



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 21 June 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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5 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

ORIGIN:

Director Planning and Regulation

SUMMARY OF REPORT:

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

RECOMMENDATION:

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

REPORT:

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

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

DA No.	DA10/0556
Description of Development:	surf lifesaving outpost and vehicle access
Property Address:	Lot 7064 DP 1113596 Surfside Crescent, Pottsville
Date Granted:	19/5/2011
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	6(a) Open Space
Justification:	The proposed life saving facility is required to be in close proximity to the beach for reaction times etc. The shadow created by the facility is unavoidable due to the facility being located on adjacent open space land. The development is surrounded by residential dwelling of two storey in height, with the proposed facility being single storey in height.
Extent:	The dimensions of the proposed outpost (roof area) being height 3.8m x length 16.2m x width 9.4m (152.28m ²). The size of the proposed shadow is relatively minor due to the relatively small scale of the development and in relation to the size of the reserve (90, 511.79m ²).
Authority:	Tweed Shire Council

DA No.	DA10/0797
Description of Development:	two storey dwelling with basement carpark and swimming pool
Property Address:	Lot 353 DP 1087716, No. 23 Cylinders Drive, Kingscliff
Date Granted:	10/5/2011
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(f) Tourism
Justification:	Application has been made to vary Clause 32B of the North Coast Regional Plan, as the proposed development will cast a shadow onto the foreshore land at the rear of the property. The dwelling is two storeys high and in keeping with the bulk and scale of Beach front dwellings already approved in the area. The shadow cast by the dwelling will only impact on a footpath/cycle way at the rear of the property. The beach is located approximately 100 metres from the dwelling and shadows cast by existing trees in the foreshore have a more significant impact on the foreshore area than the shadow cast by the dwelling.

Extent:	<p>An application has been received to construct a two (2) storey dwelling with a basement car park, an in-ground swimming pool and fencing at the subject property.</p> <p>An objection under SEPP No. 1 has been submitted to seek a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space. . The shadow cast will only impact on a pedestrian/ cycle way and the coastal dune vegetation behind the dwelling and not impact on the public's enjoyment of the foreshore.</p>
Authority:	Tweed Shire Council

DA No.	DA10/0849
Description of Development:	additions to create a dual occupancy
Property Address:	Lot 61 DP 31369 No. 11 Murraba Crescent, Tweed Heads
Date Granted:	24/5/2011
Development Standard to be Varied:	Clause 51A - Multi Dwelling Housing Densities in Zone 2a
Zoning:	2(a) Low Density Residential
Justification:	Site is 897m ² in 2a zone - applicant's justification rests on minor nature of variation (3m) and the objectives of the standard will be achieved anyway given the low impact design of the proposed dwelling.
Extent:	Variation of 3m or less than 10%
Authority:	Tweed Shire Council

DA No.	DA11/0107
Description of Development:	dwelling additions
Property Address:	Lot 18 DP 838549 No. 768 Terranora Road, Terranora
Date Granted:	2/5/2011
Development Standard to be Varied:	Clause 24 - Set backs to designated roads
Zoning:	1(c) Rural Living
Justification:	Application received to vary clause 24 of the Tweed LEP 2000 to permit the construction of additions to an existing dwelling within thirty metres of Terranora Road which is a designated road.
Extent:	<p>Application has been received to vary clause 24 of the Tweed LEP 2000 to permit the construction of dwelling additions within the thirty metre setback to Terranora Road.</p> <p>The allotment is zoned 1(c) rural living and is subject to a thirty metre setback as this part of Terranora Road is a designated road.</p> <p>The additions will be located within 12m of the Terranora Road frontage to the site which will require the development standard to be varied by more than 10% hence the need for a SEPP 1 variation.</p>

Authority:	Tweed Shire Council
DA No.	DA11/0176
Description of Development:	gazebo and pool pump house
Property Address:	Lot 5 DP 1047760 No. 9 Winchelsea Way, Terranora
Date Granted:	23/5/2011
Development Standard to be Varied:	Clause 24 - Set backs to designated roads
Zoning:	1(c) Rural Living
Justification:	A SEPP 1 objection has been lodged against the requirement under clause 24 of the Tweed LEP 2000 for the dwelling house to observe a thirty (30) metre building alignment to Terranora Road, which is a designated road
Extent:	Variation to encroach 43% or 13 metres into designated road setback to accommodate an outbuilding.
Authority:	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

6 [PR-CM] Development Application DA10/0295 for a Telecommunications Facility at Lot 7306 DP 1132011, No. 37 Boxsell Road, Limpinwood

ORIGIN:

Development Assessment

FILE NO: DA10/0295 Pt1

SUMMARY OF REPORT:

The subject application seeks consent for the construction of a telecommunications tower for Optus 3G coverage in the form of a monopole 30m in height and associated antennae, equipment shelter, bollards and chain-link security fence, within the existing garbage depot site on Boxsell Road, Limpinwood.

The proposed development raises issues in relation to visual amenity, flora/fauna impact and alternative site selection. Twenty-one (21) written submissions were lodged against the application.

This application was called up by Councillor Milne for determination by Council.

Following the assessment against the relevant heads of consideration, Council Officers consider that the location of the proposal is not suitable in terms of its likely adverse impacts on the natural and built environments.

It is therefore recommended that the application be refused.

RECOMMENDATION:

That Development Application DA10/0295 for a telecommunications facility at Lot 7306 DP 1132011, No. 37 Boxsell Road, Limpinwood be refused for the following reasons:

- 1. The development application is contrary to Clause 115(3) of the State Environmental Planning Policy (Infrastructure) 2007, in that the proposed development is not consistent with the principles described in the NSW Telecommunications Facilities Guidelines.**
- 2. The development application is contrary to Clause 4 of the Tweed Local Environmental Plan 2000, in that the proposed development does not meet the aims of the plan.**
- 3. The development application is contrary to Clause 5 of the Tweed Local Environmental Plan 2000, in that the proposed development**

would have an unacceptable adverse impact (particularly in terms of visual amenity and flora / fauna) on the natural environment.

4. The development application is contrary to Clause 8(1) of the Tweed Local Environmental Plan 2000, in that the proposed development is considered to have an unacceptable cumulative impact upon the surrounding environment.
5. The development application is not suitable for the subject site, in that there is considered to be better suited alternative sites in the same locality and the proposed development is contrary to the Tweed Shire Scenic Landscape Evaluation.
6. The development application is not considered to be in the public interest.

REPORT:

Applicant: Optus Mobile
Owner: Land and Property Management Authority
Location: Lot 7306 DP 1132011, No. 37 Boxsell Road, Limpinwood
Zoning: 5(a) Garbage Depot
Cost: \$200,000

BACKGROUND:

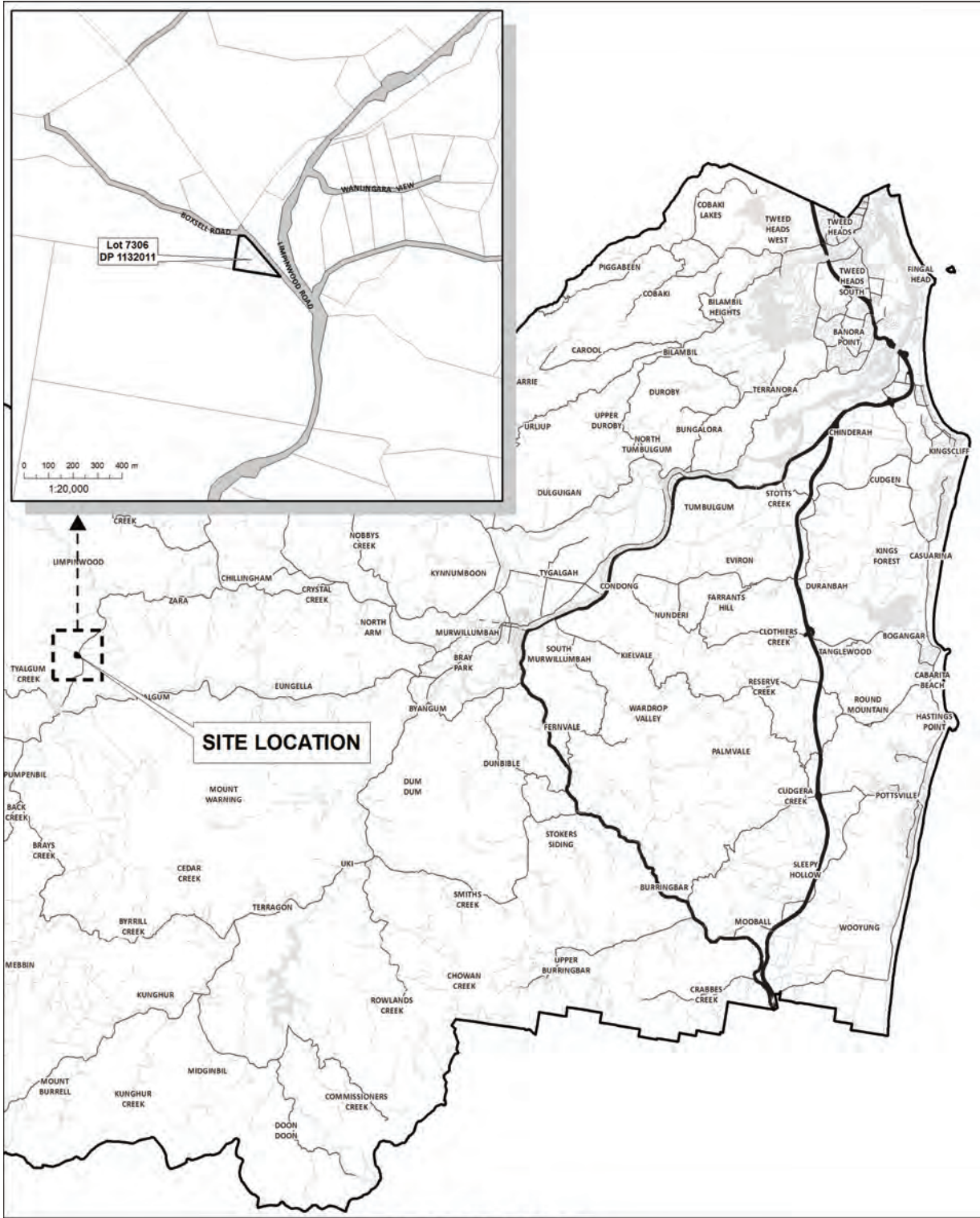
The subject site is legally described as Lot 7306 DP 1132011 located at 37 Boxsell Road, Limpinwood. The site has an area of 15,705m² and is zoned 5(a) Garbage Depot and is surrounded by land that is zoned 1(a) Rural. The site is approximately 2.2km from the township of Tyalgum

The subject application was lodged in May 2010 and seeks consent for the construction of monopole (telecommunications facility) and associated infrastructure, to provide improved 3G capacity in the Tyalgum township and surrounding rural areas. The Optus proposal comprises the following:

- One (1) 30m high monopole (maximum height including antennas is 30.9m);
- Three (3) Optus panel antennas (each 2.8m long) mounted on a circular headframe at Centre Line 29.5m;
- Two (2) x 0.6m parabolic antennas at Centre Line 27m;
- 1 x 0.6m parabolic antenna at Centre Line 27m;
- Equipment Shelter; and
- High chain link security fencing around the proposed compound.

The complex will take up an area of approximately 10.0m x 6.0m (60m²).

SITE DIAGRAM:



Locality Plan

Lot 7306 DP 1132011
No. 37 Boxsell Road, Limpinwood

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

Cadastral: 31 May, 2011
© Land and Property Management Authority (LPM) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

0 2 4 Km
1:200,000 @ A4 Portrait
NO NOT SCALE
COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator
National Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56
GDA

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3 Tumbulgum Road
Murwillumbah NSW 2484
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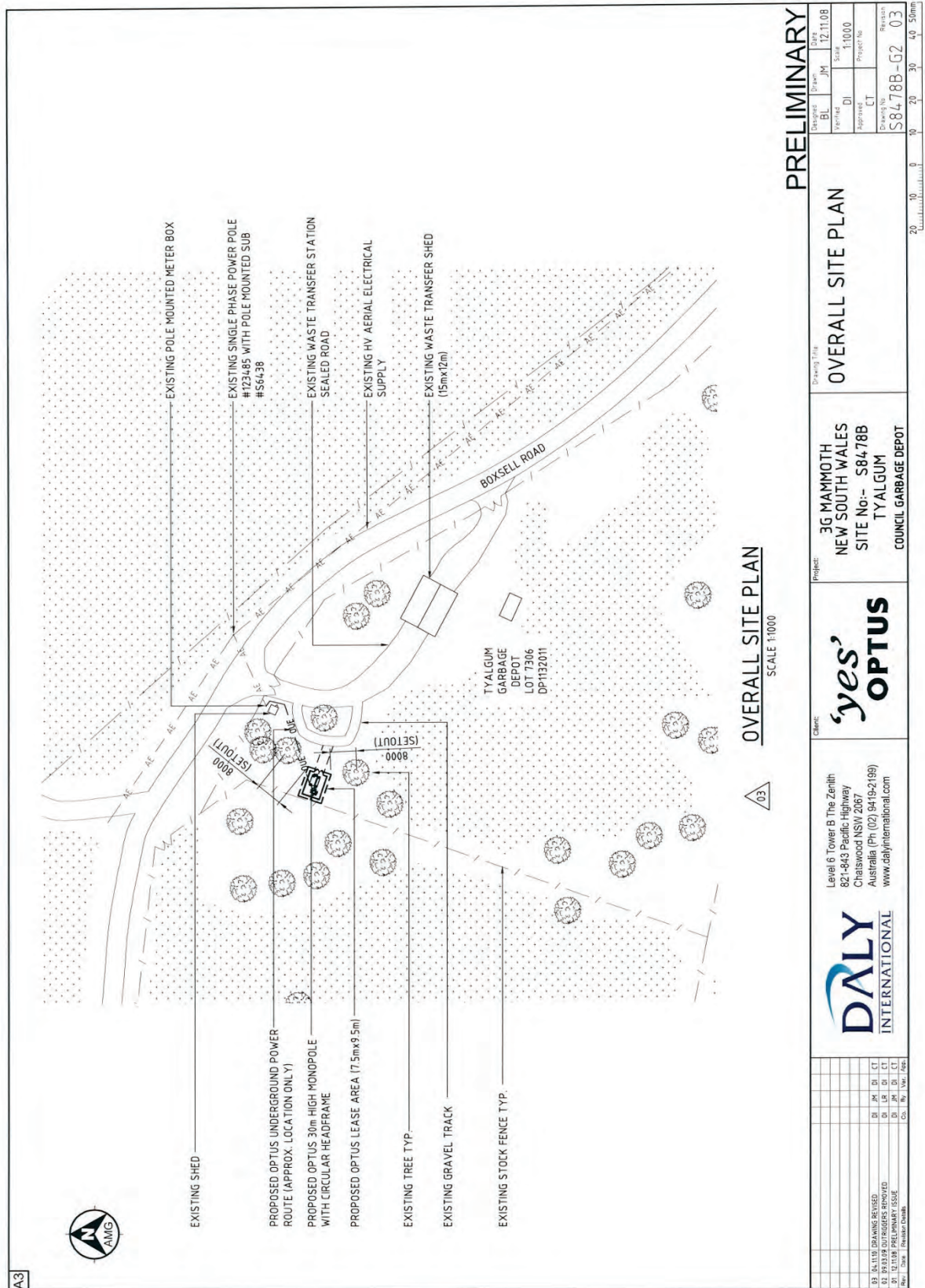


Filename: Z:\SAPPS\GIS\SWD\0401\TEMPLATES\MAPS\GIS\Map-LocalityPlan_A4P.mxd

Author: (Bart)Webb - Planning Services Unit

Date Printed: 11 May 2011

DEVELOPMENT PLANS:



PRELIMINARY

Category	Drawn	Date
BL	JM	12.11.08
Verified	DI	Scale
Approved	CT	1:1000
Drawn by	Project No	Revisions
S84,78B-G2		03

OVERALL SITE PLAN

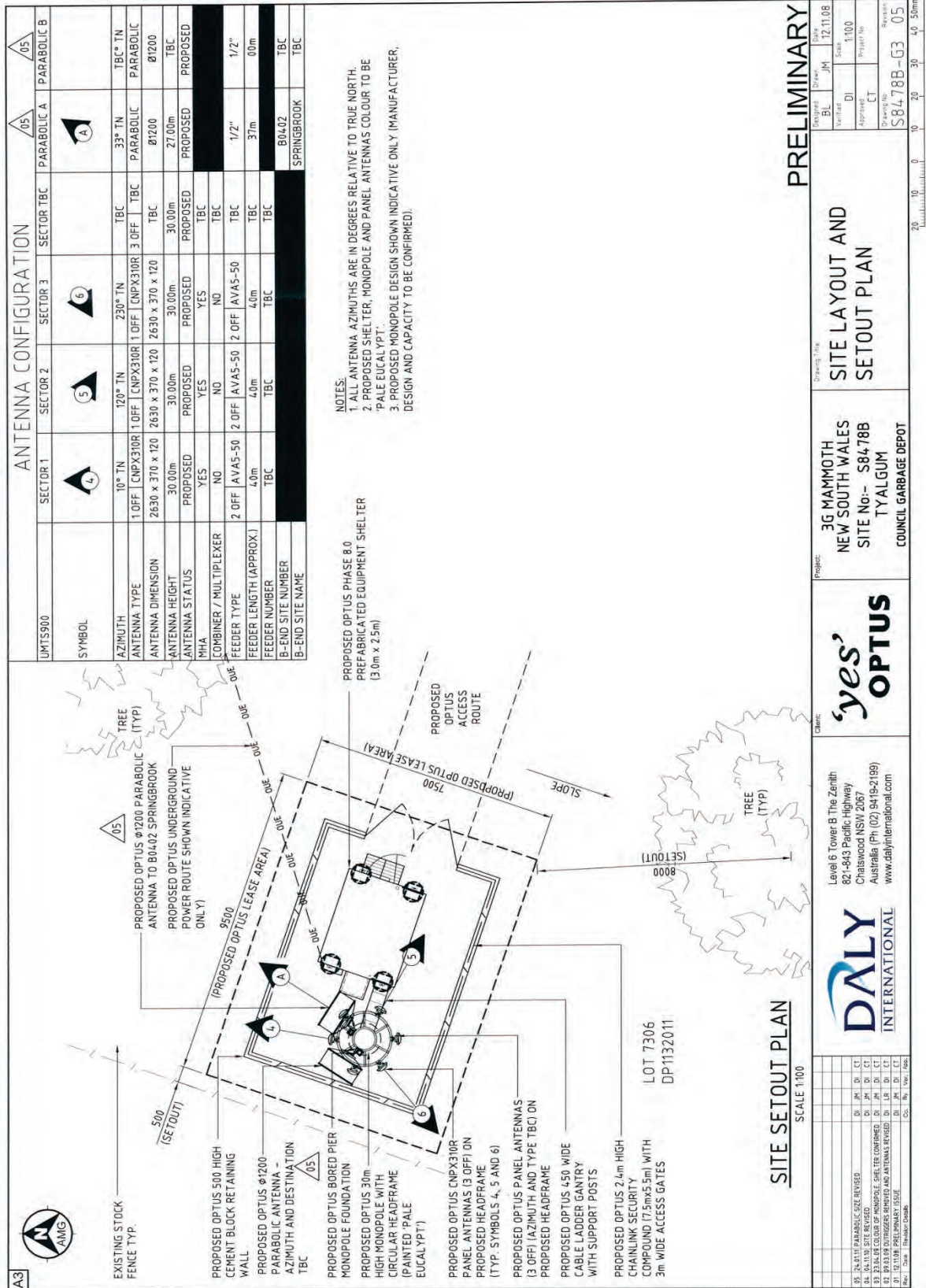
Project:
 3G MAMMOTH
 NEW SOUTH WALES
 SITE No:- S84,78B
 TYALGUM
 COUNCIL GARBAGE DEPOT

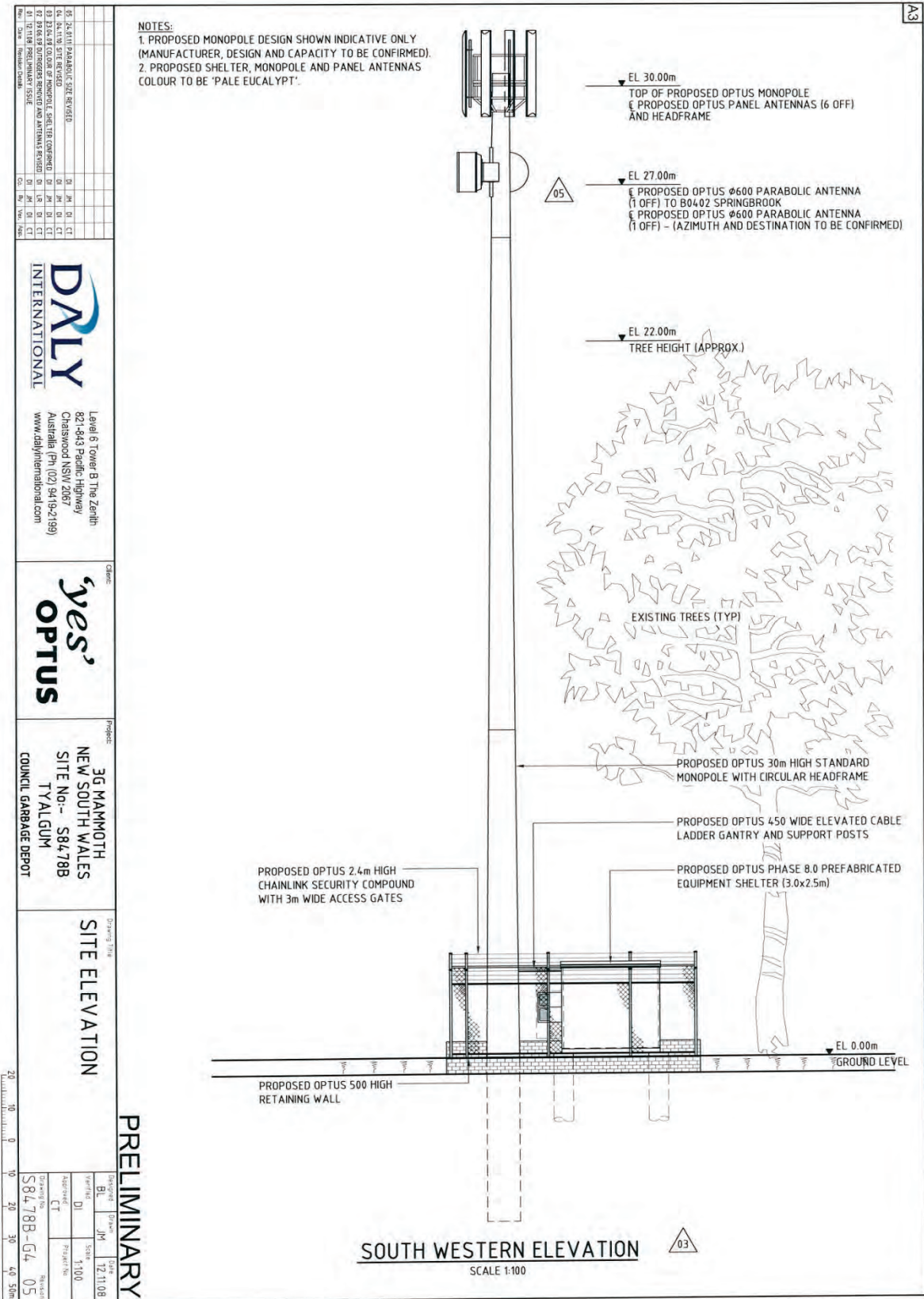
Client:
 'yes'
OPTUS

Level 6 Tower B The Zenith
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 Chatswood NSW 2067
 Australia (Ph (02) 9419-2189)
www.dalyinternational.com

DALY INTERNATIONAL

01	DATE	BY	CHK	APP
02	12.11.08	JM	DI	CT
03	06.06.11	DI	DI	CT
04	06.06.11	DI	DI	CT
05	06.06.11	DI	DI	CT
06	06.06.11	DI	DI	CT
07	06.06.11	DI	DI	CT
08	06.06.11	DI	DI	CT
09	06.06.11	DI	DI	CT
10	06.06.11	DI	DI	CT





05	2.5x1.1 PARABOLIC SIZE REVISION	01	01	01	01	01	01
06	0.4x1.1 SITE REVISION	01	01	01	01	01	01
07	0.4x1.1 SITE REVISION	01	01	01	01	01	01
08	0.4x1.1 SITE REVISION	01	01	01	01	01	01
09	0.4x1.1 SITE REVISION	01	01	01	01	01	01
10	0.4x1.1 SITE REVISION	01	01	01	01	01	01
11	0.4x1.1 SITE REVISION	01	01	01	01	01	01
12	0.4x1.1 SITE REVISION	01	01	01	01	01	01
13	0.4x1.1 SITE REVISION	01	01	01	01	01	01
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19	0.4x1.1 SITE REVISION	01	01	01	01	01	01
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21	0.4x1.1 SITE REVISION	01	01	01	01	01	01
22	0.4x1.1 SITE REVISION	01	01	01	01	01	01
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27	0.4x1.1 SITE REVISION	01	01	01	01	01	01
28	0.4x1.1 SITE REVISION	01	01	01	01	01	01
29	0.4x1.1 SITE REVISION	01	01	01	01	01	01
30	0.4x1.1 SITE REVISION	01	01	01	01	01	01

DAILY INTERNATIONAL

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 Australia (Ph) (02) 941 9421 (99)
 www.dailyinternational.com

'yes' OPTUS

Project:
**3G MAMMOTH
 NEW SOUTH WALES
 SITE No:- S84.788
 TYALGUM
 COUNCIL GARBAGE DEPOT**

Drawings Title:
SITE ELEVATION

PRELIMINARY

Drawn by	Checked by	Scale	Date
BL	JH	1:100	12.11.08
Author	Project	Drawn by	Checked by
CT	884.788-04	05	

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development has been assessed by Council's Ecologist. The proposed development is considered to create unacceptable adverse impact on the natural environment, contravening paragraph a) and d) of clause 4, which are provided below:

“(a) The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced; and

(d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.”

The proposed development is therefore not considered to be consistent with the aims of this plan.

Clause 5 - Ecologically Sustainable Development

As described in this report the proposed development is considered to create unacceptable adverse impact on the natural environment, contravening Clause 5 of the LEP.

Clause 8 - Zone objectives

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

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

(b) it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and

(c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

In this instance, the subject site is zoned 5(a) Special Uses (Garbage Depot), the primary objectives of which are outlined in Clause 11 assessment below. The proposed development is considered to be consistent with the primary objectives of the zone.

Other relevant clauses of the TLEP have been considered elsewhere in this report.

The proposed development is considered to have an **unacceptable cumulative impact** on the surrounding locality, particularly in relation to

such close proximity to the proposed Telstra facility further along Boxsell road.

In light of the above, the proposed development is not considered to meet the provisions of Clause 8 of the LEP.

Clause 11 - Zone objectives

Zone 5 (a) Special Uses

Zone objectives

Primary objective

- *to identify land which is developed or is proposed to be developed, generally by public bodies, for community facilities and services, roads, railways, utilities and similar things.*

Secondary objective

- *to provide flexibility in the development of the land, particularly if it is not yet or is no longer required for the relevant special use.*

The proposed development is defined as a 'Telecommunications Facility' under the provisions of the Tweed LEP 2000. The proposed development is **only permissible** within the 5a zone if it is a '*use which is compatible with adjacent uses allowed (with or without consent) in adjacent zones*'.

The surrounding / adjacent zone is 1(a) Rural, which does permit Telecommunications Facilities. The proposed development is considered to be generally compatible with rural uses and is therefore permissible development.

Clause 15 - Essential Services

The proposed development does not require the provision of water, sewerage and drainage/stormwater. Electricity supply is available from within the waste transfer station compound. The power supply is proposed to be run underground from an existing power pole within the compound to the proposed equipment shelter.

Clause 16 - Height of Building

The site is identified on Council's Building Heights Map as being affected by a three (3) storey height limit. The proposed structure has a total height of 31.4 metres (note: as per definition pursuant to Tweed LEP 2000, the structure cannot be measured by storeys as there is no space between two floors). Therefore, the proposal complies with Clause 15 of the LEP.

Clause 17 - Social Impact Assessment

Section A13 of Council DCP, identifies the types of developments that require a social impact assessment, the proposed telecommunication tower is not identified as an item requiring social impact assessment.

