department were to approve the application. The provision of the external water main works could be included in the requirements for the Water Management Act Sect 305 Certificate.

General Engineering

Filling and Landforming

The site will require filling to achieve the 100 year design flood level of RL2.9m AHD as specified in Council's Tweed DCP Section A3 – Development of flood liable land. The engineering assessment report prepared by Opus, dated 8 August 2011 states that approximately 53,000m³ (solid volume) of fill will be required to achieve the required design flood level of RL2.9m AHD. The report further advises that an average fill height of RL3.4m would meet the flood level required by the DCP.

The depth of fill will range from 0.9m to 2.4m across the site. The finished floor level is required to be 500mm higher than the design flood level, which is RL3.4m AHD. Batter slopes of 1 in 3 are recommended as per the geotechnical report.

Fill material is also required to be of a granular nature instead of clay based fill material to comply with AS 2870-1996 – residential slabs and footings criteria to limit moisture. The high water table and close proximity to the creek would render a clay based fill material reasonably unsuitable for building construction. Level 1 geotechnical certification in accordance with AS 3798-2007 – Guidelines on earthworks for commercial and residential developments is required to achieve an adequate compaction of the imported fill material. The criteria of granular fill or similar and level 1 geotechnical testing would be required to be conditioned should the Department of Planning and Infrastructure wish to approve the application.

Geotechnical Report

The soil is mainly sand. A geotechnical report prepared by Soil Surveys and dated July 2004 has been submitted with the application. The seven year old report provides the following information;

- sand subsurface profile was encountered across the site with only occasional clayey sand and very occasional silty clays.
- the site may have been mined in the past.
- groundwater was encountered across the site between depths of 0.1m and 1.55m.
- maximum batter angles of 1V:3H for long term stability.

Access & Creek Street

Access to the subdivision is via Creek Street. Creek Street is classified as local urban access street and is currently in poor condition with a pavement width between 5m – 6m, no kerb and guttering or underground piped drainage. The existing pavement terminates at Lot 34 DP 25777, the road then becomes gravel for a distance of approximately 80m. Creek Street has a flat vertical alignment and straight horizontal alignment.

Creek Street intersects with Tweed Coast Road which is classified as a designated road within Council's LEP2000.

Creek Street currently functions as a local access street (with a minimal 6m pavement width). The 45 lot subdivision has two proposed accesses located on Creek Street, these being approximately 350m and 430m, measured from the intersection of Creek Street and Tweed Coast Road. From an engineering perspective Creek Street would need to be extended to service the subdivision and will require an upgrade to a wider access street requirement of 7.5m for the full length of Creek Street from the intersection to the end of the proposed extension.

Council's development design specifications also limit the length of a 6m wide local access street to a length of 200m. Wider access streets are designed to cater for higher traffic volumes over longer distances and to provide for more intensive land uses such as catering for the traffic generated from the proposed 45 lot subdivision.

Three new roads are also proposed to service the subdivision, which are accessed towards the end of Creek Street. Therefore Creek Street is required to be constructed to a 7.5m pavement width from the intersection of Tweed Coast Road to the end of the subdivision (approximately 438m).

Cross sections provided by Opus (figure no. 19.0) show a 7.5m pavement width, incorporating water sensitive urban design for the full length of Creek Street. The Creek Street cross section shows a 3% two way cross fall, with swale drains and a 1m x 0.6m sand infiltration trenches located in the centre of the swale drains, located either side in the road reserve. TSC's standard drawings also show a flush edge strip located at either side of the road pavement, which the Opus cross sections are missing. The flush edge strips allow for ease of mowing maintenance, therefore should the Department of Planning wish to approve the application a condition of consent would be required to ensure a flush concrete edge strip is included in the road design. The existing driveways are to be flush with and match the profile of the swale drain.

However, as discussed above an engineering solution needs to be achieved that meets the objectives contained within Tweed DCP Section B23 Hastings Point.

Traffic Generation/Intersection Upgrade

The traffic generation rates used in the below table are sourced from the RTA Guide to Traffic Generating Developments (2002) which is preferable for trip generation rates.

The following table provides an estimate of the existing and proposed traffic within Creek Street;

Dwelling type	Number of dwellings	Daily trip rate per dwelling	Estimated Daily Trips (vpd)
Single Dwelling (proposed)	45	9	405
Single Dwelling (existing)	32	9	288
Units (existing)	15	6.5	98
Total			971

Tweed Shire Council have traffic counts for Tweed Coast Road taken south of Creek Street in March 2011 which specify 6300 vehicles per day.

These volumes require a sheltered right turn lane to be provided on Tweed Coast Road for safe turning into Creek Street from the north and a pedestrian refuge.

The intersection operates as a right-left staggered treatment type intersection (figure 2.12 of Ausroads part 5) with Tweed Coast Road as the main arterial road intersected with Creek Street and Peninsula Street located 10m to the south.

The proposed subdivision will require a protected right turning lane on Tweed Coast Road to cater for the additional traffic turning into the subdivision and a pedestrian refuge. An existing pedestrian refuge is currently located to the north of Creek Street.

Figure No. 12 titled "Conceptual Intersection Layout" prepared by Opus dated August 2010 details the intersection upgrade by providing a 3m wide sheltered right turn lane on Tweed Coast Road to turn south into Creek Street. The lane widths travelling straight through (north and south) for Tweed Coast Road are 3.5m. Road widening will be required to achieve a 3m wide protected turning lane and 3.5m wide through lanes. Channelization will also be required to delineate the protected right turn lane.

The amended intersection layout has moved the existing refuge from the north of Creek Street to the south of Creek Street and extended the existing cycleway to Creek Street. Road widening will also be required for the pedestrian refuge and 3.5m through wide lane widths. Due to the proposed road widening a retaining wall approximately 0.6m in height will be required to provide a level surface for the cycleway as the land slopes away from the road.

Intersection Sight Distance

The intersection sight distance as specified in Ausroads Guide to Traffic Engineering Practice – Part 5 intersections at grade (2005) is adequate. The speed environment used in the application is 65km/h (this is about the average speed motorists travel on Tweed Coast Road) even though the area has a 50km/h speed limit.

The location used to determine the Creek Street / Coast Road sight distance was taken 3m into Creek Street from the dashed give way line at the intersection.

It is concluded the intersection provides adequate sight distance in accordance with Ausroads, as shown in the following table.

	Observed intersection sight distance	Ausroad requirements for SISD
Safe Intersection Sight Distance (SISD) Left (m)	120m	132m
Safe Intersection Sight Distance (SISD) Right (m)	200m	132m

Construction Traffic

The application as proposed would require imported fill material to fill the site and to be transported from Tweed Coast Road, then down Creek Street to fill the site. Construction traffic to the site will be approximately 50 trucks per day for a period of 6-8 weeks. This is based on 53,000 m³ of imported fill material with a truck and trailer capacity of 20m³ and a 20% bulking factor on the material. 100 truck movements (accounting for two way traffic movements, including the empty truck returning to the fill source) will occur every day throughout the estate to fill the site as per the preferred project report. This equates to one truck every 12.5 minutes. This will create amenity and noise issues for the existing residents in Creek Street.

Should the Department of Planning & Infrastructure wish to approve this application these issues would need to be addressed.

Pedestrians, Footpaths and Cycleways

Council's normal engineering policy position is for a 1.2m wide concrete footpath on all proposed roads within the subdivision and along the full width of Creek Street (as per Council's Development Design Specifications).

A 3.5m cycleway is proposed along the emergency access road which links into the existing cycleway on Tweed Coast Road. Vehicle loadings are proposed on the roadway / cycleway, therefore the construction of the cycleway would require steel reinforcement.

However, as detailed in the above report consideration must be given to Tweed DCP Section B23 Hastings Point which focuses on maintaining the existing character of Creek Street which may require an alternative engineering solution.

Open Space

The 'Amended Preferred Project Report' (5 August 2011) proposes no parks or sports fields, and there are minimal changes to the previous version (April 2011 - Preferred Project Report).

Should the Department of Planning and Infrastructure wish to approve this application the following matters would need to be addressed:

- S94 contributions in regards to local structured and local casual open space would be applicable.
- Good pedestrian and bicycle access to the Hastings Point Creek Foreshore Park is important.
- Management of public access to the natural/revegetated areas, creek or small lagoon south west of the development.
- Suitable streetscape plantings. Plants in the streetscape must not be species classified as rare or threatened, primarily for reasons of genetic origin.

Environmental Health

The amended application does not address the issues previously raised by Council's Environmental Health Officer. The applicant merely wants to address these matters at a later date by incorporating the issues into the amended statement of commitments. This is not considered to be acceptable. Therefore the previously raised issues are still valid and are duplicated below:

Acid Sulfate Soils Management

A preliminary assessment identified the submitted information was inadequate. Council submission did not request for further information. Whilst the consent authority is to undertake an assessment of the adequacy of the information submitted it should be noted that the development is adjoined by the estuarine waters of Cudgera Creek. pH of receiving waters needs to be considered when applying water quality parameters to the off-site

discharge of waters. ANZECC Guidelines for Fresh and Marine Water Quality recommends a lower limit trigger value of pH 7 and an upper limit of 8.5 for estuarine waters.

Contaminated Land Assessment

A preliminary assessment identified the submitted information was inadequate. Council submission did not request for further information. The consent authority is to undertake an assessment of the adequacy of the information submitted. It is noted the initial information has been resubmitted. The following was noted within information submitted with the ASS Report:

“It is understood the site may have been mined. Sand backfilling utilised after the mining operations appears to be the same as the natural sand material encountered across the site, ...”

It is considered that the assessment undertaken does not adequately meet the requirements of Tweed Shire Council therefore site validation by an accredited site auditor is required. Site validation across the area shall include consideration of radiation levels.

In general land intended for public open space, roads and parks have been remediated so that the upper most 2 metre depth of material is nominated as ‘clean’, with a maximum radiation level not exceeding 0.35uGy/hr. The required remediation depth is increased however where services are present (eg water and sewer) to a minimum of 500mm below the service line. This is intended to facilitate future maintenance of public services in these areas without risk of health implications for workers undertaking these tasks, or for surrounding residents. Material used in the 2.0m depth ‘cap’ shall be placed and validated in 300 - 500mm lifts (surface radiation meters are capable of detecting radioactive material in the upper most 250-300mm depth of material only. To detect materials at greater depth more complex and costly monitoring techniques are required).

Materials below the 2 metre investigation/remediation depth are left in situ. However, radioactive materials above relevant Action Levels from elsewhere on the site are not to be buried below this depth on public lands.

Surface monitoring surveys are required to be conducted in a grid pattern at a maximum of 10m centres. Council requires that the site and bulk earthworks be continuously monitored by a suitably qualified person. Council requires that a contaminated land auditor be required to review and validate any remediation works, if necessary. Depth monitoring and validation on former sand mining sites are required at a maximum of 50m centres (grid pattern). It is noted that whilst the Action Level is 2.5 µGy/hr the trigger for further detailed investigation is a background (as identified in RSIS #12) of 0.1 µGy/hr. Validation statements shall include maps for future reference of public authorities.

PUBLIC SUBMISSIONS:

Whilst Council is not the consent authority for this development Council staff have had an onsite meeting with some local residents to hear the issues that they have in relation to this application. Following this onsite meeting Council received a number of submissions objecting to this proposal.

The issues raised in these submissions are numerous and are therefore attached to this report.

OPTIONS:

1. That Council endorse the key themes of this report which will form Council's submission to the Department of Planning on DA10/0228.
2. That the Council proposes an alternative submission to the Department of Planning on DA10/0228.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The integrity of Tweed DCP Section B23 Hastings Point could be comprised if the Department of Planning do not ensure the application achieves compliance with this document.

CONCLUSION:

Council has the opportunity to make a submission to the Department of Planning on the proposed subdivision for Lot 156.

The purpose of this report is to seek Council endorsement of the key themes of this report and reinforce to the Department of Planning that the application as submitted raises major concerns and should be refused.

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. Previous Submission to the Department of Planning on the First Preferred Project Report 7 June 2011 (ECM 38547323)
 2. Previous Submission to the Department of Planning on the First Preferred Project Report (flooding issues only) 26 May 2011 (ECM 38547330)
 3. Previous Submission to the Department of Planning on the Original Environmental Assessment Report 28 July 2010 (ECM 38549514)
 4. Previous Council Report on the Original Environmental Assessment Report 20 July 2010 (ECM 38550582)
 5. Public submissions opposing this development (ECM 38591409)
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7 [PR-CM] Planning Proposal PP10/0001 - Lot 10 DP 1084319 "Boyds Bay Garden World Site", Tweed Heads West

ORIGIN:

Planning Reforms

FILE NO: PP10/0001 Pt 3

SUMMARY OF REPORT:

This report seeks Council's endorsement for the public exhibition of the Boyds Bay Garden World Planning Proposal, which seeks a rezoning from 1(a) Rural to 3(c) Commerce and Trade under the current Tweed LEP 2000 and B7 Business Park under the Standard Instrument LEP format.

The site is identified in the Tweed Urban and Employment Land Release Strategy 2009 (TUELRS) as potential employment land. Several key studies have been undertaken to evaluate the appropriateness of the site for employment purposes. Subject to finalising the confirmation from the Roads Traffic Authority (RTA) and Council's Heritage Consultant in respect of the Aboriginal Cultural Heritage Due Diligence Report (ACHDDR), preliminary indicators are that the site is suitable for employment purposes as a business park in accordance with the terms of the TUELRS 2009.

In order to facilitate the development of a business park under the current LEP to comprise a mix of commercial, light industrial, trade activities and restricted retail uses, including bulky goods, the Draft LEP amendment requires two parts, consisting of a zoning map amendment and the inclusion of a new clause. This will provide specific development standards, including a requirement for a DCP, to ensure the orderly and economic development of the site to achieve the identified strategic employment land objectives and to ensure that retail uses are not and do not become the predominant land-use.

The draft planning proposal is suitable for a public exhibition for a period of 28 days in accordance with the requirements of the Gateway Determination. Council's endorsement to exhibit, subject to Council officers receiving prior advice from the NSW RTA and Council's Heritage Consultant in support of the Draft LEP Amendment No 93, is sought.