The applicant has noted that there...'*is not expected to be any adverse social or economic effects as a result of the development. Indeed it is anticipated that there will be positive impacts as a result of enhanced mobile telephone coverage*'. However the proposal did receive numerous submissions from the community objecting to the proposal in particular the

proposed location. The issues raised in the submissions are addressed later in this report.

Clause 39A Bushfire protection

The subject site is identified as being prone to bushfire. The applicant has noted that the site would be unmanned when operational and hence would not pose a threat to human life in the event of a bushfire. As the proposal is not a habitable building, the applicant suggests that referral to the NSW Rural Fire Service (RFS) is not required.

The local branch RFS was forwarded a copy of the application to determine if a bushfire assessment was required, pursuant to s79BA Environmental Planning and Assessment Act 1979. No reply has been obtained from the Local branch of the RFS. However, Council has recently received comments from the RFS in Sydney in relation to another telecommunications facility currently under assessment, noting the following:

'RFS has a draft policy for telecommunications towers in bush fire prone areas. When the RFS is asked for comment on new towers:

- *A 10m APZ (asset protection zone) shall be provided around the tower, buildings and associated infrastructure.*

In this case the equipment shelter.

- *The equipment shelter shall comply with section 8 (BAL 40) Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas'.*

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

There are no specific clauses within the NCREP which are relevant to the proposed development.

SEPP No. 44 - Koala Habitat Protection

In terms of SEPP 44, the applicant has noted that the area of Tyalgum is not identified as core koala habitat. Therefore, a Plan of Management is not required.

The site is mapped as Secondary Koala Habitat. See flora / fauna comments later in this report.

SEPP (Infrastructure) 2007

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

115 Development permitted with consent

- (1) *Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.*

- (2) *(Repealed)*
- (3) *Before determining a development application for development to which this clause applies, **the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Director-General for the purposes of this clause and published in the Gazette.***

The guidelines referred to in Clause 115(3) of the SEPP are found within the *NSW Telecommunications Facilities Guideline Including Broadband July 2010*. Section 2 of the Guideline is specific to site selection, design, construction and operation principles for telecommunications facilities and **requires development carried out under Clause 115 of the SEPP to be consistent with the principles set out in the Guideline** in order to follow best practice.

NSW Telecommunications Facilities Guideline Including Broadband

Principle 1: A telecommunications facility is to be designed and sited to minimise visual impact.

Principle 2: Telecommunications facilities should be co-located wherever practical.

Principle 3: Health standards for exposure to radio emissions will be met.

Principle 4: Minimise disturbance and risk, and maximise compliance.

Principle 1 (Visual Impact)

- (e) *A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.*
- (g) *A telecommunications facility should be located so as to minimise or avoid the obstruction of a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.*

Although the proposed location is within existing vegetation, the proposed facility (being 31.4m in height) will be visible above the tree line (shown as approximately 22m on the applicant's drawings). As noted later in this report, the proposed development is not considered to be acceptable in terms of visual impact, and therefore is not consistent with Principle 1 of the NSW Telecommunications Facilities Guidelines.

Principle 2 (Co-location)

- (e) *If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.*

Note: Co-location is 'not practicable' where there is no existing tower or other suitable telecommunications facility that can provide equivalent site

technical specifications including meeting requirements for coverage objectives, radio traffic capacity demands and sufficient call quality.

Council was advised in February 2011 of Telstra's intention to install a proposed 40m telecommunications facility at 10 Boxsell Road under the provisions of the Infrastructure SEPP, as Complying Development. Telstra was required to advise Council of the proposal, prior to undertaking community consultation. The distance between the subject site and the Telstra proposal at 10 Boxsell Road is approximately 620m (see Figure 1 below).

Further to discussions with Council Officers (in regard to whether appropriate aboriginal heritage assessment had been undertaken and level of vegetation removal), Telstra submitted a letter from the Tweed / Byron Local Aboriginal Land Council (TBLALC). The letter noted that the TBLALC had...*'been consulted through the course of the Aboriginal Heritage Assessment'* and that the TBLALC...*'has no concerns with the proposed erection of the communication tower'*. Telstra also confirmed that the proposed location of the complying development was in a cleared area, with no requirement for the removal of vegetation.

Whilst it is acknowledged that the Tyalgum area is in need of better mobile telecommunications services, two facilities in such close proximity to each other is not acceptable, particularly in terms of visual impact. It was at this point that Optus was requested to investigate the option of co-locating on the proposed Telstra facility, noting that Council would be unlikely to support the proposed Optus facility if there was a co-location opportunity on a nearby facility (It should also be noted that this point in time (February 2011) Optus had not yet submitted an Aboriginal Cultural Heritage assessment, and it was not certain that such assessment would support the proposed Optus facility).

The response from Optus (February 2011) was that they would not consider changing the proposed location, given that the...*'application had been lodged with Council for 12 months and a considerable amount of time, effort and money has been invested in working with Council to create an acceptable solution for all parties'*. It was also noted by the applicant that it was...*'unacceptable to assume that Optus would be able to co-locate on a Telstra structure that is in the proposal stages only. There is no guarantee that the Telstra proposal will progress at all, or that Telstra will be amicable to allowing Optus to co-locate. Optus has identified a requirement to strengthen its network in the area, and is undertaking the necessary steps to do so in a timely fashion. To rely on other carries to plan and develop their infrastructure to suit coverage objectives would not be a feasible option. The ISEPP powers are also available to the Optus proposal, however have not been perused as yet in favor of working with Council for an acceptable solution'*.

Based on the fact that Optus had not addressed Council's request to investigate co-location opportunities (as required by the NSW Telecommunications Guidelines), Optus was advised that two (2) telecommunications towers in close proximity in a rural environment was **not acceptable**. See Figure 1 below which demonstrates the proximity of

the proposed telecommunications facilities. Consideration of co-location options was again requested of Optus.

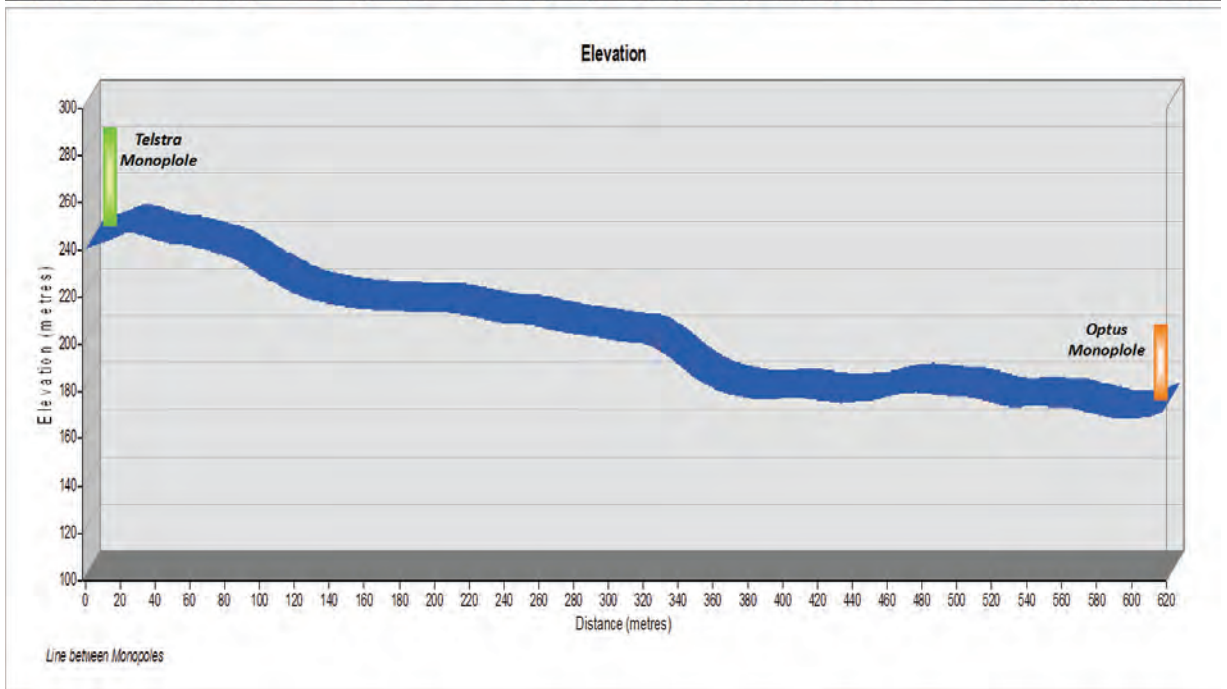


Fig 1: Comparison of location and elevation of Telstra and Optus proposals

Given Optus' disregard of co-location, Council contacted the Mobile Carriers Forum (MCF) in March 2011 to ask the Forum to "encourage" the two carriers to pursue co-location opportunities. A representative of the MCF responded in April 2011 to confirm that they had discussed the matter with representatives from both Telstra and Optus. In this regard the MCF noted the following:

'The vast majority of existing mobile network telecommunications facilities in Australia support the equipment of more than one network carrier, so the industry has had some success in this regard. Where this is not possible it is usually due to the height of the lead carrier's proposed structure which does not allow a 2nd or 3rd carrier's antennas to be established at an elevation that meets geographical coverage objectives. I understand that this was the basis for the issues you've described, and the MCF has encouraged both Carriers to work to see if they can overcome these issues.'

Further to the above, the following correspondence was received from Telstra in April 2011:

'During the site investigation co-location with the proposed Optus facility was considered however, unfortunately the proposed Optus site will not meet Telstra's radio frequency requirements. The chosen Telstra location is located approximately 80m vertically higher than the proposed Optus location at the Tyalgum transfer station.

The extra height at the proposed Telstra location allows Telstra to provide greater coverage to Limpinwood Valley, Tyalgum Creek and Pumpenbil areas and is required to meet the requirements of Telstra and its customers. Telstra has received numerous coverage complaints from the listed locations over the years. Therefore the proposed Telstra location allows all the above mentioned locations to be covered from the one location rather than multiple sites.

A significant increase in height of the Optus proposal, in excess of 45m would be required to meet Telstra's network objectives.

During discussions between Telstra and Optus the following options were identified. Optus could amend its DA to increase the height of its structure to allow Telstra to co-locate (as the existing application is still undecided this approach will take some time), withdraw its DA and undertake a complying development for a larger facility which could possibly provide sufficient height for Telstra, or co-locate on Telstra's complying development proposal at 10 Boxsell Road, Tyalgum.

There is a well established co-location process between Carriers. Council can be assured that Telstra will, as always, work cooperatively with Optus regarding their application if they wish to take this approach.

Approval timeframes of the current Optus development application have also been taken into consideration. The Optus application is still undecided and no decision is foreseeable in the near future.

Telstra and Optus have now discussed the above options and without a substantial increase in height of the Optus proposal, Telstra have concluded that the complying development proposal at 10 Boxsell Road will continue to be pursued, in accordance with the State Environmental Planning Policy (Infrastructure) Amendment (Telecommunications Facilities) 2010'.

Correspondence from Optus was received in May 2011, which noted that Telstra has not yet secured an agreed lease with the landholder. Telstra was contacted on 31 May 2011 in this regard and verbally advised Council that the proposed facility at 10 Boxsell Road was...*'still going ahead and that the lease agreement was being finalised'*. The Optus letter also suggested that there is a higher probability of aboriginal artefacts being found at the proposed Telstra site, due to the relative undisturbed nature of the ground. As noted above, documentation received from Telstra notes that an Aboriginal Heritage Assessment was undertaken, which was subsequently supported by the TBLALC.

In light of Optus not being able to demonstrate that co-location is not practicable, the proposed development is not considered to be consistent with Principle 2 of the NSW Telecommunications Facilities Guidelines.

Principle 3 (Health Standards)

- (a) *A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.*
- (b) *An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate compliance with the Mobile Phone Networks Code.*

As noted later in this report, an EME report has been submitted detailing the estimated maximum cumulative EME levels produced by the proposal. Council's Environmental Health Unit is satisfied that the proposed development is well within emissions standards. Therefore, the proposed development is considered to be consistent with Principle 3 of the Guidelines.

Principle 4 (Minimise disturbance)

- (k) *Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.*

The applicant has noted that is unlikely any trees would require removal. However, it is conceded that minor lopping of branches will be required. As noted later in this report, the proposed development is not considered

to be acceptable in terms of flora / fauna impact, and therefore is not consistent with Principle 4 of the NSW Telecommunications Facilities Guidelines.

Conclusion:

The proposed development is not considered to be consistent with three of the four principles set out in the NSW Telecommunications Facilities Guidelines. Therefore, the proposal **does not comply with the provisions of Clause 115(3) of the Infrastructure SEPP** and should be refused.

SEPP (Rural Lands) 2008

One of the aims of this Policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It is considered that the proposed development is consistent with the aims of this Policy in that it will improve the telecommunication network in the locality.

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

The subject site is proposed to be zoned RU2 – Rural Landscape in the Draft Tweed Local Environmental Plan 2010. A proposed telecommunication facility is prohibited in this zone. Any telecommunications facility would have to rely on the provisions of the infrastructure SEPP in order to be permissible in this zone.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposed land use (telecommunications facility) is not identified within the policy, therefore a strict development standard is not available to use. The applicant states that *the proposed facility is self contained and operates on a continuously unstaffed basis. Once operational and integrated within the Optus mobile network, the base station typically requires only yearly maintenance inspections.*

It is apparent from the proposed plans that the waste transfer station compound could accommodate adequate onsite parking.

A11-Public Notification of Development Proposals

The application was advertised for a period of fourteen (14) days from Wednesday 9 June 2010 to Thursday 24 June 2010 (public holidays excluded).

Twenty-one submissions were received with regard to the application, with the majority citing concerns with human health and environmental value/health, as well as impact upon a site of Aboriginal cultural heritage. Thus there is strong opposition to this site for a mobile phone tower. The issues raised within the submissions are listed within the body of the report below.

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

Clause 92(a) Government Coastal Policy

The Coastal Policy is not applicable to the subject site.

Clause 92(b) Applications for demolition

The proposed development does not include demolition works.

Clause 93 Fire Safety Considerations

Clause 93 is not applicable to the proposed development.

Clause 94 Buildings to be upgraded

Clause 94 is not applicable to the proposed development.

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

The three coastal zone management plans (Tweed Shire Coastline Management Plan 2005, Tweed Coast Estuaries Management Plan 2004 and the Coastal Zone Management Plan for Cobaki and Terranora Broadwater) are not applicable to the subject site.

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

Visual Impact

The proposed facility is 31.4 metres in height and located along a ridgeline, with some level of screening to the development from existing mature tree species that are located within the waste transfer compound.

The applicant notes the following:

'The site has been designed in a manner that takes into account the necessity of reducing any impact. The compound location is 2.2km outside of the main village area, hence the proposed monopole will not detract from the existing character of the Tyalgum town centre.

Measures to mitigate visual impact from view sheds include locating in a vegetated area, painting the monopole and the selection of an appropriate headframe'.

The following photos are some of those taken by the applicant in an effort to demonstrate that the proposed facility will not have an impact in terms of visual amenity:

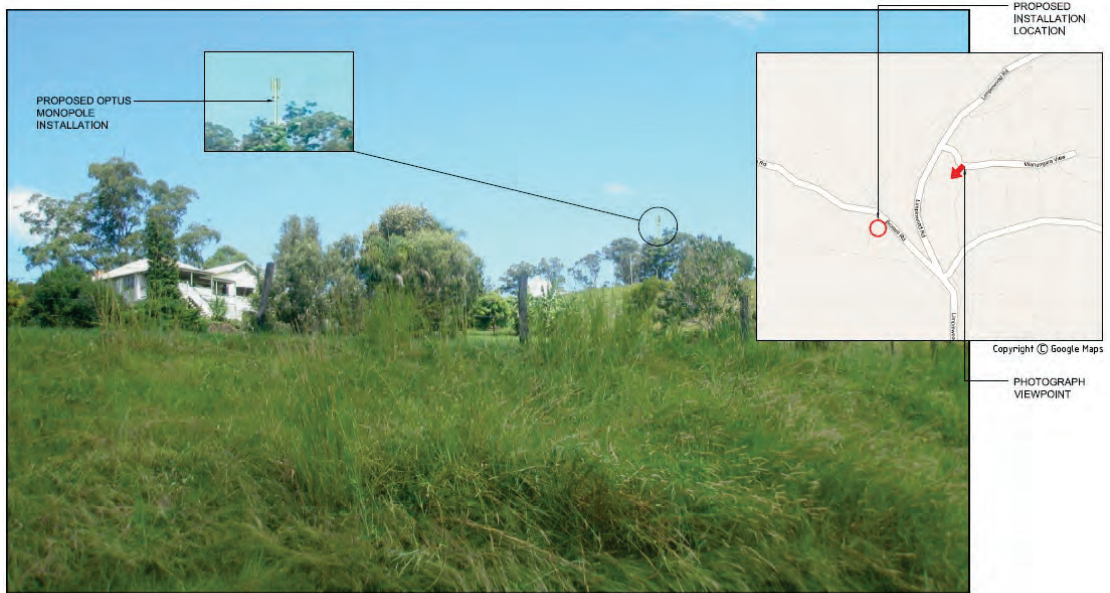
Photo 12. Wanagara Road looking south west. Taken a short distance from intersection of Wanagara Road and Limpinwood Road. The balloons were not visible further down (heading east) of Wanagara Road because the terrain reduced in elevation. Red arrow indicates the locations of the balloons. Orange arrow indicates readjustment to proposed compound position.



Photo 13. In front of Tyalgum Store, Coolamon Street, facing north east – indistinguishable. Was only located through extreme zoom on camera. Monopole is proposed to be painted painted pale eucalypt and located amidst trees making the facility further indistinguishable. Red arrow indicates the locations of the balloons. Orange arrow indicates readjustment to proposed compound position.



It should be noted that Photo 12 above is not considered to be an accurate indication of the potential impact upon surrounding residences. The applicant also included a photomontage (see below), taken largely from the same location, which provides a better indication of the proposed development, and clearly shows that the top of the facility will be seen above the existing vegetation.



PHOTOMONTAGE FOR ILLUSTRATIVE PURPOSE ONLY.
PROPOSED VIEW LOOKING SOUTH WEST
TOWARDS THE PROPOSED OPTUS MONOPOLE INSTALLATION
FROM WANUNGARA VIEW

In addition, the applicant's Photo 13 is not considered to be indicative of the view of the development from the township. Whilst it is acknowledged that the mountain behind the site (as shown in Photo 13) will provide some backdrop to the facility when viewed from where the photo was taken (along Coolamon Street), Council Officers undertook their own visual analysis from the Tyalgum township. The photo below (Figure 2) clearly shows that the proposed facility will be clearly visible on the ridgeline from other parts of the village (photo taken from Coodgie Street), with no mountain back drop to screen the proposal.



**Fig 2: Photo taken from the main road from the township towards
Limpinwood**

In terms of visual impact, two telecommunications facilities in such proximity to each other in a rural landscape are not considered to be acceptable. Although it is recognised that better mobile telephone coverage is needed in rural areas, the cumulative impact of having two facilities in such proximity is considered to be unsupportable, particularly when taking into consideration the Tweed Shire Scenic Landscape Evaluation report (which is addressed later in this report).

In addition, NSW Rural Fire Service (RFS) requirements would likely require a 10m APZ around the facility, which would essentially remove the existing trees around the proposed location. This would further increase the visual impact of the facility.

Therefore, the proposed development is not supported with regard to visual impact.

Flora and Fauna

Council's Specialist Planner / Ecologist provided the following comments, with regard to flora and fauna impacts:

'The site is centrally located within a regional fauna corridor linking Wollumbin National Park with Limpinwood Nature Reserve, is mapped as "very high" ecological status under Tweed Vegetation Management Strategy 2004 and contains vegetation mapped as Tallwood Open Forest, including hollow-bearing trees (Figures 3 and 4). The site is likely to be of importance as a stepping-stone (a function of small vegetation remnants and isolated trees in a cleared landscape between areas mapped as old growth forest).

The original application did not consider the ecological values of the site and further information was requested in the following form:

- 1) *Due to the location of the site directly within a regional fauna corridor linking Wollumbin National Park with Limpinwood Nature Reserve and its "very high" ecological status under Tweed Vegetation Management Strategy 2004, Council has determined that a full flora and fauna survey for the site and surrounds is required. This survey must be undertaken by suitably qualified persons in accordance with DECCW "Threatened Biodiversity Survey and Assessment Guidelines (2004)" in order to determine habitat use on and surrounding the site;*
- 2) *Provide Assessments of Significance for the Koala, Grey-headed Flying Fox, Large-eared Pied Bat and Little Bentwing Bat in accordance with DECCW Assessment of Significance Guidelines;*
- 3) *Provide a survey plan that plots the proposed monopole and any associated infrastructure or equipment in relation to existing trees and shrubs, including a schedule that identifies all trees to be retained, trees that will require trimming, and the*

proportion of the trees to be trimmed. Demonstrate that the proposed earthworks can be undertaken in accordance with AS 4970-2009 Protection of Trees on Development Sites; and

- 4) Provide detailed consideration to the potential and likely ecological impacts of EME on biological diversity. Include expected frequency, power density and maximum distance / extent of emissions. Any potential impacts should be considered in the context of the proximity of habitat to the source and the period(s) of exposure.*

The response received did not address point 4 of the request by way of stating that point 4 was not applicable or justifiable, and did not satisfactorily address any of the other three points. No fauna survey, SEPP 44 assessment or individual Assessments of Significance for threatened species has been undertaken. Mapping of the vegetation community on the site resulted in a description as Tallowwood (Eucalyptus microcorys)/ Large-fruited Grey Gum (incorrectly named as Eucalyptus biturbinata when it is Eucalyptus propinqua)/ Northern Grey Ironbark (Eucalyptus siderophloia)/ Pink Bloodwood (Corymbia intermedia) Dry Sclerophyll Open Forest. Within the proposed compound site are seven older remnant trees with a sparse mid-stratum of shrubs and a dense ground cover of native and exotic grasses and herbs. This community equates to the Biometric description of Tallowwood Dry Grassy Forest of the far northern ranges of the north coast, a community which has been 45% cleared.

Six of the seven trees remnant trees support trunk and stem hollows as well as termite nests suitable for hollow-obligate threatened fauna such as micro-bats and arboreal marsupials. One Tallowwood has three large and two medium-sized hollows and is considered of very high conservation significance. The monopole is proposed in the centre of the main tree grouping. Tallowwood and Small-fruited Grey Gum are known preferred Koala food tree species and the site is mapped as Secondary A Koala Habitat under the Tweed Coast Koala Habitat Study (Biolink 201) mapping.

The application stated initially that no vegetation clearing was proposed and later that clearing would be restricted to small shrubs and that some trimming of trees will be required during the initial erection of the monopole. The SEE and subsequent information did not satisfactorily address the amount of trimming required in the installation stage nor maintenance trimming that will almost certainly be required during the operational phase, particularly as the trees grow over time.

The ecological assessment has recognised that two of the six hollow-bearing trees are in the vicinity of the proposed underground power line and that a third tree being the largest and oldest Tallowwood with 3 large and two small hollows overhangs the proposed canopy and will require lopping (amount unstated). It appears very likely that continual lopping will be required and that

due to the age of the trees and the likelihood of branch drop or potential root damage from excavation and underground power line placement, a request will be made in the near future to remove the trees. The Ecological Assessment of Significance has considered maximum clearing over an area of 1350m², presumably encompassing the entire area including the large remnant trees. Removal of this important hollow resource is unwarranted.

Earthworks are proposed over the compound area and to erect a fence. No details have been provided to demonstrate that the critical root area of the plants retained will not be impacted by the excavation required of 9m² (3mx3m), or for the establishment of the fence posts (over an area 10 m x 6m). It is also proposed to have high security fencing which will have barbed wire. The risk of fauna being caught and killed or injured, in particular birds and bats but also arboreal mammals, has not been addressed.

Monopoles function through emission of radio waves, a form of electromagnetic radiation. Research and studies on the ecological effects of Electro-Magnetic Emissions (EME) suggest that a range of impacts can result on fauna and that further work is required in this area. Researched impacts include:

1. Decreased reproductive potential in mammals;
2. Cell damage and decreased reproductive success in insects;
3. Reduced reproduction output and interference with neurological processes in amphibians (the least studied faunal group);
4. Cardiac responses in reptiles (a poorly studied faunal group); and
5. Changes to immune responses, suppression of carotenoids, melatonin, total proteins, elevation of granulocytes and oxidative stress, decrease in abundance, decline in reproductive potential in birds.

Recommendation

Consideration of the above matters, and in light of a proposal by another carrier to locate in a less constrained area at slightly higher elevation (by which co-location can be gained as encouraged within the telecommunications policy and industry), has led to the conclusion that the application for a telecommunications tower at Boxsell Road, Limpinwood should be refused for the following reasons.

1. Insufficient information to enable an accurate assessment of ecological impacts

Despite a request to undertake fauna survey to determine whether hollows were being used by fauna and to consider the importance of the hollows for individual species (in particular threatened species)

no fauna survey was undertaken. Scats and scratch-marks evident at the base of trees and on their trunks indicate repeated faunal use of most, if not all, of the remnant trees in the vicinity of the proposed compound and monopole. In the absence of information sufficient to be convinced to the contrary, it must be assumed that fauna using the hollows are dependent upon them, use them for breeding and raising young and that threatened species are included in this group, in particular microchiropteran bats and arboreal mammals.

2. Potential for significant impact on hollow-dependent and threatened species

Research and studies on the ecological effects of EME's suggest that a range of impacts can result and although further work is required in this area, that impact is inversely proportional to the species size (by which smaller or young animals are more likely impacted than larger older animals). A minimum 50m buffer has been recommended for other projects. Due to the proposed placement of the monopole in close proximity to hollows likely used for breeding, a precautionary approach must be taken in this case by refusing the application.

3. The proposal is likely to exacerbate Key Threatening Processes including Loss of Hollow-bearing Trees and Clearing of Native Vegetation.

Whilst the application does not expressly state that tree clearing is necessary, the location of the proposed power line, the proposed compound, fencing and accesses into the site make the immediate or later tree removal very likely. Because Eucalypts can take up to 200 years to form large hollows, loss of these resources should be avoided and any development located well away.

4. Potential loss of primary and secondary Koala food trees.

Two Tallowwoods and two Grey Gums have potential to be impacted. These are known Primary Koala food trees and the site is mapped as Secondary Koala habitat under the Tweed Coast Koala Habitat Study mapping. Although Koala populations in this area have not been defined, scats and scratches beneath the Grey Gums indicate potential use. Fencing of the area with security fencing and barbed wire would prevent further use.

5. Alternative less ecologically constrained location is available and would result in co-location

Telstra have proposed a monopole further up Boxsell Road in cleared area unconstrained by ecological issues. Being higher, this pole should be available for co-location.



Figure 3: Overview of the site



Figure 4: Hollows and termite nests are significant features of these trees.

The Ecologist's comments above were provided prior to advice from the RFS requiring a 10m APZ, if the proposal were to be supported by Council. In light of such APZ requirements, the removal of vegetation surrounding the proposed development is a likely outcome, which is not supported.

Radiofrequency Electro Magnetic Emissions (RF-EME Levels)

Radiofrequency Electro Magnetic Emissions (RF- EME) from the operation of the Base Station has been assessed and a report has been provided dated 06/02/09. This Report has been prepared in accordance with the requirements of The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and estimates the maximum cumulative EME levels (% of ACMA mandated exposure limit) produced by the site at 1.5m above ground level at the following distance from the antennas:

Distance from the antennas at Boxsell Road	Maximum Cumulative EME Level
0m to 5m	0.000019%
5m to 50m	0.0011%
50m to 100m	0.004%
100m to 200m	0.058%
200m to 300m	0.056%
300m to 400m	0.029%
400m to 500m	0.016%

Council's Environmental Health Unit assessed the proposed development in terms of Radiofrequency Electro Magnetic Emissions, noting the following:

'The values of electromagnetic energy are given as percentages of the permitted limit. The results indicate that the maximum estimated EME level is 0.058% of the ACMA mandated exposure limit. The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards. No further considerations required.'

Heritage

During the assessment of the proposed development, it was highlighted to Council that the subject site may be an Aboriginal Heritage and Sacred site. In June 2010, the applicant was requested to investigate the matter in consultation with the Tweed Byron Local Aboriginal Land Council (TBLALC) and any other related stakeholders. The application was also referred to the next available Aboriginal Advisory Committee (AAC) meeting for comment. Minutes from the AAC meeting held 6 August 2010 note that the Committee

resolved that...*'Council Planners request some additional cultural assessment through the TBLALC in terms of the cultural pathway'*.