RECOMMENDATION:

That:

- 1. Council endorses the public exhibition of Planning Proposal (PP10/0001) for a change of land-use zone classification from 1(a) Rural to 3(c) Commerce and Trade and the inclusion of a new Clause 53G, at Lot 10 DP 1084319 Parkes Drive Tweed Heads West in accordance with point No.2 of this recommendation, subject to Council officers receiving prior advice from the NSW Roads and Traffic Authority and Council's Heritage Consultant in support of the Draft LEP Amendment described in this report;**

2. **Draft Tweed Local Environmental Plan 2000 – Amendment No. 93 – Boyds Bay Garden World Site, (Planning Proposal PP10/0001) for a change of land use zone classification from 1(a) Rural to 3(c) Commerce and Trade and the inclusion of a new Clause 53G at Lot 10 DP 1084319 Parkes Drive Tweed Heads West be publicly exhibited for a minimum period of 28 days, in accordance with the Gateway Determination dated 6 September 2010 and clause 57 of the *Environmental Planning and Assessment Act 1979*; and,**
3. **Following public exhibition any public submission received in respect of the Draft Amendment No.93 is to be reported to Council along with any proposed amendments.**

REPORT:

BACKGROUND

The Boyds Bay Garden World Site has been identified in the Tweed Urban and Employment Land Strategy 2009 (TUELRs) as "Potential Employment Lands". The site is also identified within the 'Town and Village Growth Boundary' of the Far North Coast Regional Strategy 2006 (FNCRS).

The site, currently utilised as a retail and wholesale plant nursery, known as the Boyd's Bay Garden World, is heavily disturbed and adjoins Council's Tweed Heads Waste Water Treatment Plant, and is located at the southern end of the Gold Coast Airport and within the 25-30 ANEF aircraft noise zones.

This site has been reported to Council on a number of occasions as the resolutions below indicate.

While the site was originally listed for release in the medium-term under the TUELRs, following representations from the proponent, Council, on 15 December 2009 resolved that:

1. Council endorses the proposed amendment Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years), as outlined in the submission received by Council from Planit Consulting on 9 September 2009, relating to the Boyds Bay Garden World site, Lot 10, DP 1084319, Tweed Heads.
2. Approval of Point 1 above will be subject to the proponents providing a more detailed response to the main outstanding issues identified in this report, including further prior consultation occurring with the key relevant authorities, Tweed Shire Council, Gold Coast Airport and the Roads and Traffic Authority, as part of any future Planning Proposal application to rezone this site.

Council subsequently received a request to prepare a planning proposal for the site, and on 20 July 2010 resolved that:

1. Planning Proposal PP10/0001 for a change of land-use zone classification from Rural 1(a) to 3(c) Commerce and Trade rezoning be supported in principle on Lot 10 DP 1084319 Parkes Drive, Tweed Heads West and that the proposal be referred to the Department of Planning for a gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979*.
2. The applicant of planning proposal PP10/0001 be advised that the actual rezoning classification of the land, if supported by Council, will be determined following assessment of any detailed site studies required after receipt of the initial gateway determination to proceed.

A planning proposal was forwarded to the Department of Planning in accordance with Council's resolution on 23 July 2010.

Minister's Gateway Determination

A Gateway Determination was received on 10 September 2010 and raised a number of issues requiring clarification with the Department of Planning and Infrastructure. A copy of the Gateway Determination is provided at Attachment 2.

The Determination listed several studies to be completed (comprising the Director-General's terms that are in addition to and supplementary of any other identified by the relevant planning authority), the consultation requirements and the terms of public exhibition. It also stipulated that the plan should be made by 13 September 2011.

In response to the Gateway Determination and Council requirements, a number of studies were undertaken to address critical issues affecting the site, they were:

- Potential impact on operations of the Gold Coast Airport.
- Proximity to the adjoining Council-owned waste water treatment plant.
- Capacity of road network and access to the Pacific Highway.
- Flooding.
- Aircraft noise.
- Contamination.

The site is heavily constrained by several adjoining land-uses, including; its close proximity to the neighbouring Tweed Heads waste water treatment plant, Gold Coast Airport and Pacific Highway apart from other constraints, which must be fully addressed. A full discussion of constraints affecting this site was reported to Council at its meeting of 20 July 2010.

Owing to the significance of the issues addressed in the technical studies Council officers and the proponent agreed that the limited time stipulated for the making of the Plan by the Department was inadequate; a request for an extension of time was made and subsequently granted until 13 June 2012.

Technical Studies

Traffic

Initial correspondence prepared by Bitzios Consulting was forwarded to the Roads and Traffic Authority (RTA) for their consideration. Their response can be seen in Attachment 4, which concluded that further information was required to address, among other matters; traffic generation rates, impact on the Parkes Drive access, service vehicle provision, onsite parking provision, road configuration and capacity restrictions on the current network.

These comments were forwarded to the consultant and a response has been received and referred onto the RTA. As discussed below Council officers are awaiting confirmation from the RTA of their support for the Draft LEP. This will be required prior to any public exhibition.

Airport Operation Impact Study

A copy of the Gold Coast Airport response to the initial study can be viewed in Attachment 5, in which a number of issues relating to absolute limitations to development of the site

were raised. These included zero tolerance for penetration of the airports obstacle limitation surface, public safety, lighting restrictions, emissions, turbulence, and aircraft noise. This correspondence was supported by an additional letter from Wilkinson Murray Acoustics and Air Consultants who addressed in more detail matters relating to aircraft noise. A copy of their letter can be viewed in Attachment 6.

Subsequent discussions with GCAL's consultant Ian Rigby Consulting, it was acknowledged that GCAL does not have a fundamental land use planning issue with the proposed development of the Boyds Bay site, subject to full compliance with all airspace-related constraints; however, in this location, there will be no flexibility whatsoever in imposition of those constraints, e.g. no relaxation of height limits, including above-roof projections, however minor.

The proximity of the site to the airport, notwithstanding not being formally affected by the end-of-runway public safety zone, should also be borne in mind in considering development of the site.

GCAL also advised that noise reduction requirements of AS2021-2000 should be required to be fully implemented, and if bulky goods retail is included in the final proposal presented, this should be insulated to the extent required for retail facilities, not industrial warehouses.

Council has been advised by the Gold Coast Airport Limited (GCAL) that, with the release of their airport masterplan for public exhibition on 8 September 2011, it is possible that changes to the operation of the airport as proposed in the Draft Masterplan may have an impact upon this site. The proposal will need to be forwarded to GCAL for further advice to ensure that any matters arising out of their masterplan does not pass without regard to the Draft LEP.

Because of the timing of both the Draft LEP and the airport's masterplan any further consultation will need to occur during or post public exhibition of the Draft LEP.

Offsite Impacts, including odour analysis and buffering requirements related to the adjacent Sewerage Treatment Plant

Council's Water Unit advised the proponent that the proximity to the Tweed Heads Wastewater Treatment Plant Site has considerable impact upon the subject site, and that Council's DCP Section A5 Subdivisions Manual has recommendations for the use of land within 400 metres of sewage treatment process units which would severely limit the western half of the site and impact upon suitable uses of the eastern half.

Currently, the old plant is no longer in use and flow to it is being intercepted and pumped to Banora Point Waste Water Treatment Plant (WWTP); however, Council has development approval for the construction of a new WWTP on the site but priority is currently being given to the upgrade of the Banora Point plant. Construction of the new Tweed Heads WWTP will not proceed until those upgrades have occurred.

Tweed Shire Development Control Plan Section A5 Subdivisions Manual has a general recommendation for the size of a buffer zone surrounding a sewage treatment plant. It provides for a buffer of 400 metres from primary and secondary process units for housing, tourism and community facilities and an absolute buffer of 200 metres in which no development should be allowed other than open air uses like car parking and open storage

yards. Buildings between 200 metres and 400 metres associated with industrial, commerce or trade must be designed with ventilation facing away from the sewage treatment plant and office or retail components should be air conditioned.

Virtually the whole of the subject site is within the 400 metre buffer of the old treatment plant's process units and about half of the site is within the 200 metre buffer. On this criterion, the western end of the site is not suitable for development except for open air uses requiring only limited occupation of any work stations in that area. The eastern end of the site could be suitable for appropriately designed buildings with suitable treatment of office and retail areas. The site may not be suitable for food preparation businesses.

The NSW Department of Planning Standard Instrument for LEPs directs that treatment plant sites should be included in industrial (IN1, IN3) zones, and the DoPI's Draft NSW Best Practice guideline for Treatment of Odour from Sewage Systems indicates that the design of the treatment plant should be such that the odour level at the boundary of the containing industrial zone should be no more than 2OU.

Following consultation with officers from Council's Water Unit, it was concluded that the odour study was carried out in accordance with Council's requirements as agreed in the Memorandum of Understanding. The study has adopted the 3OU (odour unit) contour as a limiting area and has based its analysis on an assumed design for a future wastewater treatment plant that is considered realistic.

This suggests that an area in the northwest corner of the site may be affected and this has been reflected in the proponents concept plan, which formed part of their draft planning proposal.

The report has listed mitigation measures for the site that are generally consistent with the provisions of Council's DCP in relation to sewage treatment plant buffer zones but applies it to the area within the 3OU contour rather than the distances nominated in the DCP, which is considered reasonable in this case.

Whilst the concept plan has reflected the results of this study in that road and car parking areas have been placed in the areas most likely to be affected by odour and the vegetation buffer is featured, it does not indicate that entrances and air-conditioning and ventilation inlets are to be oriented towards the east (facing away from the potential odour source); however, these matters will be considered in detail at the development assessment stage and require no further investigation prior to public exhibition.

Consultation with the Roads and Traffic Authority

Further to the discussion above, the RTA has been consulted. A copy of their response to the initial draft proposal is provided as Attachment 4.

Subsequent additional information addressing these issues has been received by Council and has been referred but not yet reviewed by the RTA. As discussed further below the prior support for the Draft LEP is required prior to proceeding with its public exhibition.

Aboriginal Cultural Heritage

The National Parks and Wildlife Act 1974 provides that a person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object without an Aboriginal Heritage Impact Permit (AHIP).

The Department of Environment and Heritage (DEH) has recently released guidelines for undertaking a due diligence assessment which set out criteria for landscape features that may indicate the likely existence of Aboriginal objects.

As agreed in the Memorandum of Understanding (MoU) a study was to be completed in accordance with the DEH "*Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*", September 2010, and relevant legislation including Part 6 of the National Parks and Wildlife Act 1974.

The study was to identify any known or likely Aboriginal cultural objects, and, where appropriate, how harm to any known or likely Aboriginal cultural objects may be avoided, and, should harm be unavoidable, secure an AHIP.

Council's Heritage consultant reviewed the proponents assessment of the Aboriginal Cultural Heritage due diligence report and identified a number of matters which required the proponent's further consideration including:

- That the Due Diligence Code be applied in full rather than the first section alone;
- Removal of references to "significant" Aboriginal cultural heritage, as the National Parks and Wildlife Act affords all places and objects protection;
- Updating the study terminology by referring to current legislation and its requirements;
- That the Tweed-Byron LALC be approached to ensure that the 18 identified but unmapped sites do not lie within the boundaries of the Boyds Bay Garden World Site, and
- Provision of more detail relating to survey methodology.

The proponent has been provided with this advice, to which they have prepared additional information, which has been referred back to Council's consultant.

Until such time as Council is satisfied that the due diligence assessment is to a satisfactory standard, the planning proposal will not be publicly exhibited.

Review of Technical Studies

It was highlighted in the above discussion that the initial review of the studies identified a need for further information and/or clarification. This additional information has, at the time of writing, been referred back to the NSW Roads and Traffic Authority and Council's Heritage Consultant.

Due to the limited time available at the time of writing this report for the September meeting, and to ensure that delay in processing the proposal is kept to a minimum, the Council's endorsement to publicly exhibit the Draft LEP is sought on a conditional basis; that any

public exhibition flowing from Council's endorsement be subject to Council officers receiving prior advice from the NSW RTA and Council's Heritage Consultant in support of the Draft LEP Amendment No 93. Where that support is not forthcoming the Draft Plan will not be publicly exhibited and a further report to Council detailing the issues will arise.

The Need for Site Specific LEP Clauses

The TUELRS 2009 sought to identify land suitable for employment purposes. This had traditionally been seen to include industrial land and the terms of reference for the initial study specifically excluded retail. The TUELRS acknowledged the need for diversification in the delivery of employment land and has sought to achieve this by encouraging more of a focus on "Business Park" styled development. In its own terms this can be classified as a mix of industry, commerce and trade as the dominate land-use (the traditional concept of 'business park') but also envisaged that retail could also exist as a sub or 'not predominate' component. The underlying premise of the TUELRS was to capitalise on opportunities for employment generation and in particular the diversification in the provision of employment opportunity by allowing a different kind of development that might be more attractive to businesses not currently resident in the Tweed, e.g. pharmaceuticals, technology & manufacturing, call centres, distribution centres, and industries requiring collocation of their main office building.

To achieve the strategic intentions requires a specific clause to be included in the LEP. The main reason for this is that there are no suitable business park type clauses existing under the Tweed LEP and the ability of the 3(c) Commerce and Trade zone to permit bulky goods retailing, which is seen to be a highly desirable land-use, could readily undermine the objectives of the TUELRS and impact on the existing retail areas of Tweed Heads and Tweed Heads South.

The inclusion of a new Clause 53G 'Boyds Bay Business Park' which is similar in format to those existing for Area E and Seabreeze Estate, will provide greater certainty about regulating the land-use opportunities for the development of the site. This will be achieved predominantly through a site specific DCP and concept masterplan.

A copy of the draft Clause as part of the Draft Tweed Local Environmental Plan 2000 (Amendment No 93) is provided as Attachment 3.

CONCLUSION:

While there have been some delays in progressing the assessment of the proposal due to an apparent change in the proponents intentions for the site, which were considered to be inconsistent with the TUELRS, further consultations with the proponent has reconfirmed the strategic policy parameters of the proposal and reaffirmed the status of the site as serving a 'Business Park' function comprising a mix of commercial, light industrial, trade activities and restricted retail uses, including bulky goods.

The issue that arose for consideration was that the TUELRS is providing the strategic policy nexus or 'grounds' for supporting the proposal. It does this by providing the sub-regional planning strategy basis which satisfies several key statutory requirements and/or considerations under the North Coast State Environmental Planning Policy (SEPP), among others, as it relates to the suitability of the site for the identified purpose, in this case industrial or business park (TUELRS).

If the proponent had sought to rezone the site either wholly or predominantly for bulky goods retailing, which the proponent's more recent correspondence has alluded to, then the TUELRs could not be relied on; the nature of that development would be beyond the scope of the strategic nexus provided by the TUELRs. If that event arose an alternative 'strategic' ground for satisfying the provisions of the North Coast SEPP would need to be found. This would likely prove to be a far more difficult 'nexus' or justification to sustain.

Reconciling the limitations of the TUELRs relating to retail development proved to be a very significant issue to ventilate and ultimately led to the identification of a major shortcoming of the current Tweed LEP land-use zones. The limitation arises because the range of uses sought as forming the basis of a business park exist in the 3(c) Commerce and Trade zoning however, there is no limitation on the extent of any use(s), consequently it would be open to the proponent to seek nothing other than bulky goods retailing. As discussed above, this would be inconsistent with the TUELRs and has the potential to undermine existing retail centres. To overcome this issue it is proposed to include a new Clause 53G, which is similar to other clauses in the Tweed LEP relating to site specific matters, and which can regulate with far greater certainty than any DCP the percentage or amount of retail, commercial, or other development permitted.