Council's understanding of the 'cultural pathway' was a reference to the ridge line (that the subject site is located upon) and likelihood that it would have been used as a path or a track. The applicant was then requested to consult with the TBLALC with particular regard to the cultural pathway.

In November 2010, the applicant advised that Optus had engaged the services of *Converge Heritage & Community* to undertake the abovementioned Aboriginal consultation.

Converge's Cultural Heritage Assessment was submitted in February 2011. The report refers to consultation, research, fieldwork, site evaluation and impact assessment, as well as management and recommendations. The assessment provided the following Executive Summary:

'Converge Heritage and Community (Converge) was commissioned by Daly International on behalf of Optus Pty. Ltd. (Optus) to undertake an assessment of the Indigenous cultural heritage aspects on the proposed site of a telecommunications monopole (the Project), on Boxsell Road, Limpinwood (the study area).

*No specific areas or objects of Aboriginal cultural heritage significance were identified during the field survey. However, the study area is situated within a cultural landscape with a line of sight to the culturally significant Wollumbin (Mount Warning). **The study area is also located on a ridgeline which forms the beginning of a track way through the McPherson Ranges to Beaudesert** (cf. Steele 1984:53).*

It should be noted that the low GI and poor GSV levels that predominate over the majority of the study area may have been a constraining factor to the identification of areas and objects of Aboriginal cultural heritage significance.

As noted above, no objects or areas of archaeological significance were identified during the survey. The potential for objects and areas of archaeological significance does, however, still exist because the study area is located on a ridgeline, which is known as a preferred route of travel for people in the past.

The study area is situated in a cultural landscape which contains a range of different landscape and anthropogenic features which bear significance to the local Aboriginal parties.
To the east of the study area is the grave of the former leader, Wollumbin Johnnie – the Aboriginal leader of this area bore the name Wollumbin, after the important landscape feature, Mount Warning (Steel 1984:52).

There are a number of Bora rings and stone arrangements to the south west of the study area, including the site of a former stone arrangement which was constructed in relation to the geological formation, The Pinnacle (Coowarragum). This stone arrangement was destroyed in the historic period during land clearing, although

Steele claims 'a visit to the site can be a moving experience' (1984:53).

*This study has found that there is a **low probability that further, undetected cultural heritage material may remain in the study area**, either within areas of low visibility or as subsurface remains. A number of recommendations are made in Section 5.0 of this report in order to assist in protecting and managing the cultural heritage values of the study area'.*

The report also provided the following recommendations:

'Procedures for unexpected finds

Much of the study area exhibited poor ground surface visibility levels, which limited the possible identification of cultural objects and raises the possibility that further, undetected cultural heritage still exists within the study area. Should unexpected Aboriginal cultural heritage be located during project activities, work must cease immediately, DECCW and National Parks and Wildlife must be notified and an Aboriginal Heritage Impact Permit (AHIP) may need to be applied for. Further investigation may be required depending on the nature of the Aboriginal object that is found (refer to Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW).

'On-going consultation with the local Aboriginal community

On-going, formal consultation between Tweed Shire Council (TSC) and appropriate representatives of the local Aboriginal community is recommended to ensure cultural considerations are incorporated into future development activities at the site. Consultation about unexpected finds in the study area would be important in order to allow appropriate mitigation programs to be implemented'.

The final report was reported back to the Aboriginal Advisory Committee (AAC) to determine if they supported the applicant's assessment. The following resolution was made at the AAC's March 2011 meeting:

'Draft Report for proposed Optus telecommunications facility at Limpinwood

Converge's draft report regarding the proposed Optus telecommunications facility at Limpinwood was discussed at the last meeting however there wasn't a resolution of the Committee as there was no quorum. Ian advised that he has now distributed the final report.

Moved: Joyce Summers

Seconded: Jackie McDonald

RESOLVED *that the Committee accepts the final report from Converge regarding the Optus telecommunication facility at Boxsell Road, Limpinwood'.*

Therefore, the proposed development is considered to be acceptable in terms of Cultural Heritage, subject to implementation of the mitigation measures and recommendations.

Noise

Some level of noise will be generated during the construction phase for the proposed monopole. During the operation phase of the lifespan of the monopole noise associated with use of air conditioning plants servicing the equipment shelter will be generated. However, considering the distance to existing nearby dwellings is approximately 230 metres, no significant impacts are anticipated in this regard.

Lighting

The application does not make mention of any security lighting to be used at the facility.

Contamination

With regard to contamination, Council's Environmental Health Unit provided the following comments:

'The proposed subject site is considered potentially contaminated due to its current use as a waste transfer station and historical use as a landfill. Anecdotal evidence from Council's Aerial Photography dated 2000, 2004, 2007 and 2009 indicates that the proposed location of the facility within the site has not been subjected to land filling activities. This is supported by advice received from Council's Waste Management Coordinator Adam Faulkner (conversation 6 July 2010). The proposed use is not anticipated to be impacted upon by potentially contaminated land from current and historical land uses.'

Impact upon the Existing Waste Transfer Station

The proposed development was referred to Council's Waste Management Unit, to determine if there would be any impact upon the existing on-site operations at the waste transfer station. The Waste Management Unit noted that the...*'proposed location of the facility will not interfere with the daily operations of the Tyalgum Waste & Recycling facility'*.

(c) Suitability of the site for the development

Consideration of Alternative Sites

The applicant provided the following analysis of alternative sites:

'When looking at alternative sites there is a limit as to how far the 3G mobile base station can be located from the targeted coverage area (in this case the township of Tyalgum). Even though 3G coverage from a mobile station may reach many kilometres out from the actual base station the greater the distance from the base station the greater degradation the 3G signal suffers. Signal degradation leads to commonly experienced problems such as "dropping out" and inability to connect.'

1. Investigation of land around Tyalgum Cemetery, off Swift Road

Area not considered to be suitable for the erection of a telecommunications facility.

2. Farmhouse Lot 85 DP 755694, 1699 Tyalgum Road, Tyalgum

Unable to contact land owner after repeated efforts.

3. Tyalgum Water Reservoir, Lot 85 DP 755748, 85 Bray Street, Tyalgum

The water reservoir site has the advantage of mature vegetation cover and close proximity to the township which would ensure the provision of reliable 3G services. However, at this point in time the Council owned garbage depot located on Lot 7306 DP 1132011 Boxsell Road is still the preferred option as this site will not only provide reliable 3G services but provide the 3G service to a wider portion of the surrounding rural community (due to the higher terrain elevation of the land at this location).

4. Land surrounding Chambray Place

The site had the advantage of elevated terrain and proximity to the Tyalgum township which would ensure the provision of reliable 3G services. However, at this point in time the Lot 7306 DP 1132011 Boxsell Road is the preferred option due to its present use as a garbage depot facility by Tweed Shire Council. The elevation of land at Lot 7306 DP 1132011 is also greater than the land surrounding Chambray Place which will provide the 3G service to a wider portion of the surrounding rural community.

5. Farmhouse West of Garbage depot, Lot 10 DP 1109367, Tyalgum

Inability to obtain tenure approval from the property owner. This site would have entailed vegetation removal from the hillsides, which is a course of action preferentially avoided by Optus (if feasible).

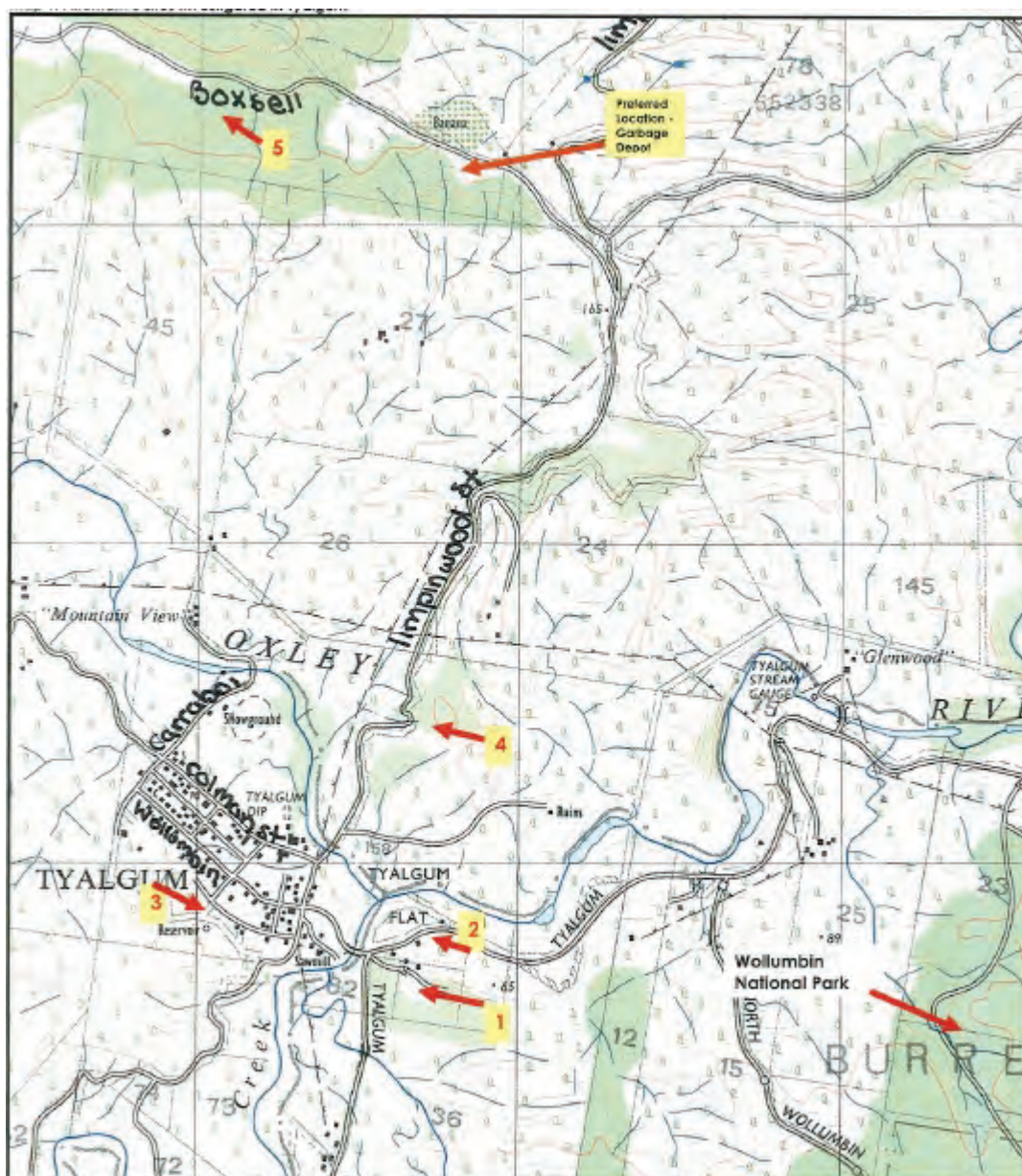


Figure 5: Alternative Sites Investigated by Optus

The garbage depot is preferred because after assessment and consideration of all factors in site selection the subject site had the most positive attributes:

- *The advantage of elevated terrain which has the benefit of providing 3G signal not only to the Tyalgum township, but the surrounding rural residential properties located further out from the township;*
- *The 5(a) Special Uses zoning of the garbage compound. The zoning surrounding the garbage depot is 1(a) rural;*
- *Very tall mature trees within the compound combined with the undulating terrain assist in mitigating the visual impact within the immediate surrounding area;*

- *Minimal to no visual impact as seen from the Tyalgum township;*
- *The subject site avoids the need to locate in the main township of Tyalgum; and*
- *The subject site has the appropriate technical requirements needed for the proposer functioning of a mobile base station i.e. power source, road access, line of sight to another telecommunications facility achieved etc'.*

Council is not satisfied with the applicant's analysis of alternative sites. Option 3 (Tyalgum Water Reservoir) is regarded to be a suitable location, given its co-location ability upon an existing structure, providing coverage to the township.

The applicant's comment that the proposed development will have 'minimal to no visual impact' is not supported. As noted in the visual impact assessment above, the subject site is along a ridgeline, with the proposed 31.4m facility being approximately 10m above the canopy of the existing trees. With no vegetation behind the structure, the proposed facility will be highly visible from various locations within the Tyalgum township. The RFS requirement of a 10m APZ would also increase the level of visibility from the surrounding area.

Option 5 is considered to be the most appropriate site. Although it is noted that the applicant was unable to secure tenure approval at the time, it became apparent during the assessment of this application that that was no longer the case. Not only has the land owner of Lot 10 DP 1109367 made a submission that his property (further up the ridge) is available for such use. It also became apparent that Lot 10 was the location of a Telstra facility (complying development) upon which Optus could co-locate upon. As noted elsewhere in this report, co-location between carriers should be undertaken, particularly when the facilities are proposed in such proximity to each other (approximately 620m apart).

The applicant has noted that a facility at Option 5...*'would have entailed vegetation removal from the hillsides'*. This is not the case for the proposed Telstra facility, suggesting that the Optus facility may have been proposed in a different location upon Lot 10. The information provided to date by Telstra notes that...*'no tree clearing is proposed'*, which provides further argument for co-location on Lot 10.

Given that Telstra cannot co-locate upon the Optus facility without a significant increase in height (which would exacerbate the potential visual impact from the township), the Optus facility should be co-located upon the proposed Telstra facility. Given that the majority of the alternative sites have been discounted on account of the subject site having a higher elevation, the fact that the proposed Telstra facility has an even greater elevation (approximately 70m higher) demonstrates that the proposed development should not be supported. Rather, Optus should co-locate upon the Telstra facility proposed on Lot 10 DP 1109367 (Option 5).

As a result of a better site location being available for co-location purposes, the subject site is not considered to be suitable for the proposed Optus facility.

Tweed Shire Scenic Landscape Evaluation

Catherine Brower's Tweed Shire Scenic Landscape Evaluation report (1995) was undertaken to: identify and analyse the scenic landscape of the Tweed Shire to determine its aesthetic and cultural heritage values; identify ways of protecting view corridors of high value; and to provide methods for the management of the scenic value of the shire.

The subject site is located on the edge of the Limpinwood and Tyalgum Creek areas (see Figure 6 below). The evaluation report identifies the Limpinwood area as having a Very High scenic quality and Tyalgum Creek as having a High scenic quality.

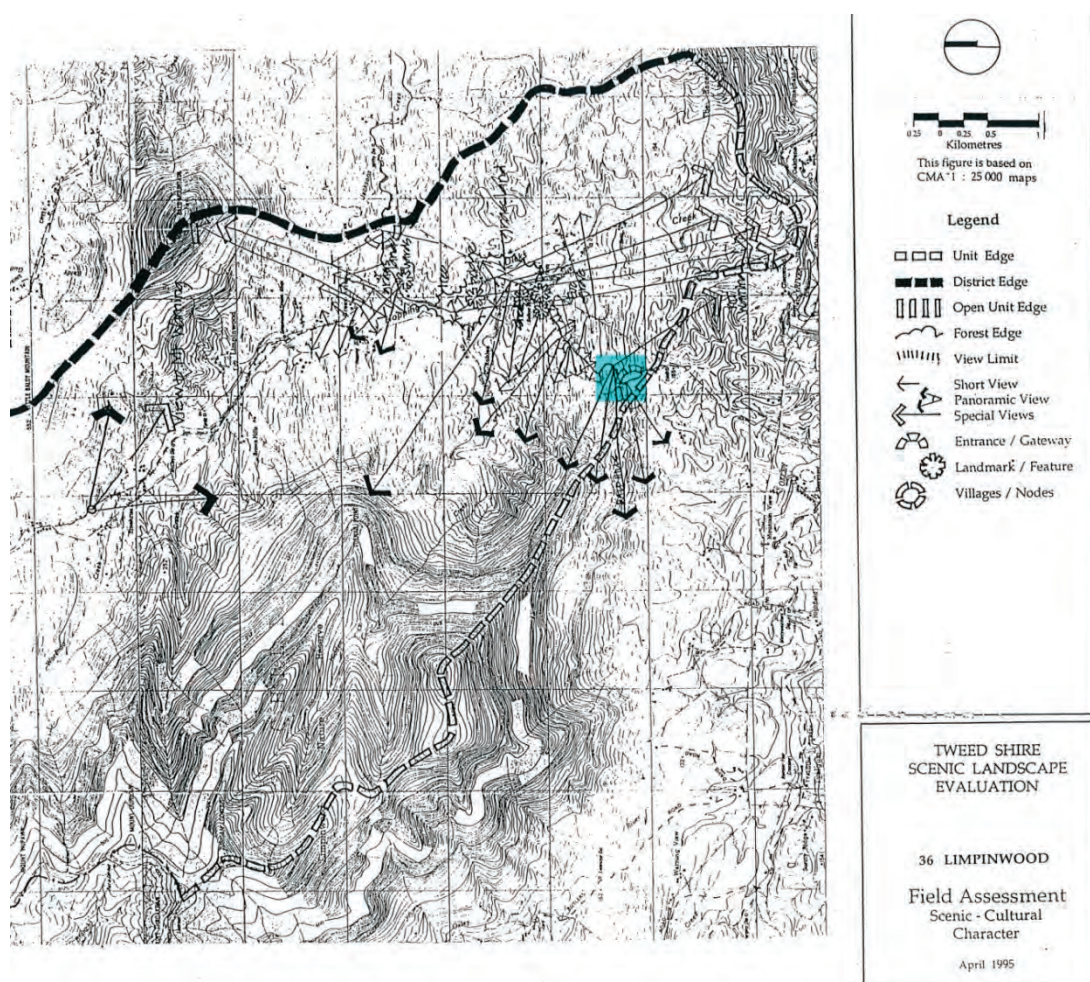


Figure 6: Proposed site (highlighted in blue)

In terms of scenic districts, the report identifies Tyalgum as a scenic district, with the following parameters of development:

- *Development to retain existing rural character where visible;*
- *Limit development along scenic roads and along creeks;*

- ***Development should be restricted from ridgelines and should not significantly open the existing forest canopy.***

With regard to Scenic Setting Units, the evaluation report notes the following parameters of development for Limpinwood:

- *Retain rural landscape character, setting and existing landuse;*
- *Preserve character of open grazing areas;*
- *Retain landscape setting of old farm buildings;*
- *Preserve significant vegetation – riverine forest, ridgeline and hillside vegetation, creek corridors; and*
- ***Development should not significantly impact on designated scenic routes and viewpoints.***

Given that the proposed development is located on a ridgeline and is considered to impact on the scenic value of the area, the subject site is not considered to be suitable for a telecommunications facility.

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

The application was advertised for a period of fourteen (14) days from Wednesday 9 June 2010 to Thursday 24 June 2010. During this period twenty-one submissions were received with regard to the application, with the majority citing concerns with human health and environmental value/health, as well as impact upon a site of Aboriginal cultural heritage. Thus there is strong opposition to this site for a mobile phone tower. In response to the various objecting submissions the following assessment of the common issues raised is summarised below.

Objection	Response
Health concerns from electromagnetic energy generated from the facility	Council's Environmental Health Unit has assessed the proposed development in terms of EME requirements, with no objections.
Conflict of Interest – Council accepting lease money and giving approval	There is no conflict of interest. The subject site is owned by the Land and Property Management Authority (LPMA). Council manages the Crown Reserve, but all lease agreements would be between Optus and the LPMA.
Previous Councils have given a guarantee that the site would become a tourist scenic viewing parkland and picnic facility when the waste management facility closed. The site allows magnificent views of the Tyalgum and Limpinwood Valleys, Mount Warning and the Eungella Ranges.	This issue was put forward to Council's Director Community and Natural Resources, who advised that he was not aware of any such proposals. It was also noted that the waste facility is a transfer station and there are no current plans to close it down. The scenic value of the subject site is acknowledged, as noted within the body of this report.
The site is an Aboriginal Heritage and Sacred Site, to which a Telecommunications Facility would be	As noted in the report above, the applicant was required to undertake an extensive Aboriginal Cultural Heritage Investigation.

Objection	Response
in breach of the protection afforded under Commonwealth Legislation.	The report concludes that there is a low probability that further undetected cultural heritage material may remain in the study area. A number of recommendations were made to assist in protecting and managing the cultural heritage value of the study area.
This area was set aside for perpetual use by the community as a horse and stock rest area – it belongs to the community and not the Council.	As noted above, the site is owned by the LPMA, with Council managing the Crown reserve as a waste transfer station. Council has no current plans to close the waste facility down.
The farmland adjoining the site is held in various titles and carries the right to construct homes in close proximity to the ridge top. The proposed facility would be totally incompatible to the future development of a “Tyalgum Heights Estate”. For Council to use proximity to a Telecommunications Facility as refusal for granting a home construction approval, would be subject to a very significant damages claim through the courts. Council should be aware of serious health dangers by Telecommunications Facilities emitting EMF. Any refusal would devalue property prices and be subject to compensation.	Any future proposal for subdivision or dwelling construction would be subject to merit assessment, with appropriate setbacks as required. All Telecommunications Carriers are required to be below the minimum Australian Standard in terms of EME, and is extremely unlikely that a future dwelling in the vicinity of the subject site would be refused on such grounds. See comments within the body of the report in terms of EME assessment. The consideration of property prices is not a Section 79C matter for consideration.
Council should assist in providing a more suitable site (possibly at the top end of Tyalgum Ridge Road) in isolation away from residences.	It is the responsibility of the applicant to undertake appropriate searches for alternative sites. See Alternative Site comments within the body of the report in this regard.
The area is an important wildlife corridor, as witnessed recently with two sightings in the valley below of a relocation of a Regent Bower Bird from the Lamington Plateau, as well as a family of red-necked Wallabies coming down the same route.	Council’s Ecologist has recognised the site as a regional fauna corridor linking Wollumbin National Park with Limpinwood Nature Reserve, which is mapped as “very high” ecological status under <i>Tweed Vegetation Management Strategy 2004</i> . Refer to the flora and fauna assessment in this regard, which does not support the proposed development.
Intention of building a future dwelling on the adjoining site, in close proximity to the proposal, when the refuse facility closes. Concern was raised over potential of refusing a dwelling due to emissions from the facility. Compensation would be sought if this is the case.	It is difficult to comment on a specific future dwelling, without specific details of the development. However, every application is assessed on merit. In terms of EME, the proposal is considered to be well within Australian Standards.

Objection	Response
The owner of Lot 10 is prepared to offer a more suitable site that is about 150m higher, further up the ridge and unlikely to affect as many people.	Lot 10 is the location of the proposed Telstra tower. Council has repeatedly requested Optus to investigate co-location opportunities on Lot 10, particularly given its higher elevation. See co-location and alternative site comments, which do not support the proposed development.

It should also be noted that Council Officers have had several verbal discussions with an objector, who for health reasons has been unable to submit a written objection to the proposed development. The main point of contention was the impact on the views, with regard to the subject site being a vantage / lookout point. This objector also raised the issue of other alternatives in terms of people using Skype or satellite internet options. All of the alternatives raised were valid points, but would involve major research as to whether they were viable / feasible options and as such was beyond the scope of the assessment of this application. When the possibility of co-location was discussed with the objector, they clearly indicated that the Telstra site was a better location, particularly if Optus could co-locate there.

(e) Public interest

Given the issues raised by the proposed development in relation to visual impact, flora / fauna impact, co-location opportunities and in light of the abovementioned submissions, it is not considered to be in the public interest to recommend approval of this application.

OPTIONS:

1. Refuse the application.
2. Approve the application in principle, providing appropriate reasons, and to bring forward a further report to the next Council meeting with recommended conditions of consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed telecommunication tower located within the existing waste transfer station is considered to create an unacceptable level of impact in terms of visual

amenity and flora and fauna. Given that the subject site is not considered to be suitable for the telecommunications facility and that co-location opportunities are available, the proposed development is not supported and is therefore recommended for refusal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

7 [PR-CM] Development Application DA10/0516 for a Telecommunications Facility at Lot 17 DP 1157351, No. 57 Jabiru Drive, Cobaki Lakes

ORIGIN:

Development Assessment

FILE NO: DA10/0516 Pt1

SUMMARY OF REPORT:

Council has received a development application for the construction of a telecommunication facility at Lot 17 DP 1157351, No. 57 Jabiru Drive, Cobaki Lakes. The telecommunication facility proposed involves:

- One 30 metre high monopole with a triangular headframe (with space allowed on the headframe for an additional nine future panel antennas if required);
- Three panel antennas (2.63m x 0.3m x 0.115m) at 30 metres in standard factory colour;
- One Telstra equipment shelter (measuring 3.28m x 2.28m x 2.995m) within the proposed Telstra compound (measuring 6m x 10m);
- Construction and operational access will be via an existing track at the western end of Jabiru Drive, and a proposed Telstra track serving the facility.

The application was advertised for a period of fourteen (14) days from Wednesday 25 August 2010 to Wednesday 8 September 2010. During this period four (4) submissions were received, all of which are objections. The most common issues raised were regarding health and safety concerns from electromagnetic energy generated from the facility, depreciation of property value, the proposed access route and improper community consultation. An assessment of the issues raised is summarised within the body of this report.

The proposal has been assessed against the requirements of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), NSW Telecommunication Guideline including Broadband, the Environmental Planning and Assessment Act and all relevant Regional and Local planning documentation.

Following the assessment against the relevant heads of consideration, it is considered that the proposal will create a range of adverse environmental impacts, and it is therefore recommended that the application be refused.

RECOMMENDATION:

That Development Application DA10/0516 for a telecommunications facility at Lot 17 DP 1157351, No. 57 Jabiru Drive Cobaki Lakes be refused for the following reasons:

- 1. The proposed development is not considered to meet the requirements of s79C of the Environmental Planning and Assessment Act 1979 as it is likely to result in unacceptable environmental impact and the site is deemed unsuitable.**
- 2. The development is considered likely to impact on flora and fauna, particularly to threatened species, within this area of environmental significance and conservation value. On the basis the proposal is inconsistent with clause 4 of the TLEP, which seeks to determine whether the ecological integrity of the Tweed Shire will be retained.**
- 3. The development is considered likely to impact on flora and fauna, particularly to threatened species, within this area of environmental significance and conservation value. On this basis the proposal is inconsistent with clause 5 of the TLEP, which seeks to ensure ecologically sustainable development.**
- 4. On the basis of the lack of submitted information to indicate otherwise, the proposal is inconsistent with clause 54 of the TLEP which seeks to enable the protection of vegetation for reasons of amenity or ecology.**
- 5. The subject site contains known Koala habitat and on the basis of short-term high level and long-term ongoing disturbance associated with the development (including construction phase, site operation and maintenance, noise and vibration, lighting and the impact of electromagnetic energy), the proposal is considered to be inconsistent with the aims and objectives of the State Environmental Planning Policy 44 - Koala Habitat, which seeks to ensure the proper conservation and management of areas of natural vegetation that provide habitat for Koalas to ensure a permanent free-living population over their present range and reverse the current trend of Koala population decline.**
- 6. The proposed development is likely to result in disturbance impacts that are considered unacceptable for a site that is known to contain vulnerable species sensitive to disturbance and at threat from development in other parts of Tweed Shire. On this basis it is considered that the proposed development does not satisfy the provisions of Principle 4 of the NSW Telecommunications Facilities Guideline Including Broadband or the provisions of Clause 15 of the SEPP (Infrastructure) 2007 that requires such development to minimise disturbance to flora and fauna.**

REPORT:

Applicant: Telstra Corporation Limited
Owner: Mr RW Staff and Mr R Standing
Location: Lot 17 DP 1157351 No. 57 Jabiru Drive, Cobaki Lakes
Zoning: 1(a) Rural
Cost: \$230,000

BACKGROUND:

Council has received an application for the construction of a telecommunication facility at Lot 17 DP 1157351, No. 57 Jabiru Drive, Cobaki Lakes. The telecommunication facility proposal involves:

- One 30 metre high monopole with a triangular headframe (with space allowed on the headframe for an additional nine future panel antennas if required);
- Three panel antennas (2.63m x 0.3m x 0.115m) at 30 metres in standard factory colour;
- One Telstra equipment shelter (measuring 3.28m x 2.28m x 2.995m) within the proposed Telstra compound (measuring 6m x 10m);
- Telstra compound including security fence and access gates;
- Associated works such as foundations, running underground fibre and power routes;
- Construction and operational access will be via an existing track at the western end of Jabiru Drive, and a proposed Telstra track serving the facility (approximately 29 metres to the site).

Telstra have stated that the development is required to provide for 'NextG' mobile phone and wireless broadband coverage to the proposed new development of Cobaki Lake and will extend into Piggabeen. Telstra advise that the proposal will provide high quality mobile telecommunications services into the area and will form an integral part of the overall Telstra network.