The draft planning proposal is seen to be suitable for a public exhibition for a period of 28 days in accordance with the requirements of the Gateway Determination. Council's endorsement to exhibit, subject to Council officers receiving prior advice from the NSW RTA and Council's Heritage Consultant in support of the Draft LEP Amendment No 93, is sought.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The financial implications of publicly advertising the planning proposal are budgeted within the Planning Proposal fees and charges as prescribed and collected in accordance with Council's adopted Fees and Charges Schedule 2011/2012. There are no perceived legal or resourcing implications associated with this report.

POLICY IMPLICATIONS:

The basis of this report is to seek Council's endorsement for the public exhibition of a planning proposal. However there are two outstanding matters that must first be satisfactorily resolved. The report therefore seeks Council's conditional endorsement and in doing so Council's policy relating to the public exhibition of planning policies and instruments (that there be certainty with the subject matter of what is being exhibited) will be maintained. There are no other perceived policy implications.

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. Planning Proposal Preliminary Draft (Exhibition Version) (ECM 38687228)
 2. Gateway Determination (6 September 2010) (ECM 38687229)
 3. Draft Tweed Local Environmental Plan 2000 (Amendment No 93) (ECM 38687230)
 4. RTA letter 7 July 2011 (ECM 38687231)
 5. Gold Coast Airport letter of 14 July 2011 (ECM 38687227)
 6. Wilkinson Murray letter of 12 July 2011 (ECM 38687243)
-

8 [PR-CM] Tree Preservation Order Application/Compliance Assessment - Lot 1 DP175234 and Lot 1 DP781511 No. 93 Parkes Lane, Terranora

ORIGIN:

Development Assessment

SUMMARY OF REPORT:

A site inspection undertaken as a result of a Tree Preservation Order application over Lot 1 DP175234 and Lot 1 DP781511 at 93 Parkes Lane Terranora revealed that tree removal had been undertaken without approval. Detailed consideration during the inspection revealed that a maximum of ten native trees had been removed, along with numerous Camphor Laurel trees. The native trees were all recognised as reasonably common regrowth rainforest trees unlikely to be substantially taller than 3 metres and none of the species viewed are listed as Endangered or Vulnerable species under the Threatened Species Conservation Act 1995.

Given the lack of clear evidence of an enforceable breach, the (provisional) exemption for Camphor Laurel under the 1990 Tree Preservation Order and the fact that remaining native trees were flagged and left standing on the site, it is considered that prosecution is unlikely to be successful.

However, further tree removal should not be undertaken until a development application, accompanied by a flora and fauna assessment and specifying acceptable methods for tree removal has been received and approved. In the meantime, cover should be established quickly over any bare soil areas to prevent erosion which could impact on wetlands down slope.

RECOMMENDATION:

That Council endorses the following actions in respect of recent vegetation removal on the premises at Lot 1 DP 175234 and Lot 1 DP 781511, No. 93 Parkes Lane, Terranora:

- 1. Compliance action not be pursued for the tree removal undertaken;**
- 2. The owners of the site be advised that cover must be established immediately over exposed soil areas to prevent erosion and potential compliance action under the Protection of the Environment Operations Act;**
- 3. The Tree Preservation Order (TPO) application submitted to Council on 26 July 2011 be refused on the basis that the significance of the impact on threatened species, populations and ecological communities has not been assessed; and**

4. **The applicants of the TPO be advised in writing that, if Camphor Laurel removal throughout the property is to be pursued, a Development Application is required which specifies best-practice weed control methods and is accompanied by a flora and fauna assessment detailing how impacts are to be minimised.**

REPORT:

Following a complaint that vegetation was being removed from a property at the end of Parkes Lane Terranora, an inspection of the site was undertaken by Council's Compliance Officer on 13 July 2011. This inspection resulted in work ceasing and submission of an application under the Tree Preservation Order 1990 (TPO).

The TPO application in the name of Creeksound Pty Ltd was received by Council's Ecologist on 26 July 2011. The application over Lot 1 DP175234 and Lot 1 DP781511 at 93 Parkes Lane Terranora requested permission to remove "all areas of Camphor except within SEPP wetlands and protection zones". The property is roughly 38 hectares in size and a rough sketch was provided with cross hatching appearing to represent most of the property. It is noted that the two subject lots form the central portion of "Area E" at Terranora for which the draft Development Control Plan was exhibited from 27 July 2011 to 26 August 2011.

The property manager of the site phoned to request that the application be dealt with quickly as boundary fencing was involved and stock would be "out on the road" if not approved, so they need to continue work immediately.

At that time the Property Manager was advised that:

- although there was no issue with fencing of property boundaries, the exemptions under the Native Vegetation Act 2003 which permit vegetation removal along fence lines did not apply as the land was zoned residential, not rural;
- as approval had now been sought under the TPO, work should not recommence until the application was assessed and approval issued and that a site inspection had been arranged at the earliest opportunity;
- fencing undertaken under the Surveying Act is not exempt from threatened species legislation and therefore it was likely that for such a large tree removal application, a flora and fauna assessment should be undertaken;
- some Steep Protected Land was mapped on the property and removal of noxious weeds on such land needed to be done in accordance with Catchment Management Authority guidelines (to prevent soil erosion); and
- as the property was zoned for residential development, agriculture required development consent unless existing use rights had been proven.

A site inspection was undertaken in the company of the Property Manager on 3 August 2011 in order to assess the application under the TPO 1990. Most of the property was viewed either by vehicle or on foot.

The following matters were noted:

1. Bare ground without cover was present over much of the top section of the property (see Figure 1) and at least three large stockpiles of trees were visible. Trunks and leaves seen within these piles were primarily identifiable as Camphor Laurel (a noxious weed) with some pruned material (Lilly Pilly) confirmed as originating from a neighbour's hedge.
2. In other sections of the site some felled native trees were visible including Macaranga (*Macaranga tanarius*), Guioa (*Guioa semiglauca*), Red Kamala (*Mallotus philippensis*) and Rough-leaved Elm (*Apananthe philippinensis*).