The proposed site is located approximately 400 metres to the North West of Jabiru Drive on an elevated rural property. The subdivision pattern in this vicinity comprises of a mixture of small and large rural holdings used for both agricultural practices and residential occupation. The closest dwelling to the vicinity is approximately 500 metres to the South East on Jabiru Drive. The proposed location for the telecommunication facility is located on a large rural lot with a total site area of approximately 36 hectares. The lot is heavily vegetated with native species. Access to the proposed site would be achieved firstly via the existing driveway and secondly by a proposed access track.

The proponent has stated that the proposed site was preferred as opposed to other locations in the surrounding area for the following reasons:

- The landowner is willing to agree to commercial terms with Telstra;
- The location provides for sufficient height to achieve Radio Frequency (RF) objectives of the proposal;

- The Rural 1(a) zoning of the site was considered suitable;
- The size of the lot and scale of the works the current land use of the site will not be greatly impeded;
- There is adequate site access for construction and maintenance purposes;
- The site is located away from sensitive land uses;
- The site does not contain any known items of environmental or cultural heritage significance nor is identified as being located within a conservation area.

The application was advertised for a period of fourteen (14) days from Wednesday 25 August 2010 to Wednesday 8 September 2010. During this period four (4) submissions were received, all of which are objections. The most common issues raised were regarding health and safety concerns from electromagnetic energy generated from the facility; depreciation of property value; the proposed access route; and improper community consultation. An assessment of the issues raised is summarised within the body of this report.

Following an assessment of the development application against the relevant policy framework, it is considered that the proposed communication facility would enhance the telecommunications services in the surrounding locality. Further, it is considered that the location and design of the proposal is such that it would not impact on the visual amenity of the locality to such an extent to warrant refusal of the proposal. The proposal is also consistent with the requirements of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) with regard to Radio Frequency Electromagnetic Energy guidelines.

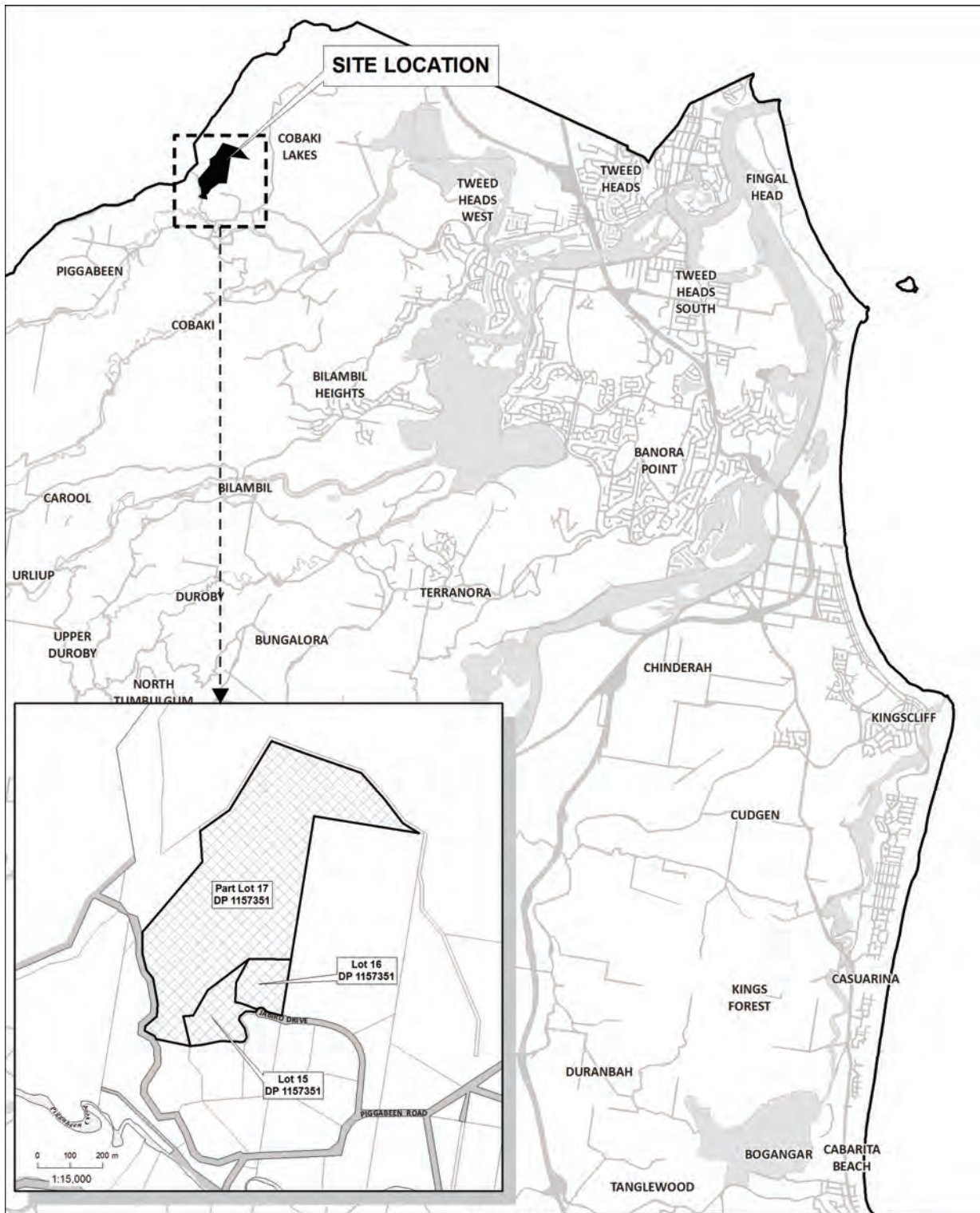
However, Council's Ecologist has advised that although the tower is proposed within an area that requires little clearing, the surrounding area is of high conservation significance, in particular for Koalas and arboreal marsupials and also likely for bats. NSW Rural Fire Service have advised that a 10m inner asset protection zone is usual for monopole structures and this matter was not factored in to the assessment. The site is immediately abutting crown land which forms the border reserve along the ridge line separating NSW from Qld and which provides wildlife corridor connectivity. The ecological value of the allotment is reflected in a Restriction on Title that states *"No trees shall be disturbed or removed from any lot burdened without the prior written approval of the Tweed Shire Council"* and by the proposed zoning within draft LEP 2010 of E2 Environmental Conservation.

The ecological assessment undertaken for the proposed development recorded one threatened fauna species and considered fifteen additional threatened fauna species as possible occurrences over time. The *Tweed Coast Koala Habitat Study* (Biolink 2011) concluded *"that the Tweed Coast Study Area's koala population is now in very serious trouble."* Within the report it is also states that *"Population Viability Analysis carried out by Phillips et al. 2007 has determined that as little as a 2 – 3% increase in the naturally occurring mortality rate (as a function of total population size) due to incidental factors such as road mortality, dog attack or the stressors associated with disturbance generally, is sufficient to precipitate decline."*

Council's Ecologist considers that the development will introduce disturbance to the site in a number of ways, as detailed further within the body of this report. However, given the dire situation in which Koalas north of the Tweed River are found, the presence of Koalas within and around the site and the disturbance very likely to arise from the proposal, the precautionary principle must be applied in preventing development that may have further detrimental impacts on an area where Koalas are shown to be surviving.

On this basis, the application is recommended for refusal.

SITE DIAGRAM:



Locality Plan

Lot 15 & 16 DP 1157351 and Part Lot 17 DP 1157351
No.50, 55 & 57 Jabiru Drive, Cobaki Lakes

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Cadastre: 03 June, 2011
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Boundaries shown should be considered approximate only.

0 1 2 Km
1:80,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56
GDA

Civic and Cultural Centre
3 Tumbulghum Road
Murrumbidgee NSW 2484
PO Box 816
Murrumbidgee NSW 2484
T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
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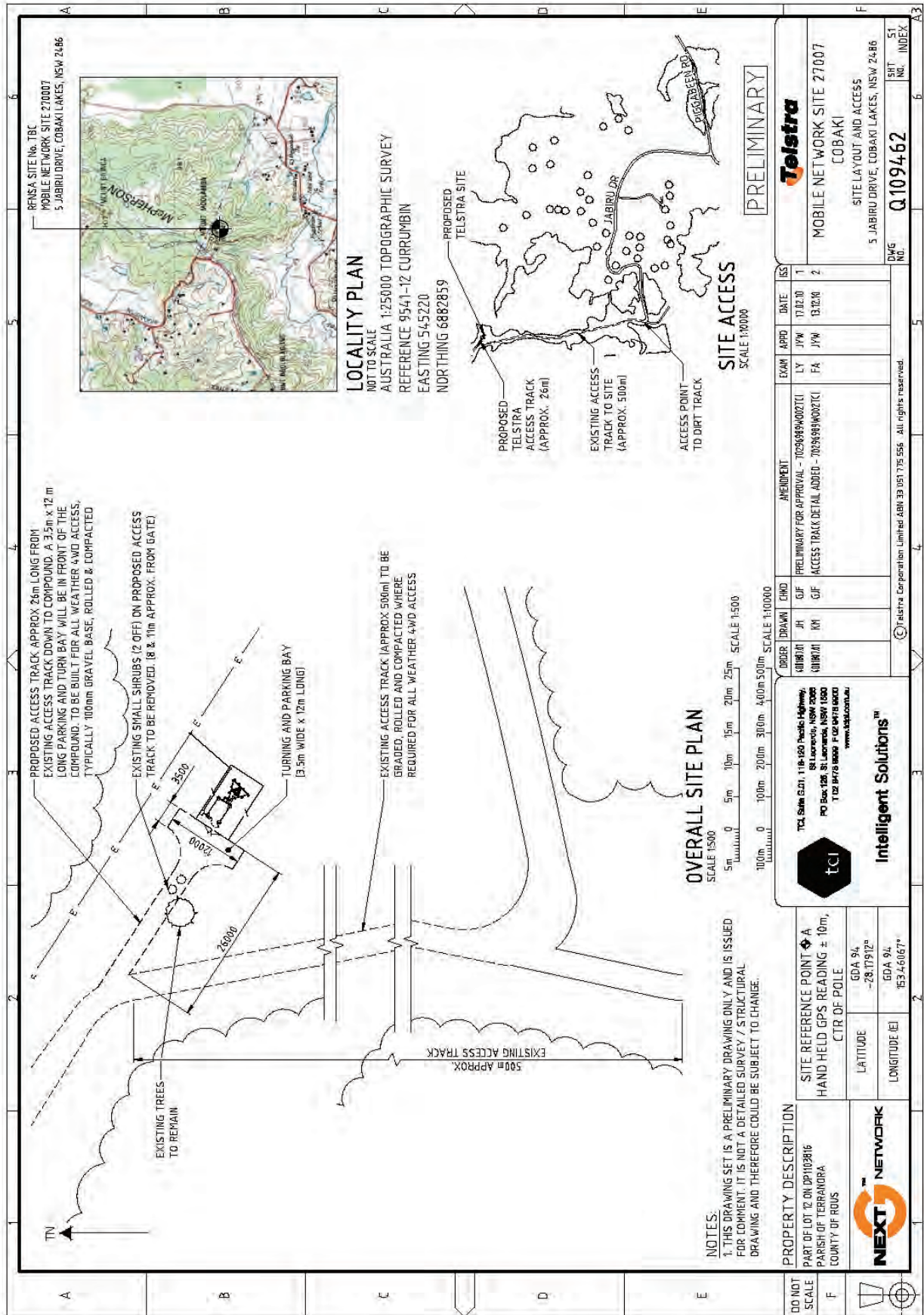


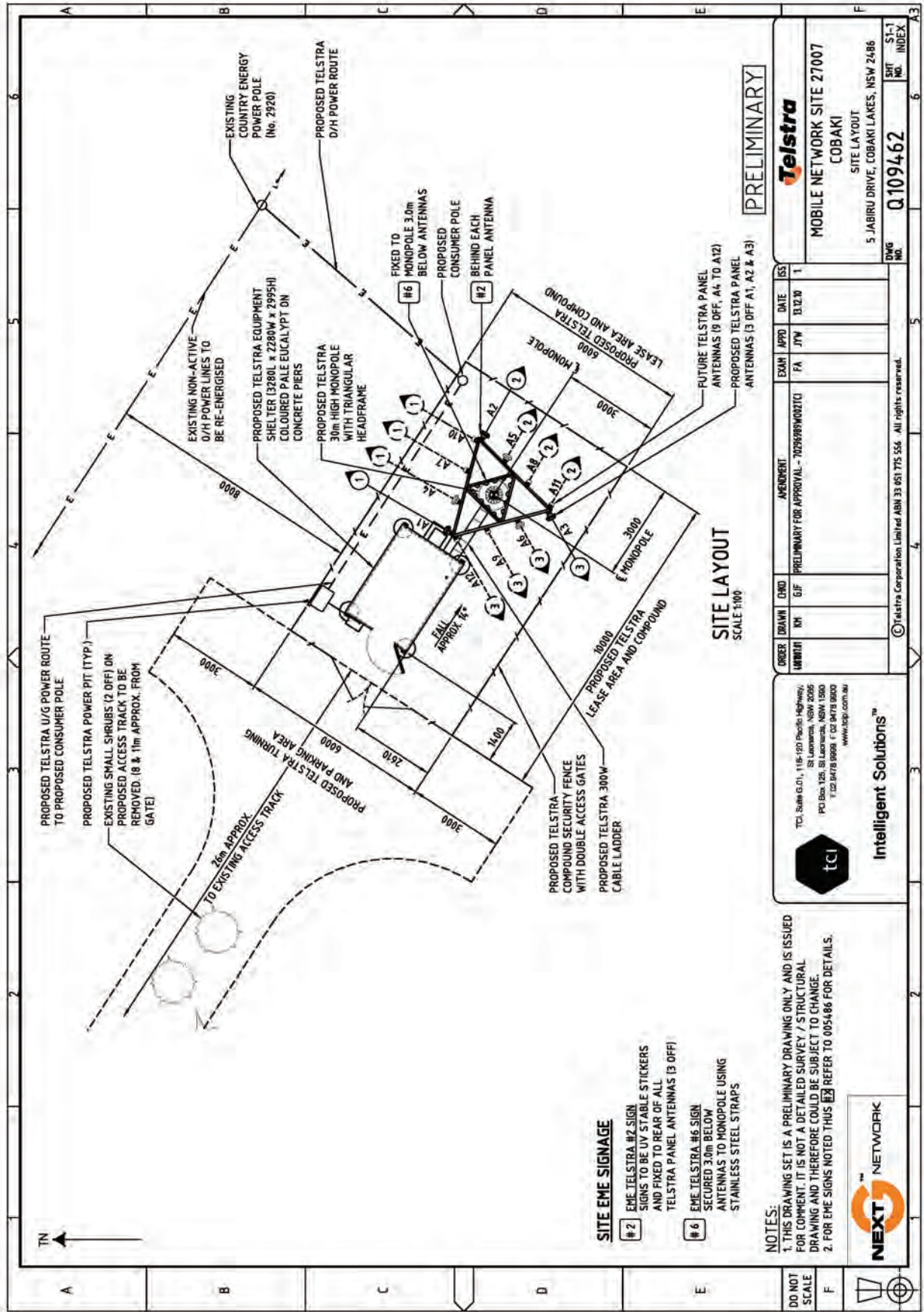
Project: 2318RPP03/WINDGARD/TEMPLATES/BAEM/FPS/Map-LocalityPlan_A4P.pdf

Author: R. Bellman - Planning Services Unit

Date Printed: 03 JUNE 2011

DEVELOPMENT PLANS:





PRELIMINARY

Telstra
MOBILE NETWORK SITE 27007
COBAKI
 SITE LAYOUT
 5 JABIRU DRIVE, COBAKI LAKES, NSW 2486
 DWG NO. **Q109462** SHIT NO. **51-1**
 INDEX

ORDER	DRAWN	CHKD	AMENDMENT	EXAM	APRD	DATE	ISS
1			PRELIMINARY FOR APPROVAL - 1026989002(C)	FA	JYW	13.12.10	1

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 TCI, Suite 6.01, 116-120 Pacific Highway,
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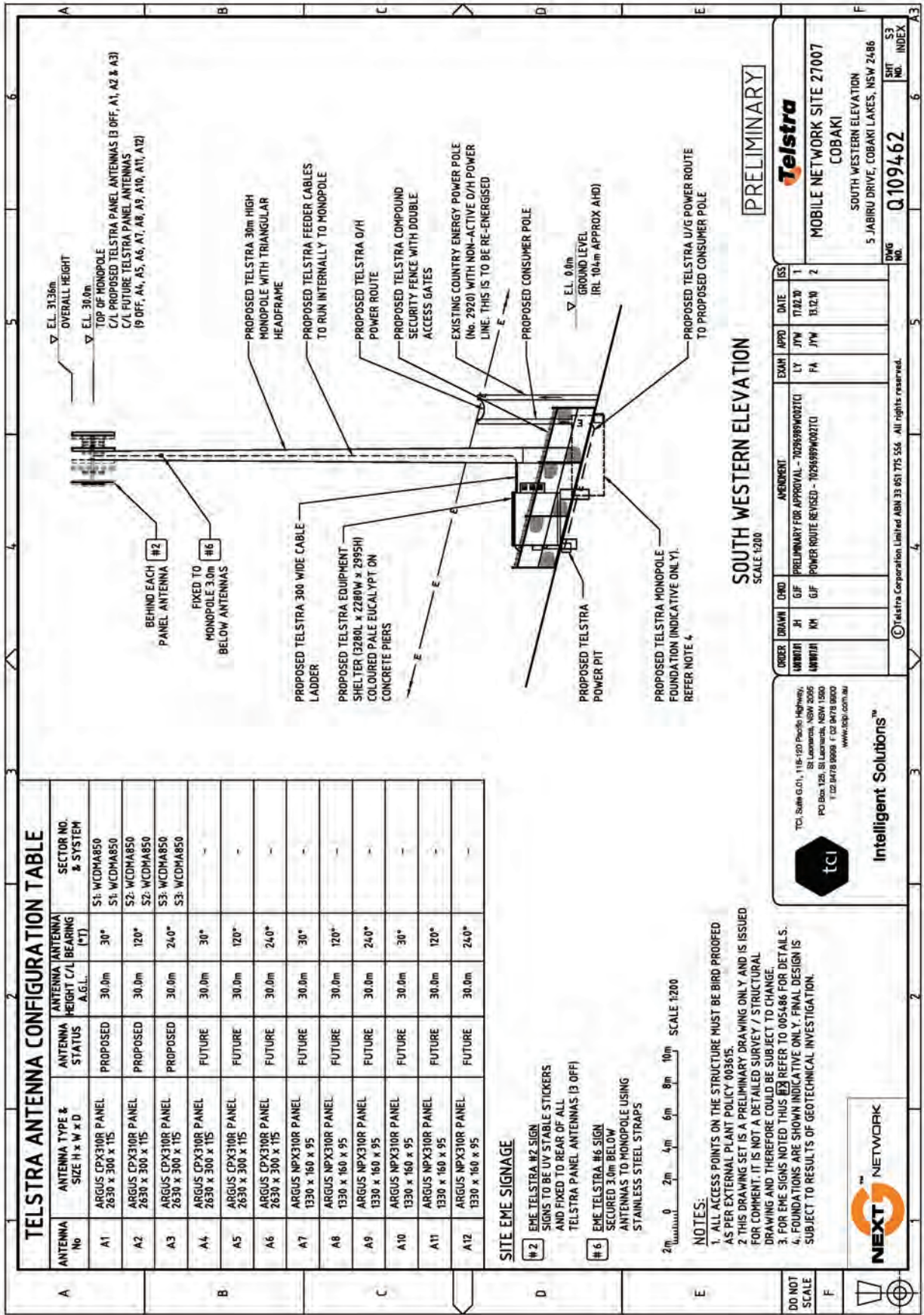
SITE EME SIGNAGE

- #2** EME TELSTRA #2 SIGN SIGNS TO BE UV STABLE STICKERS AND FIXED TO REAR OF ALL TELSTRA PANEL ANTENNAS (3 OFF)
- #6** EME TELSTRA #6 SIGN SECURED 3.0m BELOW ANTENNAS TO MONOPOLE USING STAINLESS STEEL STRAPS

DO NOT SCALE



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TELSTRA ANTENNA CONFIGURATION TABLE

ANTENNA No	ANTENNA TYPE & SIZE H x W x D	ANTENNA STATUS	ANTENNA HEIGHT C/L BEARING A.G.L. (°)	ANTENNA BEARING (°)	SECTOR NO. & SYSTEM
A1	ARGUS CPX310R PANEL 2630 x 300 x 115	PROPOSED	30.0m	30°	S1: WCDMA850 S1: WCDMA850
A2	ARGUS CPX310R PANEL 2630 x 300 x 115	PROPOSED	30.0m	120°	S2: WCDMA850 S2: WCDMA850
A3	ARGUS CPX310R PANEL 2630 x 300 x 115	PROPOSED	30.0m	240°	S3: WCDMA850 S3: WCDMA850
A4	ARGUS CPX310R PANEL 2630 x 300 x 115	FUTURE	30.0m	30°	-
A5	ARGUS CPX310R PANEL 2630 x 300 x 115	FUTURE	30.0m	120°	-
A6	ARGUS CPX310R PANEL 2630 x 300 x 115	FUTURE	30.0m	240°	-
A7	ARGUS NPX310R PANEL 1330 x 160 x 95	FUTURE	30.0m	30°	-
A8	ARGUS NPX310R PANEL 1330 x 160 x 95	FUTURE	30.0m	120°	-
A9	ARGUS NPX310R PANEL 1330 x 160 x 95	FUTURE	30.0m	240°	-
A10	ARGUS NPX310R PANEL 1330 x 160 x 95	FUTURE	30.0m	30°	-
A11	ARGUS NPX310R PANEL 1330 x 160 x 95	FUTURE	30.0m	120°	-
A12	ARGUS NPX310R PANEL 1330 x 160 x 95	FUTURE	30.0m	240°	-

SITE EME SIGNAGE

- #2 EME TELSTRA #2 SIGN SIGNS TO BE UV STABLE STICKERS AND FIXED TO REAR OF ALL TELSTRA PANEL ANTENNAS (3 OFF)
- #6 EME TELSTRA #6 SIGN SECURED 3.0m BELOW ANTENNAS TO MONOPOLE USING STAINLESS STEEL STRAPS



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- FOUNDATIONS ARE SHOWN INDICATIVE ONLY. FINAL DESIGN IS SUBJECT TO RESULTS OF GEOTECHNICAL INVESTIGATION.

SOUTH WESTERN ELEVATION
SCALE 1:200

PRELIMINARY

Telstra
MOBILE NETWORK SITE 27007
COBAKI
SOUTH WESTERN ELEVATION
5 JABIRU DRIVE, COBAKI LAKES, NSW 2486
DWG NO. Q109462
SHT NO. S3
INDEX

ORDER	DRAWN	CHKD	EXAM	APRD	DATE	ISS
UN001/01	JH	GF	LY	JYW	11.02.10	1
UN001/01	KH	GF	FA	JYW	13.12.10	2

AMENDMENT
PRELIMINARY FOR APPROVAL - 10269899W0021C1
POWER ROUTE REVISED - 10269899W0021C1

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NEXT NETWORK

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

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

The subject proposal seeks consent for the erection of a telecommunications facility comprising of a 30 metre high monopole and ancillary infrastructure. In terms of the economic vitality the proposal will facilitate improved technological availability for the locality.

With regard to ecological integrity, the site is surrounded by an area of high conservation significance with a high number of threatened species and a high biodiversity value generally. The ecological importance of the subject site and surrounding area is detailed further within this report.

Some clearing of vegetation is proposed, particularly with regard to the creation of a 10 metre Asset protection Zone (APZ) for bush fire purposes. Other disturbance factors such as the construction phase, ongoing operation of the site (air conditioning units), flashing red lights and so on also have the potential to impact significantly on fauna species. As detailed further within this report electromagnetic energy is also a key factor in the determination of this application. Council's Ecologist has advised that every effort should be made to ensure any future stressors on the already fragile Koala population must be avoided.

It is considered therefore that the proposal will have a detrimental impact on the ecological integrity of the Tweed Shire and the application is inconsistent with this clause.

Clause 5 - Ecologically Sustainable Development

The objective of the LEP is to promote development that is consistent with the four principles of ecological sustainable development as follows:

- a) not creating irreversible environmental damage;
- b) the environment is maintained for the benefit of future generations;
- c) the biological diversity and ecological integrity is retained and a fundamental consideration;
- d) the environmental qualities of the locality are retained.

The subject site and surrounding locality is recognised for its high conservation and biodiversity value. Council's Ecologist has advised that the proposal has the potential to impact significantly on threatened species, particularly the Koala.

Whilst the development itself is not considered likely to result in significant vegetation clearance, although impacts of the requirement for a 10m APZ is unknown on surrounding vegetation, it is the indirect impacts of construction, ongoing noise, electromagnetic energy and the low intensity red light and so on which may impact significantly on fauna and threatened species within the locality. Therefore on the basis of the submitted information it is considered that the proposal would be inconsistent with the objective of this clause.

Clause 8 – Consent Considerations

The subject land is zoned 1(a) Rural and the proposed telecommunication facility is permissible with consent within this zone.

The primary objective of the 1(a) zone is to enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilisation purposes and associated development and to protect rural character and amenity. One of the secondary objectives of the zone is to allow for development that is not suitable in or near urban areas.

In general it is considered that the proposal is consistent with the primary and secondary objectives of the zone as it would aid the technological advancement of this rural area while, in general, not compromising the rural character and amenity of the area. However, as detailed within this report, the proposal would have the potential to impact significantly on ecological factors and for this reason the application is recommended for refusal.

The other aims and objectives of this plan that are relevant have been considered and addressed within this report.

Clause 11 – Zone Objectives

Primary objectives

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

Secondary objectives

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

The proposal is defined by the Tweed LEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered permissible with

development consent. It is acknowledged that the development would aid technological advancement in this rural locality whilst protecting the character and visual amenity of the locality. It is also considered that the proposal would not be suitable within an urban setting due to the visual impact of the monopole and perceived health impacts in close proximity to an urban population.

Clause 15 - Essential Services

Telstra was initially proposing to connect the proposed facility to the nearest fibre pit and existing Country Energy power pole located approximately 18 metres away from the proposed facility. However, the proponent has advised that a fibre route pit is no longer required to be connected and this element has been removed from the plans.

Council's Development Engineer requested clarification with regard to the electricity easement encumbering the site, covering the overhead power lines. The proponent has advised that the proposed compound is to be located 10m from the existing power line and that the proposed site is not within an existing easement. Confirmation has been received from the proponent that consent will be granted from Country Energy should the development application be approved.

Council's Development Engineer has advised that as it appears Country Energy have no objections regarding the structure in close proximity to their own infrastructure and Council is therefore no longer concerned as a 'third party'.

When the facility is operational the site will be unmanned and therefore utility services such as telephone, water and sewerage would not be required.

Clause 16 - Height of Building

The site is identified on Council's Building Heights Map as being affected by a three (3) storey height limit. The proposed equipment shelter is single storey in height, with the associated tower being approximately 30m in height (please note: as per definition pursuant to Tweed LEP 2000, the monopole structure cannot be measured by storeys as there is no space between two floors).

Given the presence of vegetation of comparable height it is considered that the proposed development is consistent with this clause.

Clause 17 - Social Impact Assessment

Section A13 of the Tweed Shire DCP identifies the types of developments that require a social impact assessment. The proposed telecommunication tower is not identified as an item requiring social impact assessment. However the proposal did receive a number of submissions from the community objecting to the proposal, particularly with regard to the proposed location. The issues raised in the submissions are addressed later in this report.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as containing Class 5 ASS. The proposed monopole tower is unlikely to lower the water table as the site and location of the facility is elevated. Council's Environmental Health Officers reviewed the application in relation to ASS and raised no objection. No further investigation is required in relation to ASS.

Other Specific Clauses

Clause 33 Obstacles to Aircraft

The objective of the clause is to ensure that development in the vicinity of Coolangatta and Murwillumbah Airports and en route flight paths does not increase the risk of obstacles to aircraft.

The proposal has been referred to the relevant aviation agencies:

- Planning Consultant for the Gold Coast Airport Pty Ltd (GCAPL)
- Gold Coast Airport Pty Ltd
- Civil Aviation Safety Authority (CASA)
- AirServices Australia (Airservices)
- Aviation and Airports Division, Department of Infrastructure and Transport.