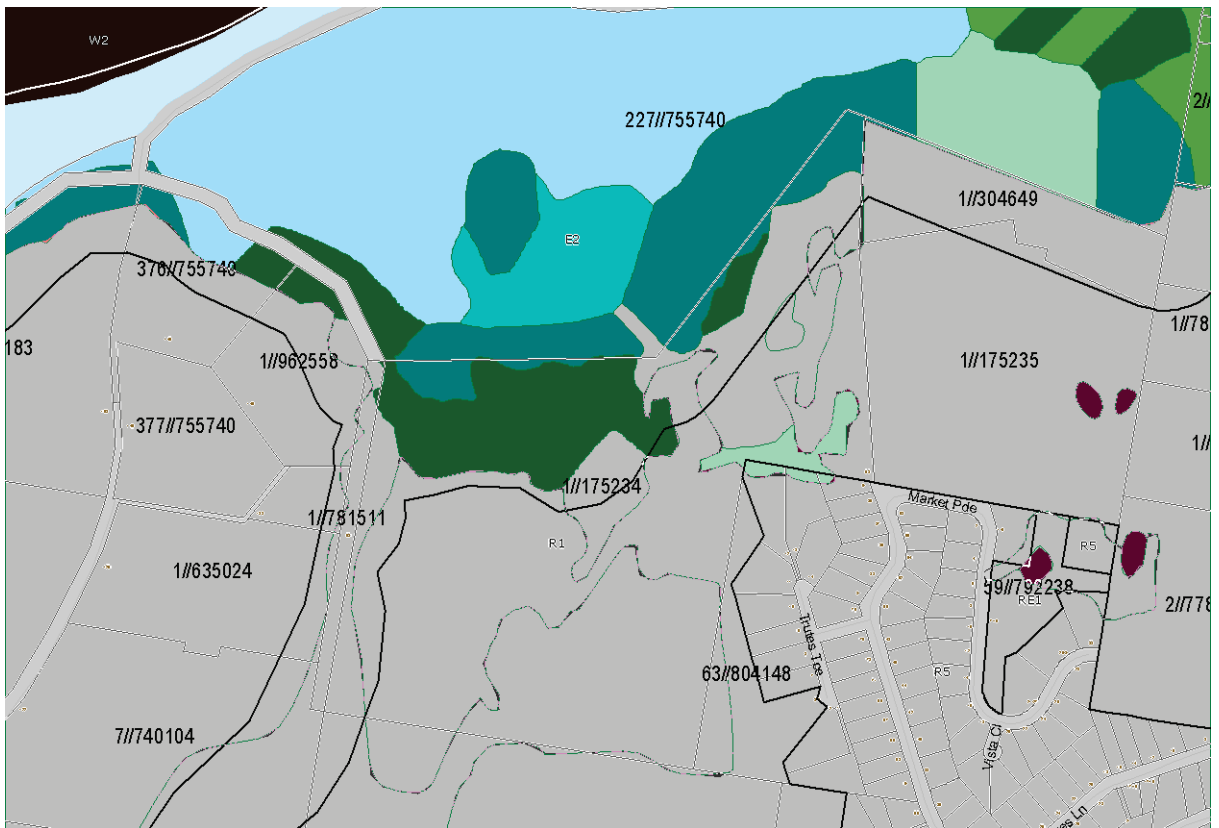
3. No measurements were taken to be certain as to whether these native trees were greater than 3 metres in height or greater than 30cm in girth, but it was estimated that they were likely to be around that size or less, rather than substantially greater. Native trees of larger size were still present on the site dotted across the hill slope and marked with pink ribbon.
4. Whether any understorey species that may constitute threatened species had been cleared is not known, but no evidence of this was seen.
5. No Camphor Laurel removal or other vegetation clearing had been undertaken within the 7(a) Environmental Protection – Wetlands and Littoral rainforest zone (such works require development consent).



Figure 1: The approximate extent of clearing is outlined in red, with SEPP 14 and 100m buffer shown as blue hatching and environmental protection zoning extent as black line.



Figures 2 and 3: Aerial imagery of the property above and Tweed Vegetation Management Strategy 2004 mapping (below). Green areas represent two EECs – Lowland Rainforest on Floodplain and Swamp Sclerophyll forest. Both are within the environmental protection zone where no clearing occurred. The remainder of the property in grey is mapped as Camphor Laurel dominant (highly disturbed/early regeneration) or non-bushland (cleared).



Legislative context

The site is covered by the TPO 1990 and TPO 2011. The applicable TPO instruments are reproduced below.

TPO 2011 wording

1. Take notice, in accordance with Clause 54 of Tweed Local Environmental Plan 2000, Tweed Shire Council has made a Tree Preservation Order in respect of land identified on the map entitled "Tree Preservation Order (2011)" dated 15 February 2011.
2. A person must not carry out vegetation clearing without consent of Council on land identified as 'Bushland affected by Tree Preservation Order (2011)' on the map entitled "Tree Preservation Order (2011)" dated 15 February 2011.
3. Notwithstanding Clause 2, a person must not carry out vegetation clearing without consent of Council 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
4. A person who contravenes this Order or causes this order to be contravened, shall be guilty of an offence under the Environmental Planning and Assessment Act, 1979, as amended, and may be subject to prosecution under the provisions of the Act.
5. The definition of "vegetation clearing" has the same meaning as "vegetation clearing" in Clause 30 of Tweed Local Environmental Plan 2000 as it relates to trees.
6. Notwithstanding Clauses 2 and 3, this Order does not apply to vegetation clearing on land if it is:
 - a. reasonably considered necessary by Council to remove or reduce an imminent risk of serious personal injury or serious damage to property;
 - b. located within public reserves under the control of Council (or which are on Council controlled land and all work relating to that land) if performed by Council staff, workmen or persons under the direction of Council staff;
 - c. within the path of proposed roadways, sewerage or drainage schemes, or any public work that has been approved by Council;
 - d. within a building site or within eight metres (8m) of an existing or proposed building, or foundations, that has been approved by Council.

TPO 2011 Applicability

The site does not contain any areas mapped as bushland under this TPO, nor were any Koala food trees noted or expected to occur on the site, rather the site contains Camphor Laurel and early regrowth rainforest vegetation. No provisions of this TPO have apparently been breached.

TPO 1990 wording

TPO 1990 prohibits the ringbarking, topping, lopping, removing, poisoning, injury or wilful destruction of trees of thirty centimetres (30cm) or more girth (circumference) measured at forty-five centimetres (45cm) above ground, three metres (3m) or more in height.

Exemptions - TPO 1990 does not apply to vegetation clearing under the following circumstances:

- a. Required to be lopped in accordance with Clauses 23(1) and 23(2) of the Electricity (Overhead Line Safety) Regulation 1991;
- b. Located within public reserves under the control of Council or which are on Council controlled land and all work relating to that land, if performed by Council staff, workmen or persons under the direction of Council staff;
- c. Within the path of proposed roadways, sewerage or drainage schemes, or any public work that has been approved by Council;
- d. Within a building site or within eight meters (8m) of an existing or proposed building, or foundations, that has been approved by Council;
- e. Contained within agricultural tree crops and commercial tree plantations; and
- f. Which are proclaimed Noxious Plants and Camphor Laurel and Privet Trees.

TPO 1990 Applicability

Camphor Laurel is both a proclaimed noxious plant and specifically exempted under this TPO. Tweed DCP Section A10 Exempt and Complying Development specifies that noxious weed control that is exempt development must:

- Be authorised under the Noxious Weeds Act 1993
- Be carried out by methods that will not:
 - Have a significant impact on native flora and fauna
 - Create significant problems with land degradation including soil erosion, coastal erosion and siltation of water bodies.

The Noxious Weeds Act states that Camphor Laurel is a Class 4 weed that should be controlled in accordance with the management plan. The Management Plan for Camphor Laurel states that saplings less than 3 metres should be continuously controlled and larger trees should be controlled at a rate of 10% per year, or in accordance with a site-specific management plan. Council's Executive Management Team have further resolved that a maximum of 20 trees over 3 metres in height are permitted to be cleared on any one property in the absence of development consent.

No site-specific management plan has been undertaken for the site (advice received from Jim Wilmott, Manager FNC Weeds) and no flora and fauna assessment was submitted with the application or produced at request (although the Property Manager advised that consultant ecologists were due out the next day). No erosion and sediment controls were observed.

Steep Protected Land

The south-western portion of the property is mapped from previous Soil Conservation Service mapping as Protected Land over 18 degrees slope (now covered under provisions of the Native Vegetation Act as vulnerable land). Specific guidelines have been produced for dead and exotic tree removal on such land, however, no clearing was observed in this part of the property.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Visual assessment of the site has shown that some (up to ten) native trees were cleared in amongst numerous Camphor Laurel trees removed. None of these native trees are known threatened species and most are common regrowth or 'edge' species typical of early regeneration of rainforest. Measurements of such trees were not taken and photographic evidence is not comprehensive or clear. Native trees greater than 3 metres have been retained on the slopes.