The Department of Infrastructure and Transport have approved the proposal subject to conditions as detailed below:

- The mobile phone tower does not exceed a maximum height of 135.36m AHD including the attached antenna, aerials or other appurtenances;
- The tower is to be lit with a low intensity red obstacle light in accordance with the Manual of Standards for Part 139 of the Civil Aviation Safety Regulations;
- If the obstacle light is rendered unserviceable for any reason the proponent (Telstra) must ensure the light is repaired within 24 hours maximum for the continued safe operation of aircraft within the vicinity;
- A separate application must be submitted to GCA for any equipment or crane planned to be used in the installation of the mobile phone tower that exceeds the maximum height of the OLS at 82.42m AHD;
- Proponent is to notify GCA 48 hours prior to commencing work;
- Proponent must notify GCA upon completion of the communications tower;
- Finished height must be provided to GCA upon completion (in AHD), so that it can update its plans and other records for the Airport and its surrounds.

The required low intensity red obstacle light has the potential to impact on surrounding residential amenity. The proponent was requested to provide

further information in relation to the effect of the low intensity red obstacle light on surrounding neighbours as well as consultation with the surrounding community on the adjoining ridgeline including Skyline Drive, Benson Street, Stott Street and Caffery Close.

In response the proponent has stated that *'community consultation has not been done as it has been deemed to be ineffective. The consultation will have no impact on whether or not the light is put in as it is required under the Airports (Protection of Airspace) Regulations 1996 and it has already been stated the light is low intensity and will point towards the sky, not towards any dwellings. Furthermore, we will do everything in our power to ensure that any neighbouring properties are not adversely affected by the low impact light'*.

However, as the facility is located approximately 80m AHD, and given the nature of surrounding topography, it is considered unlikely that the proposal will result in a detrimental impact on residential amenity from nearby properties located at a lower level (at approximately 30m – 0m AHD) in terms of distraction or glare from the light source. It is considered that the areas where the red obstacle light may be most prevalent will be from properties located at a height of 70m to 80m AHD. Such areas are located approximately 3.4km from the subject site on the adjacent ridgeline, in the vicinity of Piggabeen Road, Skyline Street, Benson Street and Stott Street.

On the basis of: the distance from potentially affected dwellings from the proposed facility; the nature of topography in the locality; and presence of vegetation of similar height surrounding the development, it is considered that the obstacle lighting will not impact on nearby residential amenity or the character of the area to such a detrimental extent to warrant refusal of the application. The obstacle light is a Federal requirement and characteristic of development of this nature.

Clause 34 – Flooding

A small portion of the south of the subject site is flood prone land, being affected by the Probable Maximum Flood inundation level. The proposal is considered to be consistent with the clause as: the proposed structure is located on a hill which is above the flood level; the telecommunications facility will assist emergency services by providing telecommunications to the locality; and the configuration of the structure and ancillary works is unlikely to increase the risk of flood for residential development.

Further, the proponent has advised that 'the proposal is not expected to have a noticeable affect on ground levels or water flows and mitigation measures have been implemented to ensure runoff and erosion is reduced.

Clause 39A Bushfire Protection

The subject site is identified as being prone to bushfire.

The proposed development is not considered to create a significant adverse bushfire risk to warrant conditions or refusal.

The application was referred to the NSW Rural Fire Service for comment, pursuant to s79BA Environmental Planning and Assessment Act 1979. The NSW RFS have advised that conditions in relation to the creation and retention of a 10m asset protection zone (APZ) to be provided around the tower, buildings and associated infrastructure (in this case the equipment shelter) as well as the equipment shelter to comply with s8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'.

Council's Ecologist has advised that this matter was not factored in to the assessment and therefore Council is unable to determine the precise impact of this requirement on surrounding vegetation.

Clause 40 – Heritage provisions objectives

One of the objectives of the clause is to conserve the environmental heritage of the area of Tweed. The subject site has been identified as being '*Locations with a higher probability for containing sites of Cultural Significance*' within the Cobaki and Terranora Broadwater Aboriginal Cultural Heritage Management Plan August 2006. Further, Council has been notified that the area is a 'cultural pathway' because of the ridge line and the likelihood that it would have been used as a path or track.

On this basis the proponent has been requested to provide information with this regard and have stated that: *the Tweed Byron Aboriginal Land Council has been consulted through the course of the Aboriginal Assessment of the above property due to the likelihood that the proposed site is part of an Aboriginal Cultural Pathway.*

A site inspection was undertaken with the proponent and Cyril Scott, Cultural Officer and Tweed Byron LALC on 13 October 2010 and a letter has since been received by Council confirming that '*the site may or may not be located in a culture pathway*' but '*due to recorded sites around this proposed area*' a recommendation has been made that a Tweed Byron Site Officer is to be on site when any stripping of grass or soil is carried out.

Should the proposed application be approved by Council, standard conditions of consent with regard to the protection of items of archaeological and cultural heritage shall be applied.

Clause 54 Tree Preservation Order

The subject site is affected by the Tree Preservation Order 2004 that states: *No trees shall be disturbed or removed from any lot burdened without the prior written approval of the Tweed Shire Council.*

The proponent has advised that a small amount of vegetation will be required to be removed for the establishment of the facility however this is anticipated to be low lying grass and scrub. Further clarification with this regard has been requested and an Ecological Assessment Report submitted to Council which advises that the majority of the subject site has been cleared of native vegetation with only minor clearing of regrowth required for the construction of the proposed track to the compound (approximately 29m).

The subject site is also affected by the Tree Preservation Order 2011 (Koala Habitat Study Area). The Ecological Assessment Report advises that the vegetation communities present on the subject site are tall open/closed Sclerophyll forest (*E. pilularis* / *E. microcorys* / *E. siderophloia*) and low closed grassland with scattered regrowth.

The site comprises of Open/Closed Sclerophyll Forest containing mature Blackbutt (*Eucalyptus pilularis*), Tallowwood (*E. microcorys*) and Northern Grey Iron Bark (*E. siderophloia*) with scattered occurrences of Grey Gum (*E. propinqua*), Brushbox (*Lophostemon confertus*), Forest Red Gum (*E. tereticornis*), White Mahogany (*E. acmenoides*) and Pink Bloodwood (*Corymbia intermedia*).

The ecological assessment states that Koala food tree species listed under Schedule 2 of SEPP 14 – Koala Habitat Protection (i.e. Tallowwood and Forest Red Gum) occur sporadically throughout the surrounding forested areas and one (1) species of threatened fauna, the Koala, was recorded on the site approximately 60m to the south-west of the proposed compound with a small number of scats recorded in two (2) other locations within the study area, as illustrated in Figure 1.

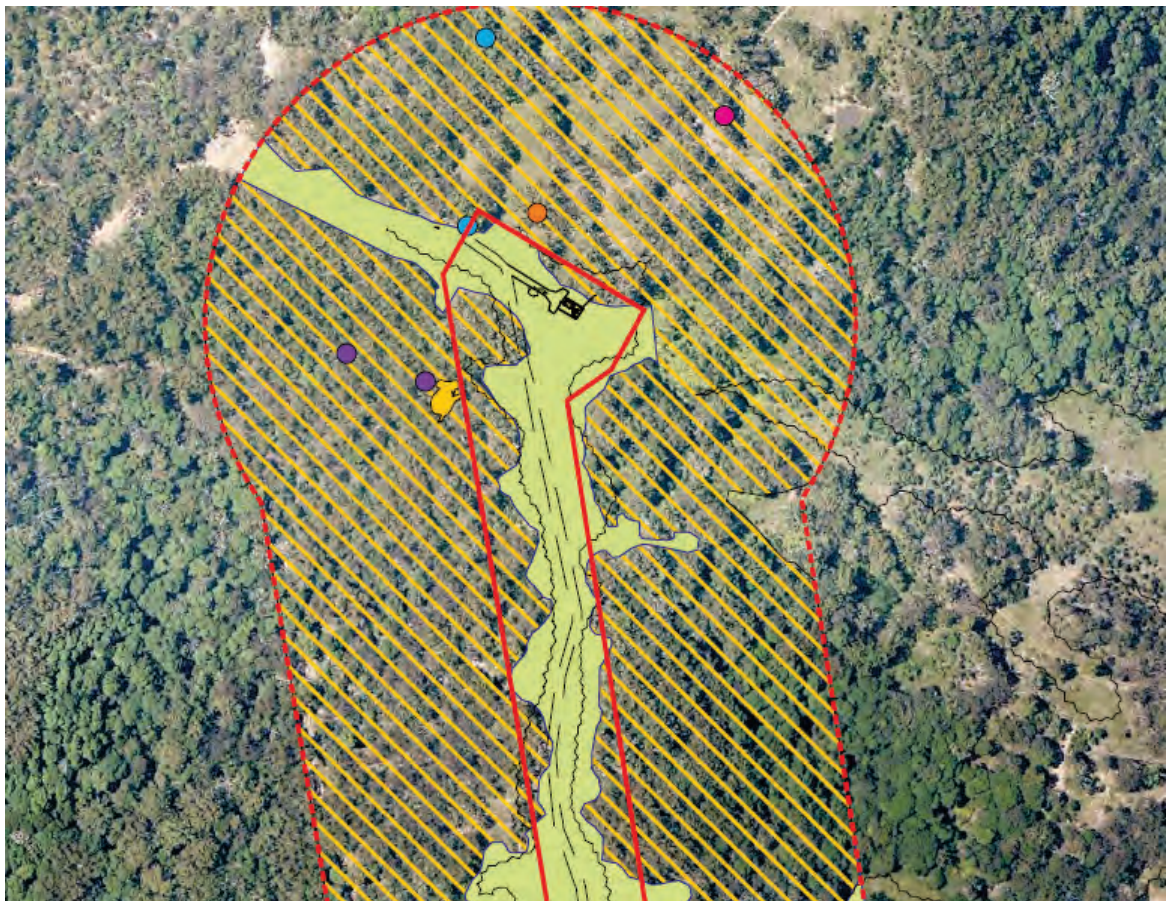


Figure 1: Extract from the ecological assessment illustrating female Koala location and presence of significant remnant hollow-bearing trees (orange, pink, purple dots) and trees with Koala scats (blue dots) in relation to the proposed development.

The ecological assessment advises that the proposed development will not result in the removal of any Koala food trees however there may be an impact to the Koala during the construction and occupation of the site. However, after construction, human occupation is likely to be limited to infrequent maintenance visits. The assessment suggests amelioration for fauna such as 10km/hr speed limit observed on the access road; no dogs to be allowed on the site; and all rubbish to be disposed responsibly.

However, Council's Ecologist has advised that the ecological assessment provided a very rapid 'snapshot' of potential fauna utilisation of the site and surrounds. The ecological consultant has nominated Tree Protection Zones of 7m around two species of Eucalypt adjacent the site, which would require pruning. Given a 10m inner asset protection zone requirement, retention of these trees is questionable.

Therefore on the basis of the lack of submitted information, Council is unable to advise whether the proposal would be consistent with this clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

Due to the topography of the site and as it is heavily vegetated, it is considered that the development will be unlikely to cause a loss of prime crop or pasture land.

SEPP No. 44 - Koala Habitat Protection

The aims of the SEPP are to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The submitted ecological assessment advises that there are a number of flora species listed as Koala food trees under the SEPP on the subject site. Further, one (1) female Koala was recorded 60m south-west of the proposed facility and a small number of scats recorded in the vicinity of the site.

The ecological assessment has incorrectly stated that the site is less than 1 hectare and therefore the provisions of the SEPP are not triggered. This is incorrect as the allotment is some 35 hectares in size. Council's Ecologist has advised that given the species list for the site contains three of the tree species listed on Schedule 2 of the SEPP, the study area is very likely to be regarded as Potential Koala Habitat. Given recent and historical records of Koalas (including sightings of a female very near the proposal) in the immediate vicinity, the site must be considered as

containing core Koala habitat and thus requiring the preparation of a Koala Plan of management. This has not been undertaken.

The construction phase, on-going noise, disturbance and lighting associated with the operation of the site as well as electromagnetic energy also have the potential to impact significantly on surrounding Koala populations. Such impacts are discussed further within this report.

SEPP 71 (Coastal Protection)

The site lies just outside of the coastal zone and therefore considerations are not required. However, Council's Ecologist has advised that there is the potential for a cumulative impact on the environment, which may have broader implications on fauna within SEPP 71 designated land.

SEPP (Infrastructure) 2007

One of the aims of this Policy is to provide greater flexibility in the location of infrastructure and service facilities. The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

115 Development permitted with consent

- (1) *Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.*
- (2) *(Repealed)*
- (3) *Before determining a development application for development to which this clause applies, **the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities** that are issued by the Director-General for the purposes of this clause and published in the Gazette.*

Therefore the proponent is applying for consent to erect the telecommunications tower and details relating to site selection, design, construction and operating principles have been provided with the development application documentation.

The guidelines referred to in Clause 115(3) of the SEPP are found within the *NSW Telecommunications Facilities Guideline Including Broadband July 2010*. Section 2 of the Guideline is specific to site selection, design, construction and operation principles for telecommunications facilities and **requires development carried out under Clause 115 of the SEPP to be consistent with the principles set out in the Guideline** in order to follow best practice.

NSW Telecommunications Facilities Guideline Including Broadband

***Principle 1:** A telecommunications facility is to be designed and sited to minimise visual impact.*

Principle 2: Telecommunications facilities should be co-located wherever practical.

Principle 3: Health standards for exposure to radio emissions will be met.

Principle 4: Minimise disturbance and risk, and maximise compliance.

Principle 1 (Visual Impact)

- (e) *A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.*
- (g) *A telecommunications facility should be located so as to minimise or avoid the obstruction of a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.*

It is, in general, considered that the facility has been located and designed as far as practically possible to respond appropriately to rural landscape setting. As detailed further within this report such development will undoubtedly impact on the visual amenity of the locality however given the nature of surrounding vegetation and topography the facility will not impact on the visual amenity of the locality to such an extent so as to warrant refusal of the proposal.

Principle 2 (Co-location)

- (e) *If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.*

Note: Co-location is 'not practicable' where there is no existing tower or other suitable telecommunications facility that can provide equivalent site technical specifications including meeting requirements for coverage objectives, radio traffic capacity demands and sufficient call quality.

The Telecommunications Act and Code of Practice encourage co-location of facilities, thus it is very likely that should a tower be approved in the location proposed in the application, at least two other telecommunications providers would co-locate. The application states that whilst three antenna will be initially installed, there is room for an additional nine antenna and at least three carriers could be expected to occupy the site. Each additional provider would require their own small building and additions to the tower, such that there would be regular disturbance over an extended period as well as ongoing disturbance for maintenance purposes. The co-location of facilities generally does not require development consent.

Whilst the potential for co-location may satisfy the general provisions of the Act there are significant concerns about the broader implications that further development and disturbance may have on fauna and flora in the vicinity.

Principle 3 (Health Standards)

- (a) *A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.*
- (b) *An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate compliance with the Mobile Phone Networks Code.*

As noted within this report, an EME report has been submitted detailing the estimated maximum cumulative EME levels produced by the proposal. Council's Environmental Health Unit is satisfied that the proposed development is well within emissions standards. Therefore, the proposed development is considered to be consistent with Principle 3 of the Guidelines.

Principle 4 (Minimise disturbance)

- (k) *Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.*

The proponent has detailed that it is unlikely that any native vegetation will require removal as the majority of the site of the proposed telecommunication facility has already been cleared. Council's Ecologist has advised that some clearing of regrowth native vegetation is required for track formation and compound construction, including some excavation. As detailed previously, the ecological consultant has nominated Tree Protection Zones of 7m around two species of Eucalypt adjacent the site however given the requirement for an inner asset protection zone, retention of these trees is questionable.

Construction will involve noise and disturbance in the short-term with a crane required to place the monopole. In general it is considered that the proposed development is consistent with the Principles of the NSW Telecommunications Facilities Guidelines.

Ongoing noise will be generated from air-conditioning units associated with the compound and occasional site visits for maintenance purposes. A flashing red light is proposed for the top of the tower as a warning to aeroplanes approaching Coolangatta airport, meaning conditions for nocturnal fauna in the surrounding forest would be significantly and permanently altered.

Although the actual proposed development footprint would be relatively minor in horizontal on-ground distance, the main impact of concern to local wildlife is disturbance, including noise and vibration and potential physical damage to habitat whilst a very large crane manoeuvres a tower of 30m height into place. Examination of the site reveals that vegetation

is very close to the track and overhanging the tower site such that at least some vegetation is likely to require removal and in all reality a number of smaller trees would be affected during placement. Initial disturbance would be exacerbated by the placement of an air conditioning unit which would run continually within an environment which currently experiences only an occasional very gentle noise from surrounding areas and few visits for maintenance purposes (the applicant has stated the Country Energy line is not in operation).

In short, disturbance impacts of an initial short-term but high level, coupled with additional short-term impacts as other telecommunications companies co-locate (as detailed further within this report), in combination with ongoing disturbance for maintenance and repairs and air-conditioning units, is not considered acceptable for a site that is known to contain vulnerable species sensitive to disturbance and at threat from development in other parts of the coast.

On this basis it is considered that the proposed development does not satisfy the provisions of Principle 4 of the NSW Telecommunications Facilities Guideline Including Broadband.

SEPP (Rural Lands) 2008

One of the aims of this Policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It is considered that the proposed development is consistent with the aims of this Policy in that it will improve the telecommunication network in the locality.

Telecommunications Act 1997

Part 1 of Schedule 3 of the Telecommunications Act authorises a carrier to enter on land and exercise any of the following powers:

- Inspect the land
- Install a facility
- Maintain a facility

A Carrier's power to install a facility is contingent upon:

- a) The Carrier being authorised to do so by a Facility Installation Permit, or
- b) The facility being a low-impact facility (as defined by the *Telecommunications (Low Impact Facilities) Determination 1997* (as amended), or
- c) The facility being temporary and used for a defence organisation for defence purposes, or
- d) If other conditions are satisfied in relation to the facility concerned.

The proponent (Telstra) does not hold a Facility Installation Permit and the proposed development is not a temporary facility for use by a defence organisation or for defence purposes. Further, as the proposal involves

the installation of a 30m monopole it does not constitute a low-impact facility under the *Telecommunications (Low-Impact Facilities) Determination 1997* (as amended).

On this basis the proponent is not empowered to undertake the proposed works without approval under NSW legislation and therefore must obtain development consent from Tweed Shire Council.

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

The Draft Tweed Local Environmental Plan 2010 is currently on exhibition. In this Draft the site is nominated within the E2 Environmental Conservation Zone. The objectives of the zone are as follows:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

The proposed development is defined as a 'telecommunications facility' which is classified as prohibited development under the provisions of the E2 Zone within the Draft LEP.

The proponent advises that numerous sites were selected as potential candidate sites within the Cobaki Lakes area and that the subject site was selected on the basis of radio frequency suitability, land use, property and planning factors.

However, the site's high conservation value has been recognised within the Draft LEP which, as it currently stands, would prohibit the development in this location. However, it is acknowledged that this does not constitute a material consideration in the determination of the development application as the document has yet to be formerly gazetted.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Access is via the existing access track off Jabiru Drive and subsequently to the proposed built access track to the site compound (measuring approximately 29m). The proponent has advised that:

- three (3) additional vehicle movements per day during construction are anticipated;
- construction would be completed within approximately five (5) weeks;
- there would be a 'minor increase' in traffic volume on the surrounding roads during construction however such impacts would be 'very minor and short term in duration';
- Road closures will not be required;

- mobile phone base stations are of low maintenance, unmanned and remotely operated therefore the proposed facility will not require parking facilities.

Clarification with regard to site access, precise location of track and turning facilities were requested by Council's Development Engineer. Further clarification has been received with this regard and Council's Development Engineer has raised no further objection.

A3-Development of Flood Liable Land

As previously detailed a small section of the southern portion of the site is flood prone land. However, the access and location of the telecommunications facility is not prone to flooding and therefore no further consideration or conditions are required with this regard.

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

Not applicable to the proposed development.

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

The subject site lies just outside of the coastal zone and is located approximately 5.5km from the coast. Therefore considerations of the Tweed Shire Coastline Management Plan are not required. However, it is considered that the potential exists for a cumulative impact on the environment that may impact on the values that make the Tweed coastline important in a local, regional and national sense.

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

Visual amenity

The proposed monopole is 30m in height and located on the top of an existing hill. Some level of screening is afforded to the development from existing mature tree species that are located on the hill top which the proponent advises are approximately 20m – 25m in height.

The proponents have advised that there would be 'minimal potential visual impact' as a result of the proposed development, however it is expected that any impact will be ameliorated by the following measures incorporated into the design of the facility':

- A monopole structure rather than a lattice tower (slim-line form and reduced bulk);
- The facility will be set back from surrounding road frontages and residential dwellings;
- Further amelioration measures (painting the monopole) are available however standard galvanised finish considered most suitable so neutral colour will blend in with sky (equipment shelter to be painted eucalyptus green);

- When viewed from certain directions (particularly from the east) the visible volume of the structure will be significantly reduced due to the presence of surrounding vegetation;
- No additional parabolic antennas or overhead electricity cables required.

However as advised by the proponent 'the proposed facility is designed with the objective of minimising potential visual impact as far as possible, whilst at the same time achieving the required RF coverage objectives. Therefore a certain level of visual impact will arise from a result of the proposed development.



Figure 2: Site of proposed facility (shown in red) to the northwest at approximately 90m – 100m AHD and low-lying nature of surrounding topography. Proposed monopole will be particularly prominent from adjacent ridgeline to the south-east (approximately 60m – 80m AHD).

The proposed monopole will extend approximately 4-5m above the existing tree canopy and so will be visible within the immediate locality. However, views of the top part of the site will, in general, be limited to distant views, as the topography of the area will limit visibility from nearby residential properties. The hilltop location rises steeply from Jabiru Drive, as illustrated in Figure 2, and therefore may limit the top of the tower being directly visible from the closest residential properties.

It is considered that the existing tree canopy as well as the topography of the site and surrounding area will reduce the overall prominence and visual impact of the proposal so as not to warrant refusal of the proposed development. This is detailed further within this report.

Access, Transport and Traffic

Access is proposed from the existing Jabiru Drive and from an access track to be constructed measuring approximately 29m in length. The development application has been referred to Council's Development Engineer who has advised that access arrangements are satisfactory. It is considered that, once the construction phase is complete, the

development would be unlikely to generate any significant volumes of traffic within the locality.

Flora and Fauna

The majority of the site is mapped under the Tweed Vegetation Management Strategy 2004 as being 'Sclerophyll Open Forests on Substrate Bedrock' with sections being 'substantially cleared of native vegetation' and 'not assessed'. As previously detailed within this report clarification with regard to proposed vegetation clearance has been received by Council whereby the ecological consultant has advised that the proposal will have a minimal impact on native fauna or flora.

As previously detailed the Cobaki Lakes area contains a diverse range of habitats from lowland wetlands and floodplains to elevated ridges above 100m AHD, with a corresponding high diversity of vegetation communities. The National Parks and Wildlife Service Wildlife Atlas database contains 583 records of forty-one threatened flora species and 1178 records of fifty-four threatened fauna species, as well as one Endangered Population within a ten kilometre radius of the subject site. The locality includes numerous mapped wildlife corridors, which have particular importance in linking lowland with elevated areas. Significant habitat removal has occurred under previous development consents over the Cobaki Lakes major development site, which lies immediately to the north of the subject site and has impacted part of the McPherson range corridor and links. Remaining habitat areas are considered critical to sustaining wildlife populations as illustrated in Figure 3.

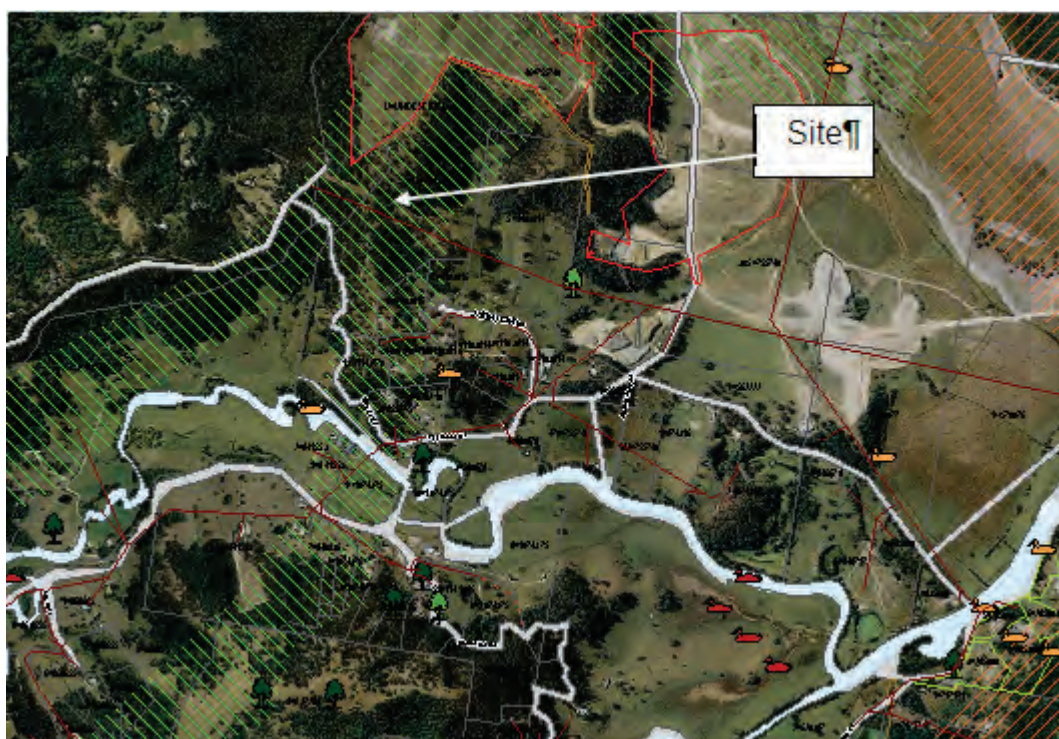


Figure 3: The proposed site is centrally located within a mapped sub-regional wildlife corridor and surrounded by numerous records of threatened species represented as tree and duck symbols here

(red and dark green being Endangered and orange and light green being Vulnerable).

The ecological assessment undertaken for the proposed development recorded one threatened fauna species and considered fifteen additional threatened fauna species as possible occurrences over time, whilst recognising that the survey was limited by both time (1 day and 3.5 hours night) and by season (Autumn, when little flowering or fruiting was occurring). Significantly, the survey recorded a female Koala 60m to the south-west of the site and Koala scats on the edge of the subject site. A number of protected arboreal mammals dependent on hollows (possums) were also recorded, along with four species of amphibians (one exotic); four species of reptile; four species of mammals (one exotic) and twenty-five species of birds.

Council's Ecologist has advised that on-ground targeted fauna survey investigations undertaken in accordance with DECC draft guidelines 2004 (recognised as the standard for ecologists in NSW) and over varying weather conditions (such as rain for amphibians species) and seasons (flowering and fruiting resources) is likely to result in numerous additional species, including threatened species. The same applies for a systematic flora survey. A particular concern in the survey investigation is the lack of echo-location signal analysis to reveal the presence of microchiropteran bat species likely to use the site and potentially most directly affected by EME due to its potential for reduction in prey (insect) populations and their smaller body size. However, of most concern for the subject location at present is the Koala.

The *Tweed Coast Koala Habitat Study* (Biolink 2011) concluded *that the Tweed Coast Study Area's Koala population is now in very serious trouble*. The report states that for the northern Koala Management Area (being north of the Tweed River and thus isolated from any other Koala populations to the south): *there is a need to determine what actions (if any) can be enacted ... to avoid what otherwise appears to be an inexorable trajectory towards localised extinction within a timeframe of 5 – 10 years*.

Within the report it is also stated that *Population Viability Analysis carried out by Phillips et al. 2007 has determined that as little as a 2 – 3% increase in the naturally occurring mortality rate (as a function of total population size) due to incidental factors such as road mortality, dog attack or the stressors associated with disturbance generally, is sufficient to precipitate decline*. It is considered that the development will introduce disturbance to the site in a number of ways, as previously detailed within this report.

The Koala Habitat Study summarises as follows: *The preceding prognosis reinforces not just the need to remove and/or minimise known and potential threatening processes from those areas known to be currently occupied, but also to effectively buffer such areas from further adverse impact, facilitate recovery and accommodate the need for population expansion, as well as ensuring that effective habitat linkages are in place to facilitate ongoing recruitment processes*. In a planning context, the

report states ... *there is a need to not only recognise currently occupied areas as core koala habitat and implement management accordingly, but also for areas of adjoining high quality (Primary/Secondary A) koala habitat as well as identified linkage areas to be afforded the highest importance and an equal level of protection.*

The intent to provide a higher level of protection to this site is illustrated by the proposed zoning of the site in LEP 2010 to E2 Environmental Protection. Recent and historical sightings of koalas within the immediate locality means the area must be regarded as core Koala habitat. How Koalas are using the site; the size, stability and distribution of any Koala population through the landscape; and actions contributing to their success or otherwise are factors which have not been considered within the ecological assessment. Recent Koala activity has been recorded to the north-west (JWA 2009), east (Benwell and Lewis 2007) and the north-east (Biolink, 2011) of the site, with records from 2004 and 2006 to the south.

Given the dire situation in which the Koalas north of the Tweed River are found, the unknown factors listed above, the presence of Koalas within and around the site and the disturbance impact very likely to arise from the proposal, the precautionary principle must be applied in preventing development that may have a further detrimental impacts on an area where Koalas are shown to be surviving.

Noise

Some level of noise will be generated during the construction phase for the proposed monopole. During the operation phase of the monopole noise associated with use of air conditioning plants servicing the equipment shelter will be generated, which is considered likely to impact on fauna within the vicinity of the subject site as previously detailed.

The air conditioning units may operate during the night and contribute to background noise levels. The development application was referred to Council's Environmental Health Unit who have advised that given the location of the site and negligible operational noise any noise impacts may be controlled via suitable conditions of consent.

Lighting

The application does not make mention of any security lighting to be used at the facility. There is a concern that additional lighting would impact further on surrounding fauna.

Contamination

The development application has been referred to Council's Environmental Health Department who have advised that analysis of previous land uses through aerial photography did not reveal any potentially contaminating activities and therefore contamination is not considered a constrain for the proposed development.

Radiofrequency (RF) Electromagnetic Energy (EME)

In response to concerns raised from surrounding residents with regard to exposure to Radio Frequency, the proponent has stated:

"The further a base station is built from the residential it is designed to provide coverage for, the base station will need to operate at a higher power which would actually increase exposure (albeit these levels are still very low and below the standard). In most circumstances the best location to build base stations in order to minimise emissions is closest to where those services are required."

Therefore, the best way to reduce emissions is to build base stations in the most technically effective locations for network coverage [...] there is no science-based reason to set up exclusion zones for mobile phone base stations around land uses such as schools and residential areas.

The application has been referred to Council's Environmental Health Unit with this regard who has advised the following:

"The 2002 Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) Radiation Protection Standard 'Maximum Exposure Levels to Radiofrequency Fields -3 kHz to 300 GHz' sets public and occupational limits of exposure to EME fields.

The Australian Communications and Media Authority (ACMA – formerly Australian Communications Authority) has the regulatory responsibility to mandate exposure limits for continuous exposure to the general public in order to protect the health and safety of persons exposed to RF EME from radiocommunication transmitters.

In order to fill this regulatory responsibility, ACMA adopted the ARPANSA limits into the Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003 and the licence conditions for radiocommunications transmitters. All licensees of transmitter installations (like mobile phone base stations) are required to comply with the public exposure limits in the ARPANSA Standard. ACMA has adopted a precautionary approach to the regulation of EME emissions, ensuring that emission limits on communication transmitters are stringent and lower than those levels that have been found to cause adverse health effects.

A Summary of Estimated RF EME Levels around the Proposed Mobile Phone Base Station at 5 Jabiru Dr, Cobaki (NSA Site No 2486009) dated 19/2/10 has been provided. The report appears to have been prepared in accordance with the ACMA requirements. The report indicates that the maximum EME level at 1.5m ground level is estimated to be 0.24% of the ARPANSA public exposure limits. The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards. "

On this basis Council's Environmental Health Unit have advised that no further considerations are required with regard to RF EME and its impact on human populations.

With regard to the impact of electromagnetic emissions on fauna populations a recent literature review undertaken for a proposed tower on

the Tweed Coast (Phillips et al 2009) stated that *“it is difficult to unreservedly reject arguments indicating some relationship between EME sourced from mobile telecommunications facilities and adverse effects on non-human biological organisms”*. The consultant cited evidence of a relationship of effect inversely proportional to size, i.e. a greater effect on smaller (and also structurally more simple) organisms such as insects.

The report concluded as follows:

Conclusions and Recommendations

Ecological systems and the organisms that comprise them are complex biological entities. Primary consideration of consent authorities in most Australian States is whether or not the extent of any impact from EME is significant enough to bring about localised extinction events and/or reductions in such range parameters as area of occupancy. Based on the preceding review we would conclude that there is not enough evidence to answer this question unequivocally. Moreover, ecosystem response will invariably differ dependent on specific location and its associated disturbance history, species assemblages and level of biological complexity therein, and the extent of exposure over time.

Are there likely to be impacts from EME at a localised population level? Again, the information provided herein would suggest that yes – there will be. Unfortunately though, research has not kept pace with technological advances and thus it can only be surmised that earlier technologies, and particularly those operating at the lower end of the frequency spectrum utilised for telecommunication purposes have the potential for greater impact than do more modern technologies which tend to operate at lower power levels, at higher frequencies and with less modulation, the end result of which is that the extent of power density fields and/or intensity windows having the potential to adversely impact on biological organisms is reduced. There is some evidence to support such a claim, recent work by Sommer et al (2007) reporting no significant differences between survivorship and disease severity code in mice chronically exposed to UMTS modulated EME. Regardless and notwithstanding such research indicating a potential for lesser impact, the weight of evidence would suggest that some impact is likely but perhaps within smaller lobes of influence than that which could be nominally associated with lower frequency bandwidths.

We consider the critical question to be whether or not the potential impacts of EME on non-human, biological organisms is significant at a level that may also compromise the functioning of ecological communities as a whole – for which we must again conclude there is currently no scientific evidence to indicate that this is the case. This conclusion must remain qualified however, because we must also conclude on the basis of existing knowledge that some localised, small-scale impacts are likely to occur, and speculate that such impacts will likely manifest themselves as decreases in animal activity, abundance and general biodiversity values generally within

a likely area of influence that may extend in a mostly horizontal plane up to 50m from the power source (based on available power density projections), the intensity and potential influence of which will vary depending on the height from the ground. As a hypothesis such speculation is readily testable and we would urge organisations engaged in the expansion of telecommunications infrastructure to address the widening gap between technological advance and the ability of research to provide informed opinion on likely ecological impact as opposed to that singularly focused on the welfare of humans. In the interim, we would argue that sufficient data exists to warrant application of the precautionary principle such that the installation of telecommunications facilities in areas where there are high conservation and/or biodiversity values should be avoided if at all possible.

The 50 metre “area of influence” referred to above was determined on a different carrier’s bandwidth and on only one carrier’s antennas being present on the monopole. As previously stated co-location of carriers has not been considered and is likely to extend the area of influence significantly.

Council’s Ecologist has advised that EME effects are still to be quantified but enough peer-reviewed scientific evidence exists to conclude that some impact at a population level is likely on species of smaller body weight that reside mainly at higher levels in tree canopies and are thus more exposed to the emissions. As the Northern Koala Management Area requires significant concerted effort already to prevent extinction from small fragmented population areas under high mortality stress, any future stressors must be avoided.

Acid Sulfate Soils

The site has been assessed as being Class 5 ASS Council’s Environmental Health Officers has determined that the subject application does not require an ASS Management Plan.

Aircraft Impacts

As previously detailed within this report the application has been referred to the Department of Infrastructure and Transport who have approved the application subject to a number of conditions of consent. Providing the development is carried out in accordance with the relevant conditions it is considered that the proposal will not interfere with the safety, efficiency or regularity of existing or future air transport operations.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is located in a rural area where the nearest residential dwelling is approximately 430m to the southeast of the proposed facility. Surrounding land uses comprise rural-residential lots, agricultural land (grazing) and cleared land subject to the Cobaki residential subdivision.

The site of the proposed facility is heavily vegetated and it is considered that the existing vegetation, to a certain extent, will provide a visual screen

to the subject proposal, particularly coupled with the elevated nature of the hill top that will limit views to the monopole from the immediate vicinity.

The elevated nature of the subject site affords the desired level of coverage to the proposed telecommunication tower and will therefore improve telecommunications service for the locality. For these reasons the site is, in general, considered to be suitable for the proposal. However, as previously detailed the proposal has the potential to impact significantly on fauna within the locality, which is recognised for its high biodiversity and conservation value. For this reason refusal of the development application is recommended.

Tweed Shire Scenic Landscape Evaluation

Catherine Brower's Tweed Shire Scenic Landscape Evaluation report (1995) was undertaken to: identify and analyse the scenic landscape of the Tweed Shire to determine its aesthetic and cultural heritage values; identify ways of protecting view corridors of high value; and to provide methods for the management of the scenic value of the shire.

The subject site is located within the McPherson Ranges on the edge of the Cobaki locality. The evaluation report identifies the Cobaki area, within the district of Terranora, as having a Medium scenic quality.

In terms of scenic management, the report identifies Cobaki as a scenic district due to its naturalness in proximity to Tweed Heads/Coolangatta; isolated paddocks in the hinterland; and the natural setting of the broadwater. The document sets the following parameters of development:

- Housing could occur out of sight up side valleys as clusters or villages (not rural residential);
- **Maintain naturalness of backdrop hills;**
- Restrict waterside development to preserve naturalness.

The proposed telecommunication facility will be visible from within the locality given it will protrude by approximately 4-5m above the existing vegetation canopy. Therefore it is arguable that the proposal will undoubtedly impact on the 'naturalness of backdrop hills' with the introduction of a modern, man-made structure on the ridge line.

As previously detailed the nature of surrounding vegetation and topography is such that the proposed monopole will not be particularly prominent within the immediate locality. When viewed from the south-east toward the McPherson Ranges the scene comprises relatively flat and cleared farmland with phone lines, electricity cables and the like clearly visible. The recently approved subdivision at Cobaki for a residential development of 10,000 dwellings is also acknowledged; this will dramatically alter the existing verdant and rural landscape character within the vicinity of the subject site.

Whilst the proposed monopole will be visible within the surrounding locality as well as from the adjacent ridge line (approximately 3.4km to the south east of the subject site), it is considered that the perceived impact to

landscape character on this area of the Tweed Shire is not in itself, a reason for refusal given the difficulty in prioritising the maintenance of 'naturalness' with the requirement for improved telecommunication services.

Flora and Fauna

The Cobaki Lakes area has very high biodiversity values and is essential for wildlife corridor connections. Large areas of conservation land free of anthropogenic impacts and connected with other similar areas are more and more important to remain so in the face of loss of habitat from ongoing coastal development. The site has been shown to be of importance to threatened species.

It is acknowledged that whilst the development footprint is reasonably small, disturbance impacts are likely to be high during the construction and ongoing maintenance provisions. Further, co-location of other carriers is likely to lead to ongoing disturbance, particularly to shy and cryptic species adversely affected by such impacts, and in particular through flashing light reflections throughout the night.

Should these impacts be enough for species to avoid the site, they are likely to be pushed out of the relatively safe forested corridor into more marginal country where more risk occurs to their safety.

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

A total of four (4) submissions have been received as a result of the proposed development. The major objections have been outlined below:

Objection	Response
<p>Health and Safety:</p> <ul style="list-style-type: none"> • Such towers are seen as health risks, especially to young children; • Evidence to the contrary of the WHO (documented causes of cancer clusters near mobile phone towers; longevity studies yet to be completed; other countries have exclusion zones); • Lack of knowledge of long-term effects of EME on people (links to brain tumours and cancer). 	<p>Radiofrequency Electro Magnetic Emissions (RF-EME) from the operation of the Base Station have been assessed and a report provided dated 19/12/10. The report indicates that the maximum EME level at 1.5m ground level is estimated to be 0.24% of the Australian Radiation and Nuclear Safety Agency (ARPANSA) public exposure limits. The report demonstrates that the predicted emissions produced by the proposal are within these standards. Council's Environmental Health Unit have advised that no further consideration with regard to RF-EME is required.</p>

Objection	Response
<p>Depreciation of Property Value:</p> <ul style="list-style-type: none"> • Will decrease property values in the area greatly due to perceived health issues and visual impact. 	<p>The proponent has advised that there is <i>no evidence to show that mobile phone installations have negative impacts on property values [...]. Land that is close to local amenities [and subsequently] has good mobile coverage is likely to be more desirable than an area with poor coverage.</i></p> <p>A perceived devaluation of property prices is not a material planning consideration under section 79C of the Environmental Planning and Assessment Act 1979.</p>
<p>Access Track:</p> <ul style="list-style-type: none"> • Impact on the private road that is currently used and maintained by 4 residents only; • Heavy machinery to be used would damage private track; • With exception of land owner, all other landowners are refusing permission for the private driveway to be used; • Access track very steep and designed for residential vehicles only; • Residents not prepared to be financially disadvantaged as a result of commercial vehicles degrading the track; • Health and safety of other track users due to heavy commercial vehicles. 	<p>The proponent has advised that the road leading from Jabiru Drive to the lots in question is a registered easement for right of carriageway and have included a copy of this easement for reference with the application details. This easement allows 'full and free right for every person who is at any time entitled to an estate or interest in possession of the land in question'.</p> <p>The easement states that owners of the lot shall maintain the carriageway and keep it in good repair and condition. It has been advised that Telstra agree to repair any damage that may occur during construction and that in relation to safety, the easement is a carriageway for vehicle access and road and safety rules will still apply.</p>
<p>Community consultation:</p> <ul style="list-style-type: none"> • The applicants have failed to carry out effective community consultation; • Such an objection is unethical; • No evidence of surrounding land owners (Lots 9 and 10 Jabiru Drive) being consulted; • Consultation that was carried out 	<p>In response to the submissions the proponent has stated: <i>we note that inconsistency between Council's Policy on Pre-DA consultation and the intent of the recently gazetted NSW SEPP Infrastructure Amendment (Telecommunication Facilities) 2010 and NSW Telecommunication Facilities Guideline including Broadband. [...] Provisions for mandated Pre-application consultation are not included [within the</i></p>

Objection	Response
<p>was selective, exclusive and incomplete;</p> <ul style="list-style-type: none"> • Applicants stated that alternative sites not suitable as they would be likely to face opposition from the community however effective and comprehensive consultation would have revealed this. 	<p>SEPP Infrastructure]. <i>Council's resolution to mandate pre-application consultation and its decision to refuse to accept a [DA] is inconsistent with the [EP and AA 1979]. Council's policy is discriminatory [and...] given the location of the proposed facility and character of the area it is considered that Telstra have gone beyond what is required in terms of pre-DA consultation.</i></p> <p>Telstra have completed the following pre-DA consultation:</p> <ul style="list-style-type: none"> • Newspaper advertisements in the Tweed Link, Tweed Sun and the Tweed Daily News on 8/13 July and 15/20 July 2010; • Letter box drops & door knocks (7 July 2010) to surrounding homes/businesses (vacant rural lots, vacant houses, wholesale nursery, golf club, residential properties) that could be affected; • Community meeting was not held as it was <i>considered excessive given the rural context of the area and the location of the facility</i>'. <p>Whilst a community meeting is not a statutory requirement as set out in the EP & A Act 1979, the <i>NSW Telecommunication Facilities Guideline including Broadband</i> requires that a carrier should <i>have regard to Council's views on consultation</i>. Whilst it is unfortunate that a community meeting was not carried out the proponent has undergone letter drops and advertised the proposal in two (2) concurrent publications which is considered to be acceptable in this instance.</p>
<p>Air Safety:</p> <ul style="list-style-type: none"> • Proposal penetrates the Obstacle Limitation Surface (OLS) by 52.78m; • Disregard for safety of air operators and passengers as 	<p>The subject proposal was referred to the relevant authorities for comment in regards to the potential conflict with flight activities. As previously detailed within this report the relevant bodies have approved the application subject to a</p>

Objection	Response
well as surrounding communities.	number of conditions of consent.
Lack of time to dispute: <ul style="list-style-type: none">• Timeframe allocated to comment was not sufficient to allow the wider community the ability to gain a knowledge and understanding.	The timeframe for the notification period for the development was conducted in accordance with the Environmental Planning and Assessment Act 1979.

(e) Public interest

The submissions have been considered within the body of this report. Council currently has no specific policies in relation to telecommunication tower developments. The proposal is a permissible form of development in the 1(a) zone and therefore can be assessed by Council.

The concerns in regard to health risks are acknowledged and have been considered within the body of this report. Current research indicates that the potential for health implications from EME levels is minimal. In this instance Council relies on the relevant standards from ARPANSA and other authorities. Council's Environmental Health Officers deemed the submitted information and reporting on the potential health risks of the monopole to be consistent with outlined Australian standards. With regard to human populations the proposed development is consistent with all relevant guidelines and proposed to be conducted in accordance with outlined Australian standards. Further, the proposed telecommunication facility will provide for improved telecommunications service for the locality and newly approved residential subdivision at Cobaki.

However, it is considered that, on the basis of the submitted information, the proposed development will impact on the ecological integrity of the subject site and surrounding locality, which would not be in the public interest, particularly with regard to ensuring that the environmental quality and biological diversity is maintained for future generations.

OPTIONS:

1. Resolve to adopt the recommendations made and refuse the development application.
2. Resolve to approve the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

In general it is considered that the proposed telecommunication facility will enhance telecommunications services in the locality, with particular regard to the recently approved residential subdivision at Cobaki. The location and design of the proposal is considered suitable without any significant adverse impacts on the natural and built environments in terms of: significant native vegetation clearance (although the precise impact of the 10m APZ is unknown); visual impact; or health impacts to human populations, so as to warrant refusal of the proposal.

However, this report has set out the significant impact of the proposed development on ecological integrity within the subject site and surrounding locality. This is particularly prevalent given the high environmental significance and conservation value of the area as well as the dire situation of Koala populations, particularly to the north of the Tweed River. For these reasons it is considered that the site is unsuitable for the proposed development due to the potential impact on fauna including threatened species.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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8 [PR-CM] Development Application DA10/0636 for a Residential Flat Building (6 Units) at Lot 14 Section 5 DP 758571, No. 204 Marine Parade, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA10/0636 Pt1

SUMMARY OF REPORT:

The subject application seeks consent for the construction of a residential flat building comprising six (6), three (3) bedroom units. The proposed building is three (3) storeys in height and provides for basement car parking with access off Kingscliff Lane. The subject site covers a total area of 834m² whilst the total area of the development is 995m² with the area of each individual unit varying between 140m² and 156m².

The application includes a SEPP 1 objection in relation to Clause 32B of the North Coast Regional Environmental Plan 1988 (NCREP) relating to overshadowing. In this regard, it is referred to Council for determination pursuant to the Department of Planning issued circular dated 14 November 2008.

The proposed development is considered to demonstrate compliance with the relevant planning instruments, apart from the proposed SEPP 1 objection. However it is considered that sufficient justification has been provided in this instance and the application is recommended for conditional approval.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 32B of North Coast Regional Environmental Plan regarding the overshadowing of a reserve be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. That Development Application DA10/0636 for a small residential flat building (6 units) at Lot 14 Section 5 DP 758571, No. 204 Marine Parade, Kingscliff be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos;**
 - Drawing No's DA34, DA 35, DA37 Issue A**

- Drawing No's DA04, DA09, DA14, DA15, DA36 Issue B
- Drawing No's DA00 - DA03, DA05- DA08, DA10, DA11, DA13 DA17 Issue C
- Drawing No's DA12 Issue D

prepared by ARCHiTECTURE Pty Ltd and dated 10/08/2010, except where varied by the conditions of consent.

[GEN0005]

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

[GEN0115]

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

[GEN0135]

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

[GEN0265]

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

[GEN0300]

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

[GEN0305]

7. Prior to the issue of a Construction Certificate, design verification from a qualified designer must be submitted to the certifying authority. The statement must verify that the plans and specifications achieve or improve the urban design/architectural design quality of the development for which development consent was granted, having regard to the design quality principles within *State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development*

[PCC0045]

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

[PCC0585]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. The developer shall provide 14 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.

Bicycle parking is to be provided at a rate specified in Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking code.

[PCC0065]

10. Section 94 Contributions

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

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

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

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

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

- (a) West Kingscliff – Open Space:

1.458 ET @ \$2386 per ET \$3,479

(\$1849 base rate + \$537 indexation)

DCP Section B4

S94 Plan No. 7

- (b) Shirewide Library Facilities:

1.458 ET @ \$792 per ET \$1,155

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

S94 Plan No. 11

- (c) **Bus Shelters:**
 - 1.458 ET @ \$60 per ET \$87
 - (\$60 base rate + \$0 indexation)
 - S94 Plan No. 12
- (d) **Eviron Cemetery:**
 - 1.458 ET @ \$120 per ET \$175
 - (\$101 base rate + \$19 indexation)
 - S94 Plan No. 13
- (e) **Extensions to Council Administration Offices
& Technical Support Facilities**
 - 1.458 ET @ \$1759.9 per ET \$2,565.93
 - (\$1759.9 base rate + \$0 indexation)
 - S94 Plan No. 18
- (f) **Cycleways:**
 - 1.458 ET @ \$447 per ET \$652
 - (\$447 base rate + \$0 indexation)
 - S94 Plan No. 22
- (g) **Regional Open Space (Casual)**
 - 1.458 ET @ \$1031 per ET \$1,503
 - (\$1031 base rate + \$0 indexation)
 - S94 Plan No. 26
- (h) **Regional Open Space (Structured):**
 - 1.458 ET @ \$3619 per ET \$5,277
 - (\$3619 base rate + \$0 indexation)
 - S94 Plan No. 26

[PCC0215]

11. Section 94 Contributions

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

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

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the

rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

\\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

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

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

Water DSP5:	2 ET @ \$11020 per ET	\$22,040
Sewer Kingscliff:	2.5 ET @ \$5295 per ET	\$13,237.50

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in

accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

[PCC0265]

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

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

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

[PCC0275]

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

[PCC0285]

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

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

- 16. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the**

Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

17. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: -
- (a) Removal of existing laybacks and provision of a new driveway access in accordance with Section A2 - "Site Access and Parking Code" of Councils consolidated Tweed Development Control Plan and Councils "Driveway Access to Property - Part 1" Design Specification June 2004.
 - (b) Construction of a 1.2m wide concrete ribbon footpath along the full frontage of the site to Marine Parade in accordance with Councils Development Design and Construction Specifications.

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

- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

18. Any sheet piling that utilises ground anchors that extend under public roads or land must not be used unless the applicant or owner enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

[PCC0955]

19. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in

accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
- (e) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks being undertaken.
- (f) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 – *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with an s68 Stormwater Application for approval prior to issue of a Construction Certificate.
- (g) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly

[PCC1105]

20. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.

- (d) **Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.**
- (e) **Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).**
- (f) **If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).**
- (g) **All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.**
- (h) **All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.**
- (i) **All infiltration devices are to be designed to allow for construction and operation vehicular loading.**
- (j) **All infiltration devices are to be located clear of stormwater or sewer easements.**

[PCC1135]

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

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

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

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

[PCC1145]

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

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

[PCC1155]

23. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the S68 stormwater application.

[PCC1165]

24. Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Any individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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

[PCC1185]

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

Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1195]

26. Prior to the issue of a Construction Certificate, a construction waste management plan is to be provided to Council. The Waste Management Plan is to include:

- a) The type of waste generated during construction.
- b) The method and location of waste storage on site.
- c) How any recyclable materials will be managed.
- d) The location of the disposal facility for residual waste.

During the construction phase it is the responsibility of the site manager to ensure that the above management measures are inspected and maintained on a daily basis.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

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

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

30. Residential building work:

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

the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

[PCW0245]

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

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

[PCW0255]

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

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.

[PCW0375]

- 34. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:**
- (a) The person must, at the person's own expense:**
 - (i) preserve and protect the building / property from damage; and**

- (ii) if necessary, underpin and support the building in an approved manner.
- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

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

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

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

[PCW0985]

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

[PCW1065]

37. Prior to the commencement of any works on the site, the applicant is to receive approval for the demolition of the existing structures on the site.

[PCWNS01]

DURING CONSTRUCTION

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

[DUR0005]

39. The provision of 14 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DUR0085]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0245]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

- 46. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance**

with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

47. A survey certificate from a Registered Surveyor is to be submitted to the Principal Certifying Authority at garage slab or footing stage, prior to pouring concrete, to confirm that the approved driveway gradients will be achieved.

[DUR0475]

48. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

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

[DUR0905]

50. Provision to be made for the designation of 1 (one) durable and pervious car wash-down area/s. The area/s must be appropriately sized and identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system. Surface runoff must be discharged into the landscaped areas or sewer network in accordance with Councils Trade Waste Agreement.

[DUR0975]

51. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

52. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

53. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- dust during filling operations and also from construction vehicles
- material removed from the site by wind

[DUR1005]

54. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Marine Parade in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

55. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

56. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

57. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

58. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

59. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties.

[DUR1965]

60. Swimming Pools (Building)

(a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS

1926.1 – 2007 & AS 1926.3 -2003. (Refer Council's web site www.tweed.nsw.gov.au)

- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

61. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

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

[DUR2185]

63. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".

[DUR2195]

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

[DUR2425]

65. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

66. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

67. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.