More than twenty Camphor Laurel trees were removed but likely not more than 10% of those existing on the site. The method used (removal using an excavator) is not best practice and potential for erosion and sedimentation exists until grass or other cover is established.

The absence of clear evidence pertaining to significant native tree removal, the fact that the site was not heavily vegetated prior to clearing and contained largely Camphor Laurel in avenues and windrows and the need for and presence of new boundary fencing mean that although a breach has occurred, it is not considered a significant breach in ecological terms and may be unlikely to be successful should court action be pursued.

However, insufficient information has been submitted with the TPO application to be confident that impacts to flora and fauna on the site will not be significant. Such information should be provided within a development application given the extent of proposed works. In addition, potential exists for erosion and sedimentation to impact sensitive wetlands around the Terranora Broadwater and the applicants should be requested to ensure a grass cover is established quickly over all exposed soil areas.

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.

9 [PR-CM] Defence of a Class 1 Appeal Lodged in the NSW Land and Environment Court Against Council for the Deemed Refusal of Construction Certificate Application CC10/0391: for Excavation of a Lake and Construction of Three Islands as Part of Tourist Resor

ORIGIN:

Development Assessment

FILE NO: PF5980/200 Pt4

SUMMARY OF REPORT:

This report seeks to advise the Councillors of legal proceedings that have commenced against Council, provide a brief summary of events to date, and to gain endorsement of the engagement of solicitors to defend a Class 1 Appeal lodged in the NSW Land and Environment Court.

The legal basis of the Class 1 appeal is that, pursuant to Section 109K of the Environmental Planning and Assessment Act 1979, Council has not determined construction certificate application CC10/0391 that was lodged on 19 July 2010.

This CC is a follow up to an earlier approved development application and involves the excavation of a lake and construction of three islands as part of a tourist resort, at Lot 1 DP 408972; Lot 1 DP 779817; No.440 Wooyung Road, Wooyung. The CC documentation includes five (5) reports covering Flooding, Contaminated Land, Groundwater and Acid Sulfate Soil issues.

After an initial assessment of the CC documentation, a 'Request for Further Information' letter was issued on 3 December 2010, raising various engineering and environmental concerns. The applicant provided an incomplete response on 7 March 2011, which Council responded to on 21 April 2011. Other correspondence has been exchanged, as well as various discussions and meetings taking place. The most recent letter to the applicant was dated 28 July 2011, after Council received a peer review of original documentation from NSW Office of Water, which supported Council's request for further information.

Council received the Class 1 Appeal on 18 August 2011. Due to this Appeal having a 'directions hearing' on 12 September 2011, being prior to Council's September meeting, it has been necessary to already engage Council's solicitors to act on its behalf in defending this Appeal.

It is recommended that Council endorses the engagement of Council's solicitors to defend this Class 1 appeal.

RECOMMENDATION:

That Council notes the information provided in this report and endorses the engagement of Council's solicitors to defend the Class 1 Appeal in the NSW Land and Environment Court, on the basis of a deemed refusal, in respect of the undetermined construction certificate application CC10/0391 lodged with Council for the excavation of a lake and construction of three islands as part of tourist resort at Lot 1 DP 408972; Lot 1 DP 779817; No. 440 Wooyung Road Wooyung.

REPORT:

Applicant: Wooyung Properties Pty Ltd
Owner: Wooyung Properties Pty Ltd
Location: Lot 1 DP 408972; Lot 1 DP 779817; No. 440 Wooyung Road Wooyung
Zoning: 1(a) Rural and 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: \$5,800,000

BACKGROUND:

Basic Issue:

The legal basis of the Class 1 appeal is that, pursuant to Section 109K of the Environmental Planning and Assessment Act 1979, Council has not determined construction certificate application CC10/0391 that was lodged on 19 July 2010. This application was lodged as a follow up to Development Consent 88/0640.01.

The CC application comprised of plans and documentation as follows:

- The application form.
- Brief covering letter by "Landpartners" being the applicant's primary consultant.
- Engineering plans (14 sheets).
- Flood Impact Assessment by BMT WBM.
- Preliminary Acid Sulfate Soil (ASS) Assessment Report by Southern Cross University (SCU).
- ASS Management Plan by SCU.
- Groundwater Quality Investigation and Impact Assessment report by SCU.
- Phase 2 Contaminated Land Assessment by SCU.

Upon initial assessment of the CC application, it was identified that numerous deficiencies were present in the submission, and a formal response was issued on 3 December 2010. These deficiencies related not only to civil engineering design and information, but flood-related issues, ASS concerns, groundwater intersection concerns, and the significant environmental impacts that the ASS and groundwater issues could have on the adjacent Littoral Rainforest, Protected Wetlands, nominated conservation areas, and Wooyung Beach dunal system. The protection of these areas throughout the construction phase is specifically addressed by DA Condition 8, requiring appropriate details to be submitted for approval prior to release of construction plans (CC approval).

While there are numerous other outstanding issues, compliance with the requirements of DA Condition 8 is the main point of contention with the applicant that is yet to be satisfactorily addressed.

An otherwise brief summary of the original issues raised in Council's letter of 3 December 2010 are;

- Non-compliance with various conditions of the development consent,
- Non-compliance with the approved Statement of Environmental Effects and conceptual plans,
- Necessary amendments and further detail being required for the actual engineering plans, including an explanation of design concepts,
- Numerous specific concerns regarding the ASS submissions,
- Groundwater concerns.

Brief Summary and Relevant History:

A summary of pertinent actions relating to the CC application is provided for your information, followed by ancillary advice relating to the history of the development itself.