(b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

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

[DUR2505]

69. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

70. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

71. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

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

[DUR2615]

73. Prior to the issue of an Occupation Certificate, design verification from a qualified designer must be submitted to the certifying authority. The statement must verify that the residential flat development achieves the urban design / architectural design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles within *State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development*

[POC0015]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

75. Prior to the issue of an Occupation Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the civil works approved under Section 138 of the Roads Act and Section 68 of the Local Government Act as set out in Councils Fees and Charges current at the time of payment which will be held by Council for a period of 6 months from the date on which the Occupation Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

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

[POC0205]

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

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

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

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

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

[POC0265]

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

[POC0435]

79. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

80. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

81. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

82. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

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

[POC1045]

USE

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

[USE0125]

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

[USE0175]

86. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General

Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE0435]

88. **Swimming Pools (Building)**

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

89. The dwellings are for permanent residential occupation only.

[USENS01]

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

1. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'
2. Water, electricity and gas are to comply with the following requirements of section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

REPORT:

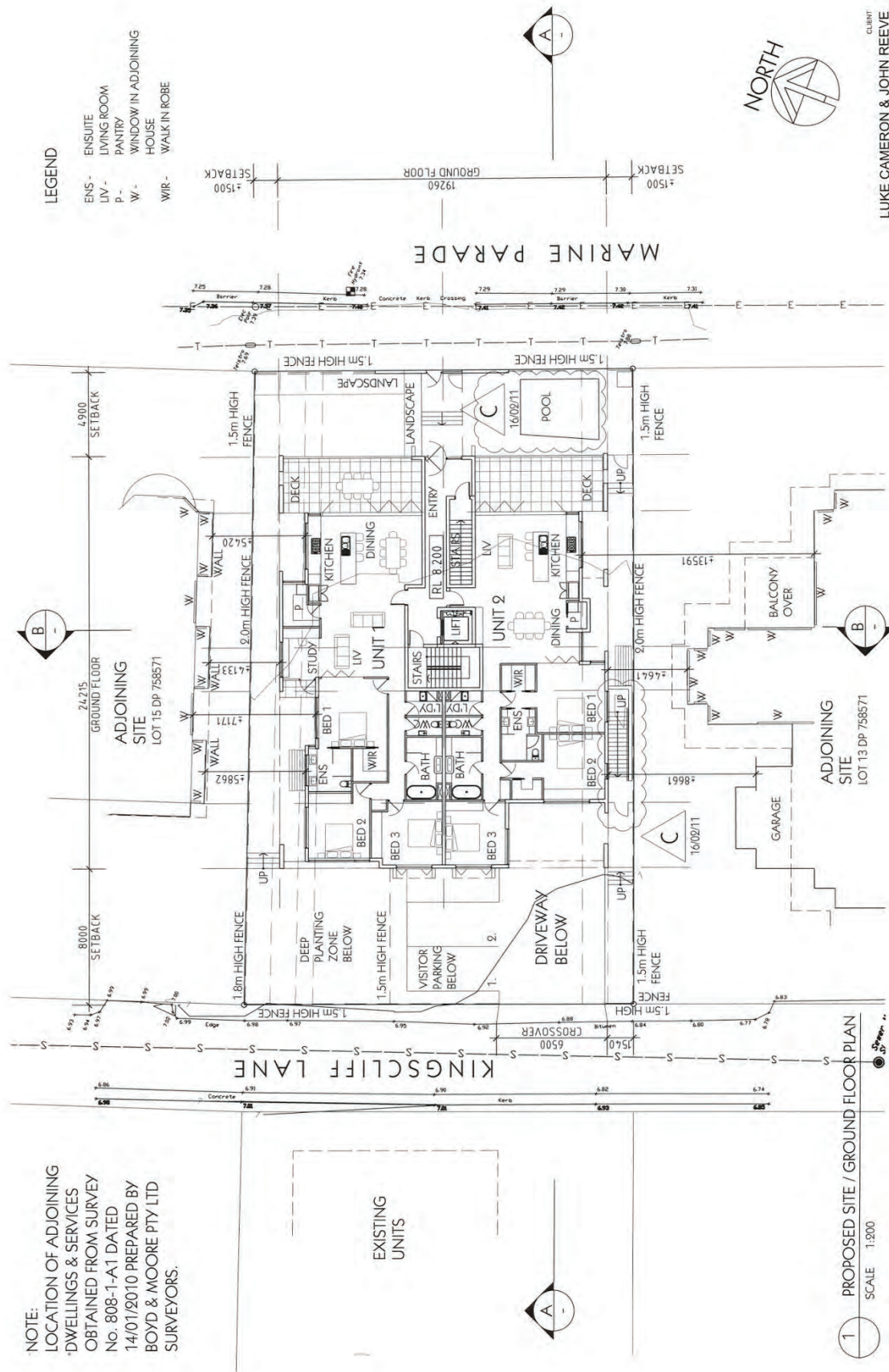
Applicant: L Cameron and J Reeve
Owner: Mr Luke S Cameron & Mr John A Reeve
Location: Lot 14 Section 5 DP 758571, No. 204 Marine Parade Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$2,000,000

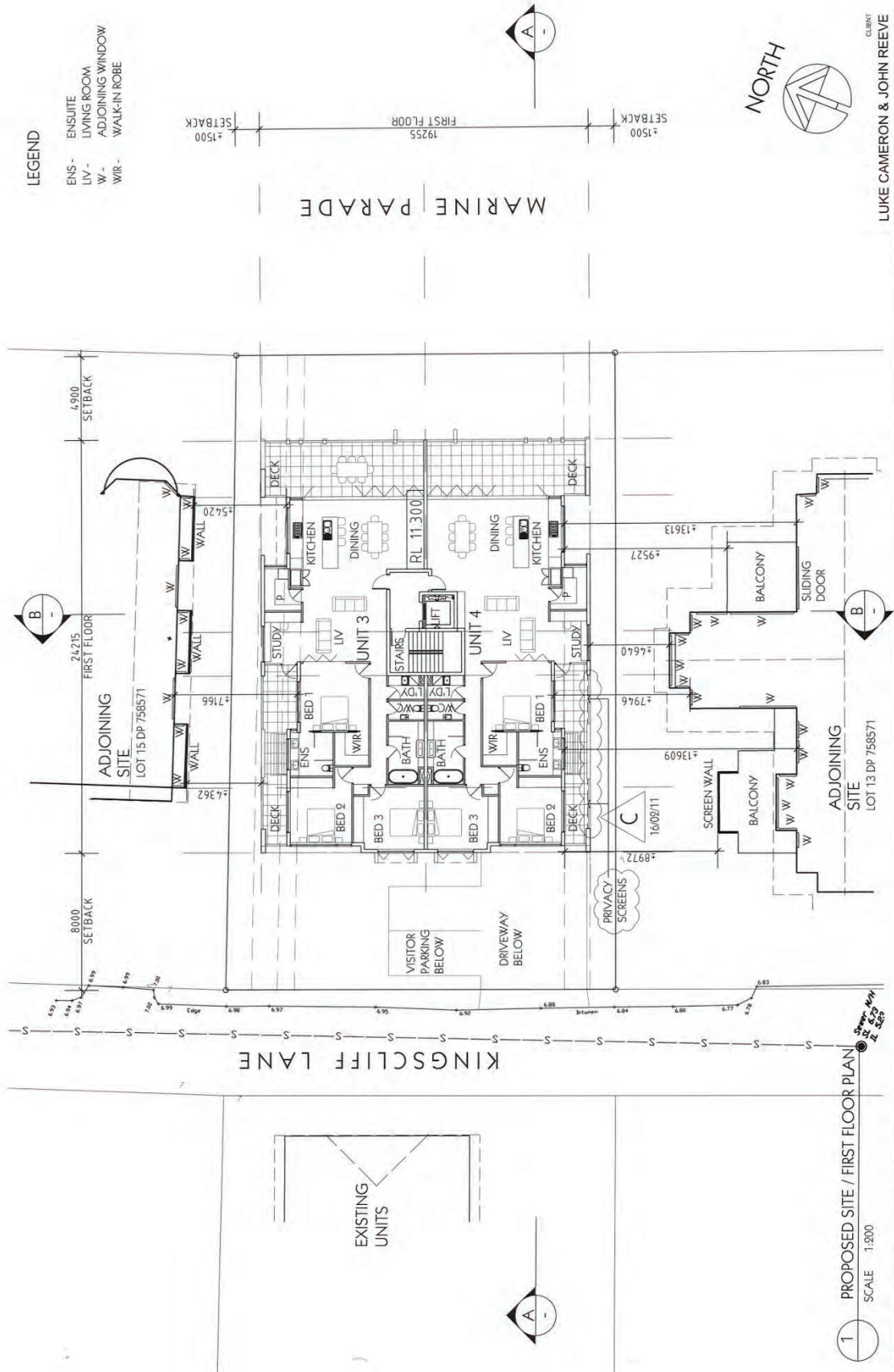
BACKGROUND:

The site is comprised of one (1) regular shape lot and possesses frontage to both Marine Parade and Kingscliff Lane of approximately 22.169 and metres 22.827 metres respectively. The site has a total area of 834m². The subject site is located in between existing residential units and a residential dwelling along the Marine Parade and opposite the parkland and the beach.

At present, the Lot contains a total of seven (7) small residential units within two (2) detached single storey buildings, which includes six (6) studio units and one (1) one bedroom unit. These existing structures will need to be demolished to enable construction of the proposal. A separate application is to be submitted for their demolition at a later time.

DEVELOPMENT PLANS:





LEGEND
 ENS - ENSUITE
 LIV - LIVING ROOM
 W - ADJOINING WINDOW
 WIR - WALK-IN ROBE



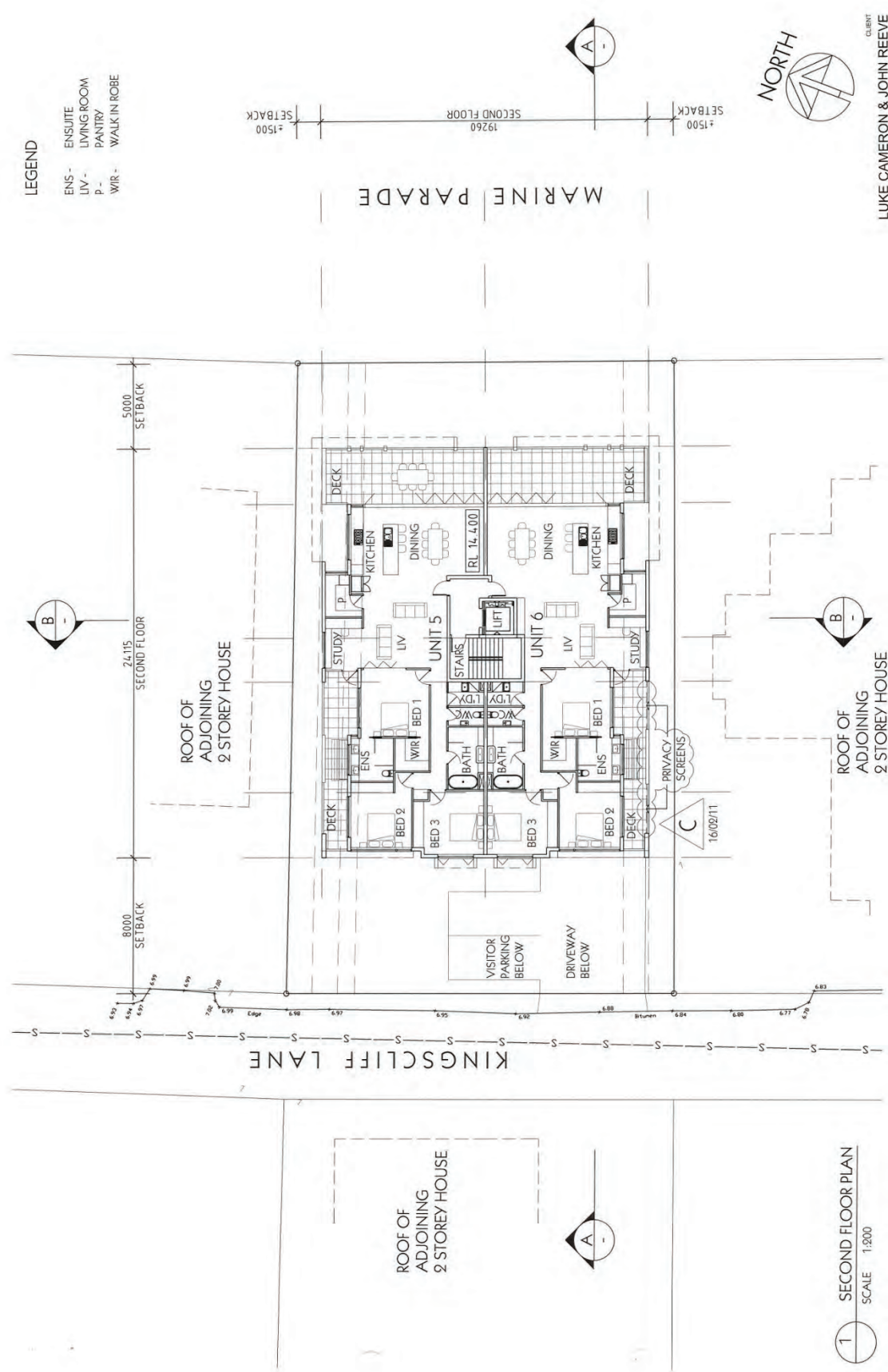
CLIENT
LUKE CAMERON & JOHN REEVE

6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

SCALE @ A3 1:200 DATE 16/02/11 DRAWN CK JOB NUMBER 0943 SHEET No DA02 ISSUE C

1 PROPOSED SITE / FIRST FLOOR PLAN
 SCALE 1:200

8i ARCHITECTURE Pty Ltd.
 18/75 270 050 454 21 Hansen Street, Morooka, Qld. 4105 P 3342 4806 F 3342 4007 E mail@8i.net.au



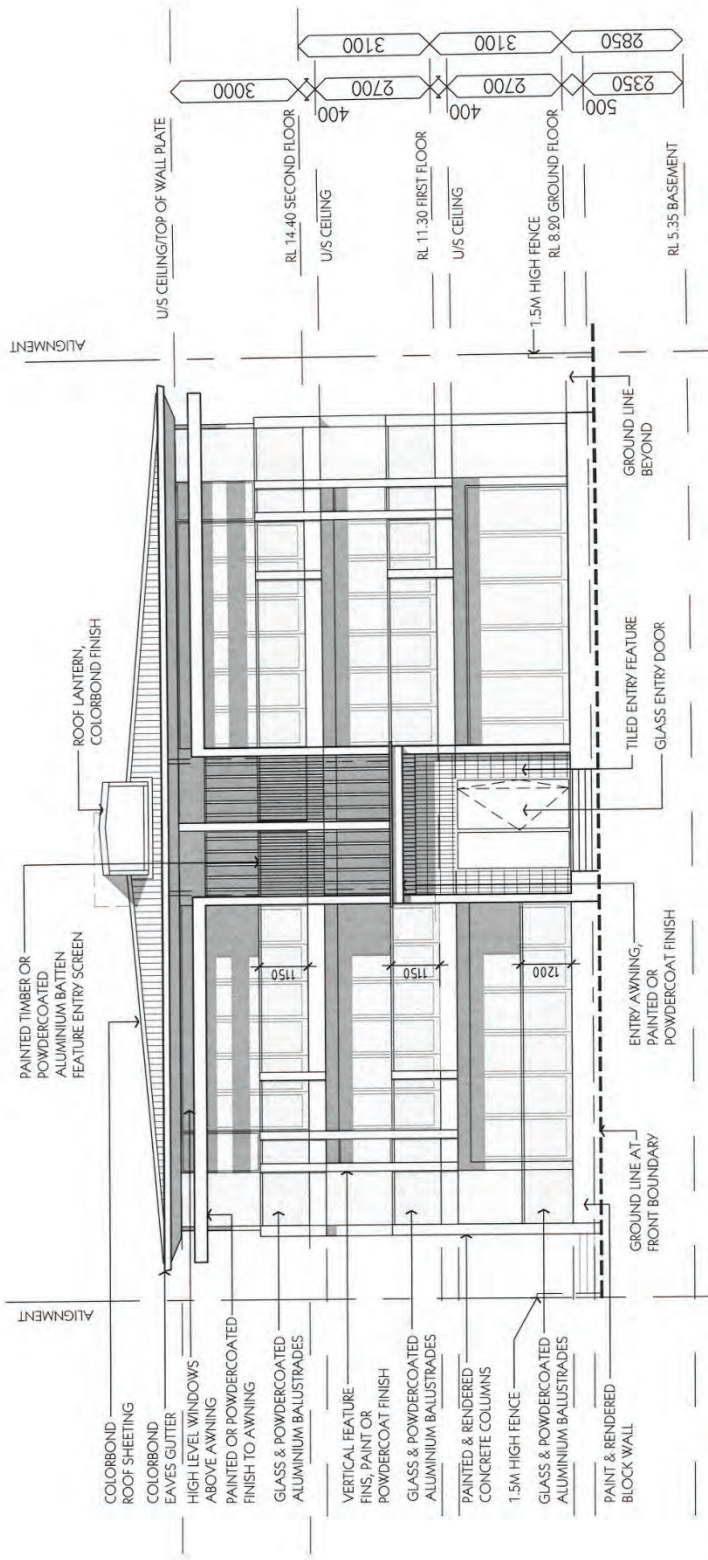
LEGEND
 ENS - ENSUITE
 LIV - LIVING ROOM
 P - PANTRY
 WIR - WALK IN ROBE



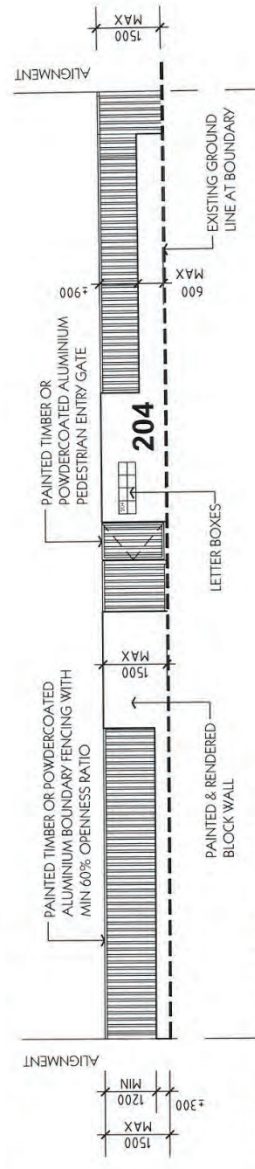
1 SECOND FLOOR PLAN
 SCALE 1:200

8i ARCHITECTURE Pty Ltd.
 ABN 75 276 061 464 21 Hancock Street, Moorooka, Qld. 4105 P 3242 4806 F 3542 4807 E mail@8i.net.au

CLIENT LUKE CAMERON & JOHN REEVE
 JOB NUMBER 0943 DRAWN CK DATE 16/02/11 SCALE @ AS 1:200 SHEET No DA03 ISSUE C
 6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487



1 PROPOSED EAST ELEVATION - MARINE PARADE
SCALE 1:100



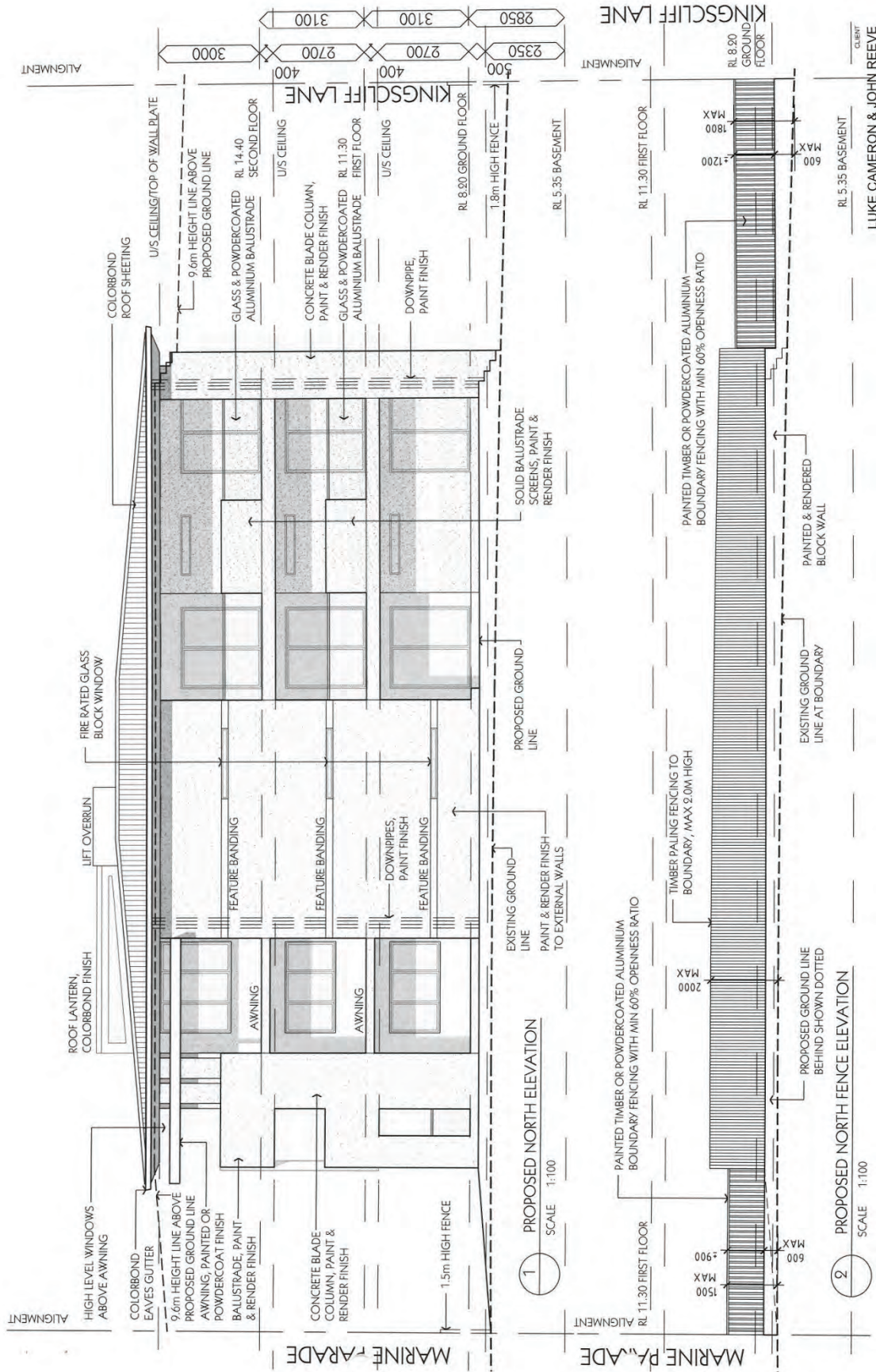
2 PROPOSED FENCE ELEVATION - MARINE PARADE
SCALE 1:100

CLIENT
LUKE CAMERON & JOHN REEVE

6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

8i ARCHITECTURE Pty Ltd.

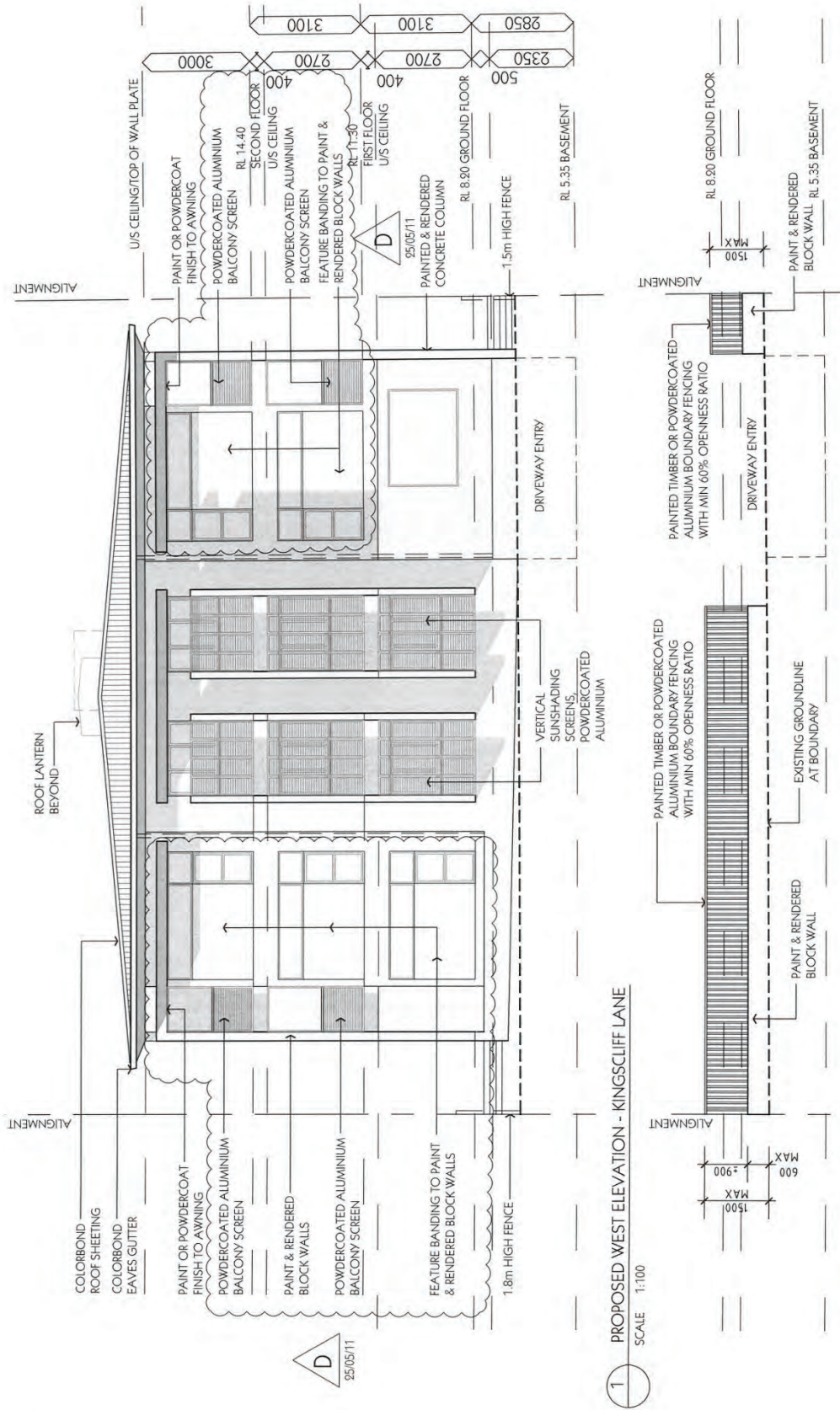
ABN 75 276 656 144 21 Hansen Street, Moorooka, Qld. 4105 P 3342 4806 F 3342 4807 E mail@8i.net.au
SCALE @ A3 1:100 DATE 16.02.11 DRAWN CK JOB NUMBER 0943 SHEET No DA10 ISSUE C



8i ARCHITECTURE Ply Ltd.

6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

21 Harslem Street, Morrocka, Qld, 4105 P 3342 4806 F 3342 4807 E mail@8i.net.au



1 PROPOSED WEST ELEVATION - KINGSCLIFF LANE
SCALE 1:100

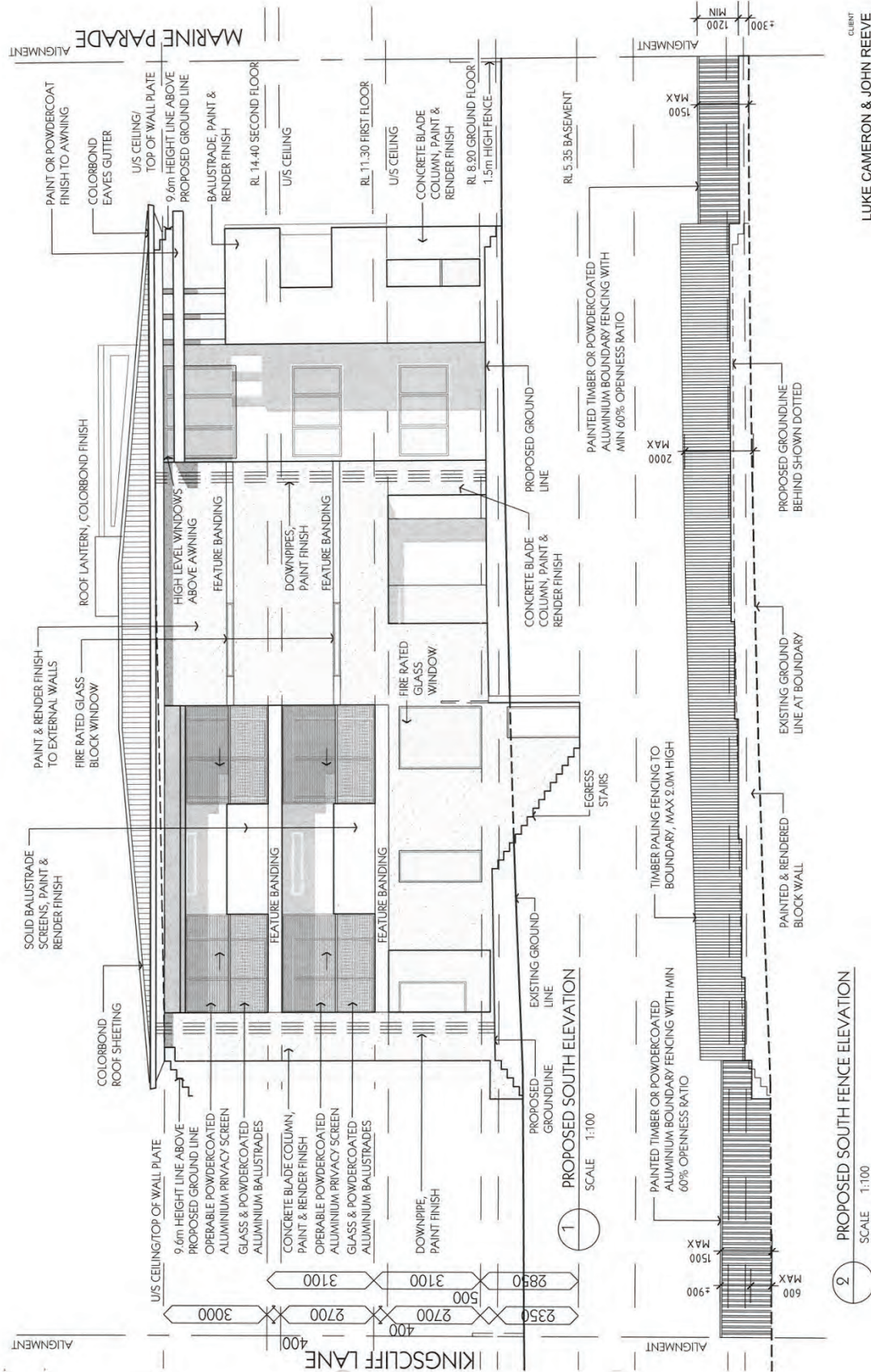
2 PROPOSED WEST FENCE ELEVATION - KINGSCLIFF LANE
SCALE 1:100

CLIENT
LUKE CAMERON & JOHN REEVE

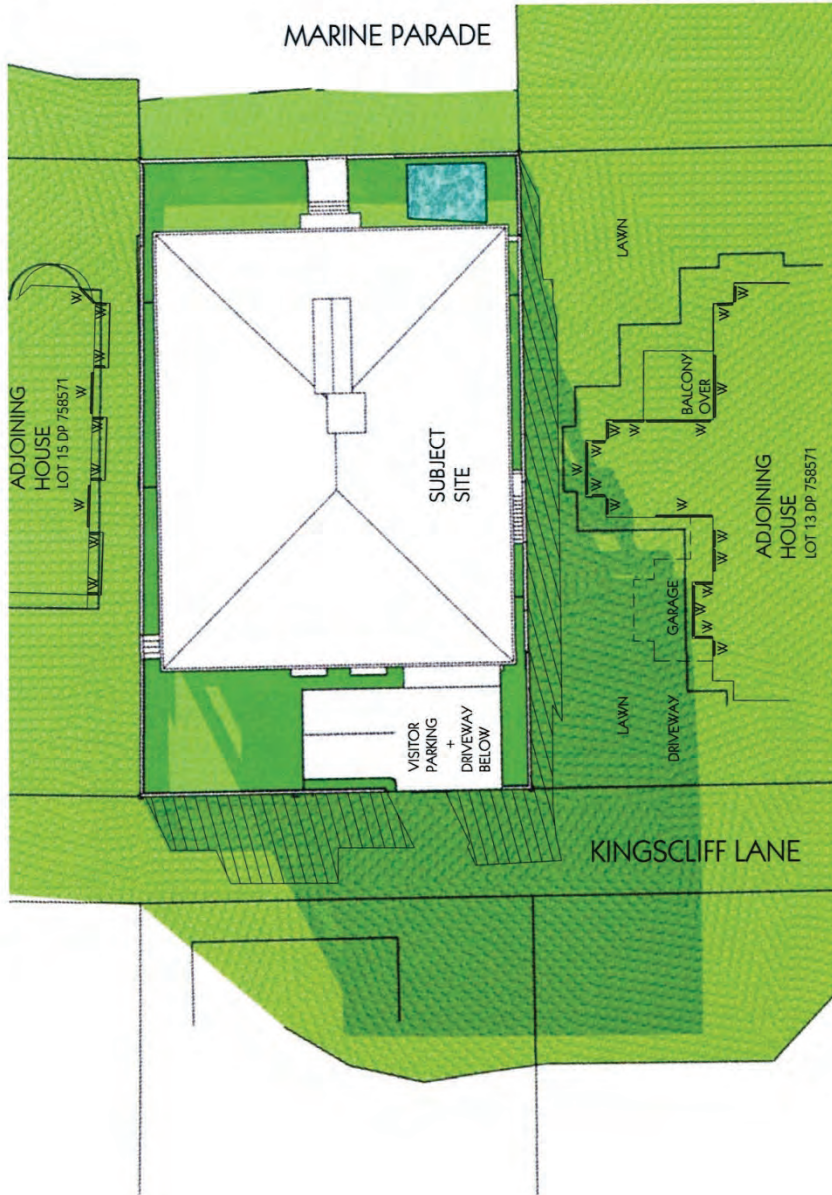
6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

SCALE @ A3 1:100 DATE 25.05.11 DRAWN CK JOB NUMBER 0943 SHEET NO DA12 ISSUE D

8i ARCHITECTURE Pty Ltd.
21 Hansen Street, Macquokka QLD 4105 P 3342 4806 F 3342 4808 E mail@8i.net.au



NOTE:
 LOCATION, HEIGHT AND
 SPREAD OF EXISTING TREES
 OBTAINED FROM SURVEY
 No. 808-2-A1 DATED
 08/01/2011 PREPARED BY
 BOYD & MOORE PTY LTD
 SURVEYORS.