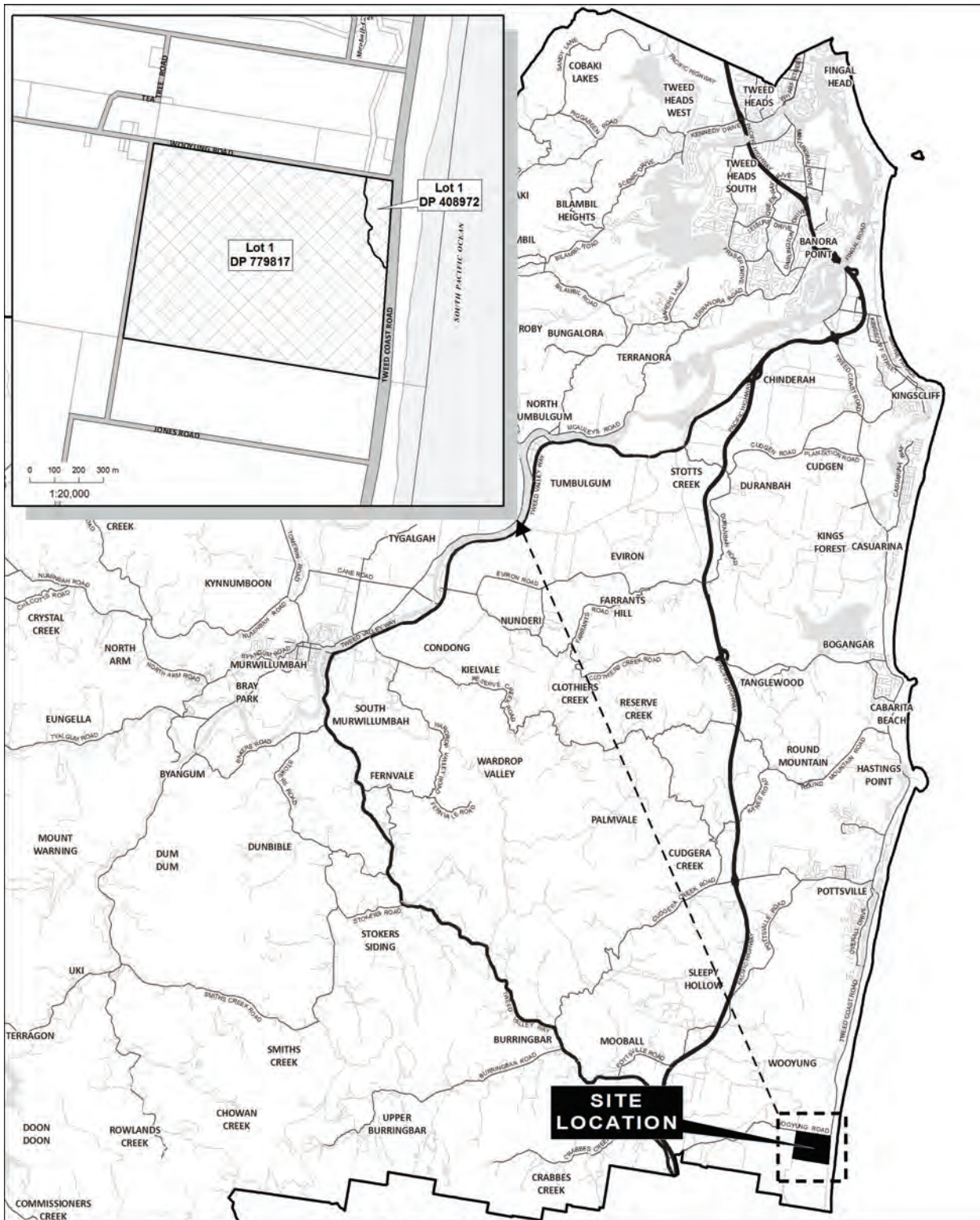
- 26.10.2006 - amended Development Consent 88/0640.01 issued. Note that the consent was originally issued on 22.12.1988, and the CC application incorrectly nominates the amendment date in lieu of the actual original approval date. A copy of this consent and the Master Plan for the approved development is attached at Annexure 'A'.
- 19.7.2010 - application for a construction certificate submitted.
- 3.12.2010 - TSC letter to applicant requesting further information for CC assessment.
- 7.3.2011 - applicant's response. Some information provided but mostly objections were provided in retort. Numerous references to further advice and information that is still being sought (by them) and yet to be submitted - however nothing further has been provided to Council to date. No amended plans provided.
- 13.4.2011 - TSC received a letter from the legal firm of Fishburn Watson O'Brien querying matters raised in Council's letter of 3.12.2010.
- 21.4.2011 - TSC reply to FWO letter.
- 21.4.2011 - TSC reply to applicant's letter of 7.3.2011. TSC relented on several issues originally raised, acknowledged that the applicant was still to submit further information regarding several issues, but also reinforced and reiterated other issues originally raised.
- 9.5.2011 - meeting held at Council with the applicant at their request.
- 25.5.2011 - TSC letter to applicant as a follow-up to the meeting of 9.5.2011.
- 6.6.2011 - TSC letter to NSW Office of Water - requesting a peer review of the applicant's Groundwater and ASS reports. This was prompted by the applicant's reticence in providing information in this regard. (No copy attached).
- 18.7.2011 - NSW Office of Water return advice to TSC re: ASS submissions. Investigations and assessment unsatisfactory - therefore subsequent ASS Management Plan unsatisfactory. Further investigation and assessment required.
- 28.7.2011 - TSC letter to applicant - advising that the ASS Management Plan will be "disregarded".
- 9.8.2011 - NSW Office of Water return advice to TSC re: Groundwater report. Further information requested.
- 18.8.2011 - Class 1 Appeal received by Council

It must be noted that no substantive extra information or amended plans have yet been provided in response to Council's original letter of 3 December 2010, although further information has been promised.

Ancillary Advice/History

- Development Consent was granted by Council on 22 December 1988 for a tourist development. Note that the applicant considers they have approval for 500 units on the site, whereas TSC considers the consent only covers approval for 300 units.
- A Section 96 application to amend the consent was lodged on 12 December 2005. In 2006, TSC advised the proponent the original consent was not valid, due to non-commencement. The proponent took the issue to the NSW Land and Environment Court for judgement. The L&E Court found that replacement of surveyor pegs on the site constituted commencement and that the original consent remains in force.
- After careful consideration of all the submissions made to the S96 Application, TSC sought legal advice to canvas a defence of the S96 Application. TSC negotiated more contemporary and robust conditions to address environmental issues such as acid sulphate soil, groundwater integrity, land contamination, etc. The main issue raised by the objectors, including Byron Shire Council, related to uncertainty about flooding impacts. An amended consent was issued on 26 October 2006.
- Late 2010 - mid 2011 the applicant canvassed an alternative redevelopment proposal for the site to local residents and Community groups, local media, TSC and State Government departments. This alternative proposal included a rezoning, subdivision and construction of 25 large sized dwellings - primarily on beachfront dunal land. Due to an apparent lack of support for this alternative proposal, the owners' representative advised Council that the proposal would be discontinued, and a renewed focus would be given to pursuing the redevelopment of the earlier approved tourist resort development.

SITE DIAGRAM:

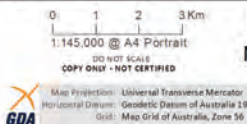


Locality Plan

Lot 1 DP 408972 and Lot 1 DP 779817
No. 440 Wooyung Road, Wooyung

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Cadastral: 05 September, 2011
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Boundaries shown should be considered approximate only.



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OPTIONS:

1. Council determines to support the defence of the Class 1 Appeal; or
2. Council determines NOT to support the defence of the Class 1 Appeal.

The Council officers recommend that Council support Option1.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Due to the Appeal having a 'directions hearing' on 12 September 2011, being prior to Council's September meeting, it has been necessary to already engage solicitors to act on Council's behalf in defending the Appeal.

Costs will be incurred by Council as a result of defending the Appeal.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Council is requested to note the report and endorse the action of engagement of its solicitors to defend the Class 1 Appeal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Development Consent No. D88/0640 (as amended 26/10/2006) (ECM 38537678).
 2. Approved Master Plan for the site (ECM 38538713).
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10 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the August 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.	DA11/0289
Description of Development:	Two storey dwelling
Property Address:	Lot 240 DP 1082837 No. 155 Overall Drive Pottsville
Date Granted:	11/8/2011
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(a) Low Density Residential
Justification:	The SEPP 1 objection relates to Clause 32B of the North Coast Regional Environment Plan and overshadowing of the waterfront open space before 3pm midwinter and 7pm midsummer. The proposal will result in minor overshadowing of the waterfront open space before these times, however the environmental impact is considered to be negligible in the circumstance.
Extent:	The SEPP 1 objection relates to Clause 32B of the North Coast Regional Environment Plan and overshadowing of the waterfront open space before 3pm midwinter and 7pm midsummer. The proposal will result in minor overshadowing of the waterfront open space before these times, however the environmental impact is considered to be negligible in the circumstance.
Authority:	Tweed Shire Council under assumed concurrence

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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