1 PROPOSED SHADOW DIAGRAM AT 21ST JUNE - MID-WINTER
 SCALE NTS 9 am

CLIENT
 LUKE CAMERON & JOHN REEVE

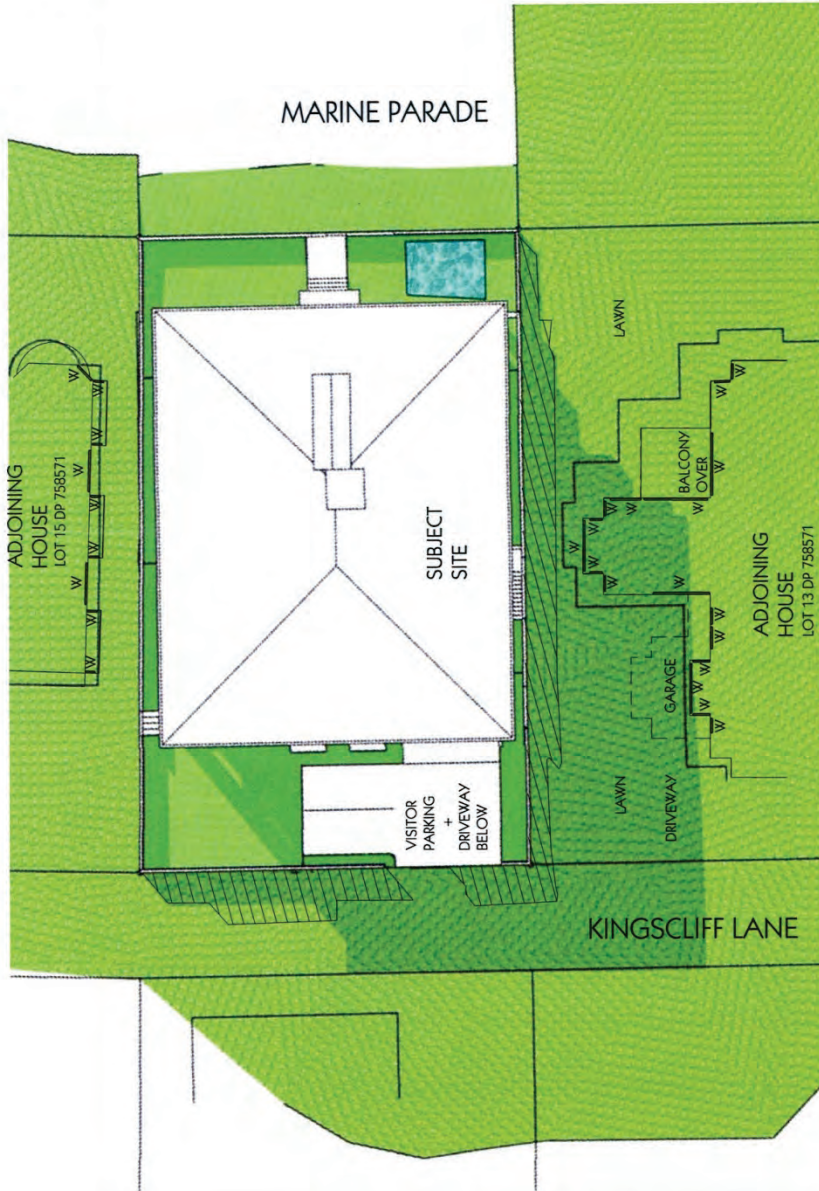
6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

8i ARCHITECTURE Pty Ltd.

SCALE @ A3 NTS DATE 17.05.11 DRAWN KY JOB NUMBER 0943 SHEET No DA20 ISSUE C

15 279 050 454 21 Hansien Street, Moorooka, Qld, 4105 P 3342 4806 F 3342 4907 E mail@8i.net.au

NOTE:
 LOCATION, HEIGHT AND
 SPREAD OF EXISTING TREES
 OBTAINED FROM SURVEY
 No. 808-2-A1 DATED
 08/01/2011 PREPARED BY
 BOYD & MOORE PTY LTD
 SURVEYORS.



LEGEND

W - EXISTING WINDOWS ON ADJOINING HOUSE



- EXISTING SHADOWING



- PROPOSED SHADOWING



2 PROPOSED SHADOW DIAGRAM AT 21ST JUNE - MID-WINTER
 SCALE NTS 10m

CLIENT
 LUKE CAMERON & JOHN REEVE

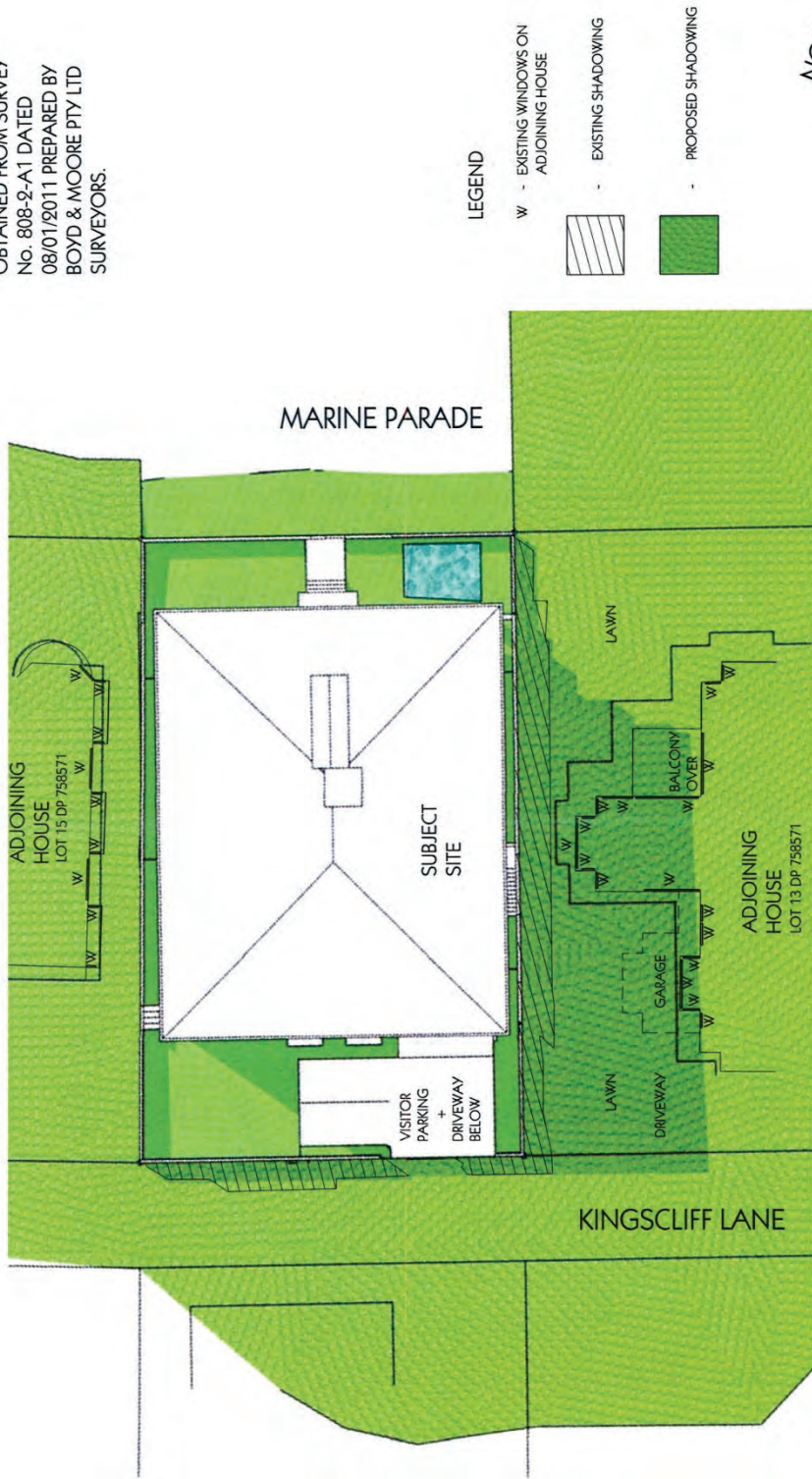
6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

8i ARCHITECTURE Pty Ltd.

ABN 75 279 050 454 21 Hansen Street, Moorooka, Qld, 4105 P 3342 4806 F 3342 4907 E mail@8i.net.au

SCALE @ A3 NTS DATE 17.05.11 DRAWN KY JOB NUMBER 0943 SHEET No DA21 ISSUE C

NOTE:
 LOCATION, HEIGHT AND
 SPREAD OF EXISTING TREES
 OBTAINED FROM SURVEY
 No. 808-2-A1 DATED
 08/01/2011 PREPARED BY
 BOYD & MOORE PTY LTD
 SURVEYORS.



3 PROPOSED SHADOW DIAGRAM AT 21ST JUNE - MID-WINTER
 SCALE NTS 11 am

CLIENT
 LUKE CAMERON & JOHN REEVE

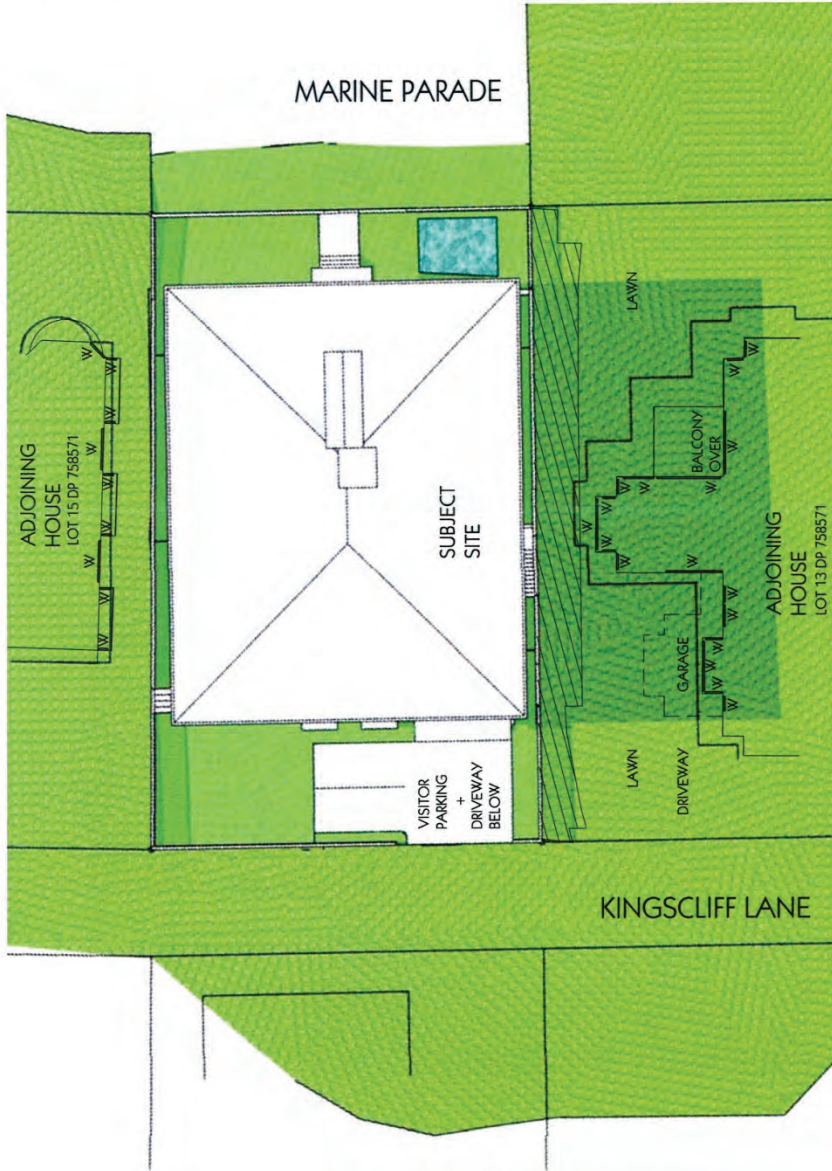
6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

8i ARCHITECTURE Pty Ltd.

SCALE @ A3 NTS DATE 17.05.11 DRAWN KY JOB NUMBER 0943 SHEET No DAZZ ISSUE C

21 Himsen Street, Morooka, Qld, 4105 P 3342 4806 F 3342 4807 E mail@8i.net.au

NOTE:
 LOCATION, HEIGHT AND
 SPREAD OF EXISTING TREES
 OBTAINED FROM SURVEY
 No. 808-2-A1 DATED
 08/01/2011 PREPARED BY
 BOYD & MOORE PTY LTD
 SURVEYORS.



LEGEND

- W - EXISTING WINDOWS ON ADJOINING HOUSE
- EXISTING SHADOWING
- PROPOSED SHADOWING

5 PROPOSED SHADOW DIAGRAM AT 21ST JUNE - MID-WINTER
 SCALE NTS 1:pm

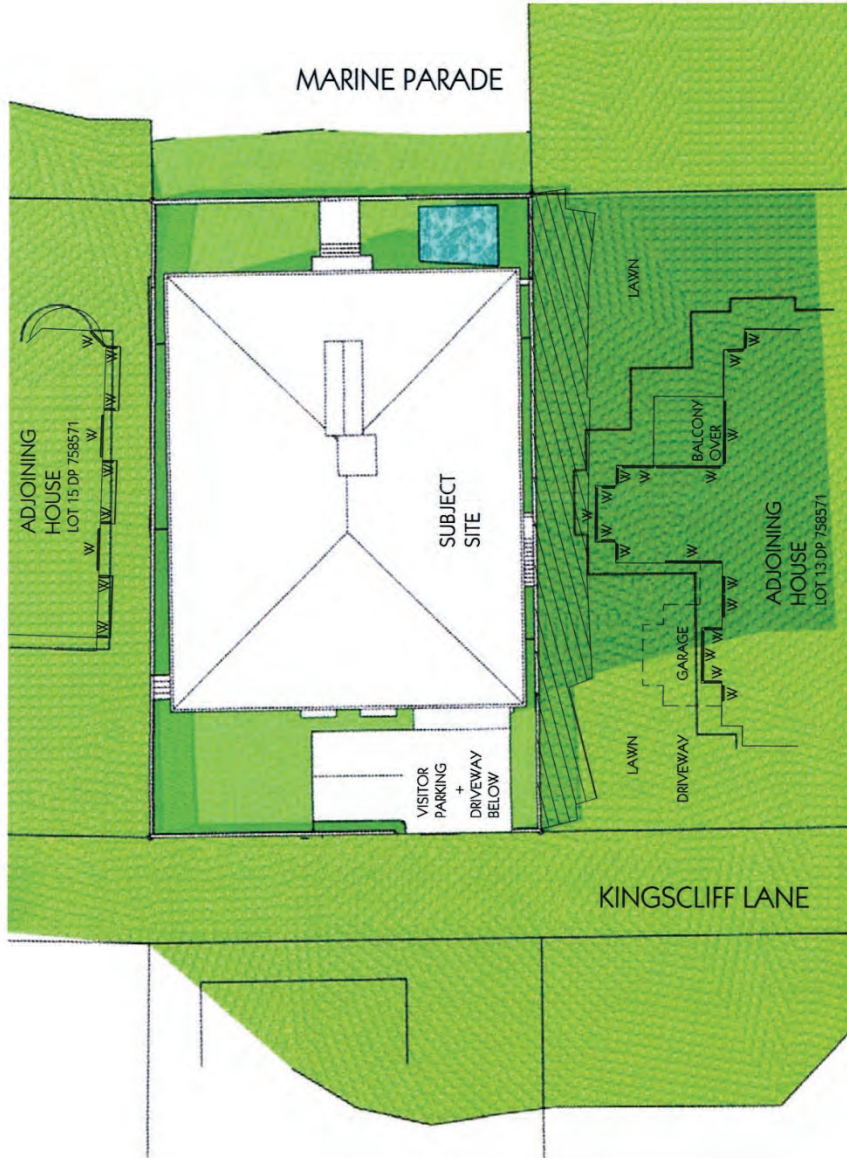
LUKE CAMERON & JOHN REEVE
CLIENT

6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

8i ARCHITECTURE Pty Ltd.

ADN 75 276 050 634 21 Hanssen Street, Moorooka, Qld, 4105 P 3342 4806 F 3342 4807 E mail@8i.net.au
SCALE @ A3 NTS DATE 17.05.11 DRAWN KY JOB NUMBER 0943 SHEET No DA24 ISSUE C

NOTE:
 LOCATION, HEIGHT AND
 SPREAD OF EXISTING TREES
 OBTAINED FROM SURVEY
 No. 808-2-A1 DATED
 08/01/2011 PREPARED BY
 BOYD & MOORE PTY LTD
 SURVEYORS.



LEGEND

- W - EXISTING WINDOWS ON ADJOINING HOUSE
- EXISTING SHADOWING
- PROPOSED SHADOWING



6 PROPOSED SHADOW DIAGRAM AT 21ST JUNE - MID-WINTER
 SCALE NTS 2 pm

CLIENT
 LUKE CAMERON & JOHN REEVE

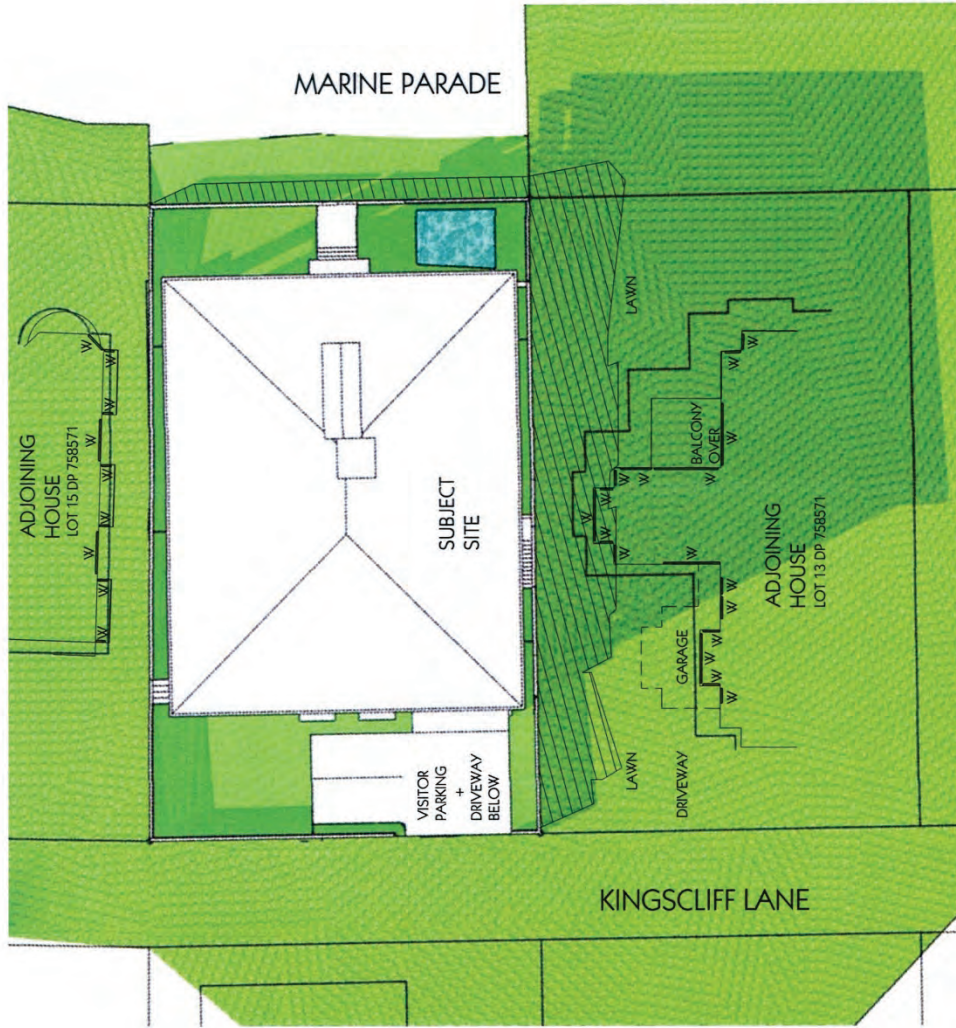
6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSCLIFF, NSW, 2487

8i ARCHITECTURE Pty Ltd.

21 Hunsan Street, Moorooka, Qld, 4105 P 3342 4806 F 3342 4807 E mail@8i.net.au

SCALE @ A3 NTS DATE 17.05.11 DRAWN KY JOB NUMBER 0843 SHEET No DA25 ISSUE C

NOTE:
 LOCATION, HEIGHT AND
 SPREAD OF EXISTING TREES
 OBTAINED FROM SURVEY
 No. 808-2-A1 DATED
 08/01/2011 PREPARED BY
 BOYD & MOORE PTY LTD
 SURVEYORS.



LEGEND

- W - EXISTING WINDOWS ON ADJOINING HOUSE
- EXISTING SHADOWING
- PROPOSED SHADOWING



CLIENT
 LUKE CAMERON & JOHN REEVE

7 PROPOSED SHADOW DIAGRAM AT 21ST JUNE - MID-WINTER
 SCALE NTS 3 pm

8i ARCHITECTURE Pty Ltd. 6 MULTI-UNIT DWELLINGS AT 204 MARINE PARADE, KINGSLIFF, NSW, 2487

ADN 15 271 5511 64 21 Himsen Street, Moorooka, Qld, 4105 P 3342 4806 F 3342 4807 E mail@8i.net.au SCALE @ A3 NTS DATE 17.05.11 DRAWN KY JOB NUMBER 0943 SHEET No DA26 ISSUE C

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The vision for the Tweed Shire is:

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

The subject proposal is for development of six 3 bedroom units and will contribute to urban consolidation without significantly altering the character of the existing locality. It is considered that the proposal is not detrimental to the vision of the Tweed Shire.

Clause 5 - Ecologically Sustainable Development

The four principles of ecologically sustainable development are the precautionary principle, inter-generational equity, conservation of biological diversity and ecological integrity and improved valuation, and pricing and incentive mechanisms. The subject proposal is consistent with the four principles of ESD.

Clause 8 - Zone objectives

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

The subject land is zoned 2(b) Medium Density Residential under the Tweed Local Environmental Plan 2000. Multi dwelling housing is permissible with consent from Council. The primary objective of this zone is:

To provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.

It is considered that the proposed development is consistent with the primary objective of the zone.

(b) it has considered those other aims and objectives of this plan that are relevant to the development, and

The proposal is consistent with other aims and objectives of the Tweed LEP 2000 as outlined elsewhere in this report.

In particular, it is noted that the proposal is consistent with the secondary objectives of the 2(b) Medium Density Residential zone which are:

- *To allow for non-residential development which supports the residential use of the locality.*
- *To allow for tourist accommodation that is compatible with the character of the surrounding locality.*

- *To discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The subject proposal is unlikely to result in an unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole.

Clause 15 - Essential Services

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The subject land has the benefit of services and is considered able to support the proposed development.

Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be undertaken in accordance with building height requirements. This is a three storey development in a three storey height limitation area and therefore in accordance with this Clause.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires consideration of development that may have a significant social or economic impact. The proposal is considered have positive social impacts in the form of provision of housing options within close proximity to the Kingscliff Town Centre and associated services.

Clause 35 - Acid Sulfate Soils

The subject site is located in an area identified as Class 5. The application is supported by an Acid Sulfate Soil Assessment prepared by Border-Tech dated May 2010. The assessment concludes that the site is not impacted by actual or potential acid sulfate soils beyond the maximum depth of excavation. The report has been prepared in general accordance with NSW Acid Sulfate Soil Advisory Committee (ASSMAC) Guidelines 1998 and is considered adequate by Council's Environmental Health Officer. The proposal is compliant with Clause 35.

Other Specific Clauses

Clause 11- Zone Objectives

The subject site is located within the 2(b) Medium Density zone. The objectives of the 2(b) Medium Density zone are identified as follows:

Primary objective

- *To provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.*

Secondary objectives

- *To allow for non-residential development which supports the residential use of the locality.*
- *To allow for tourist accommodation that is compatible with the character of the surrounding locality.*
- *To discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.*

The proposal falls within the definition of multi dwelling housing under Tweed Local Environmental Plan 2000 and is permissible with consent in the subject zone. The proposed development is consistent with the objectives and underlying intent of the 2(b) zone.

Clause 34 – Flooding

The subject site is not identified as subject to 1 in 100 years inundation, however does fall within the area subject to probable maximum flood between the 7.9m AHD and 8.0m AHD contour lines. The proposal has a habitable floor level of 8.2m AHD and is above the PMF height. The site also has access to Marine Parade which is mapped above the PMF level and provides permanent evacuation routes to land above PMF level. The proposed development is consistent with the provisions of the A3 and Clause 34

Clause 39 – Remediation of Contaminated Land

Clause 39 of the TLEP aims to ensure that contaminated land is adequately remediated prior to development occurring. Council's Environmental Health Officer has advised that it is unlikely that potentially contaminating activities have been undertaken on the site. The proposal is compliant with SEPP 55 remediation of land and Clause 39.

Clause 39A – Bushfire Protection

The object of this Clause is "*to minimise bushfire risk to assets and people and to reduce bushfire threat to ecological assets and environmental assets*". The site is mapped as being partially located within the bush fire prone area buffer of 30 to 100 metres.

The application was referred to the NSW Rural Fire Service on this basis. The NSW Rural Fire Service provided advice in accordance with Section 79BA of the Environmental Planning & Assessment Act 1979, that the proposal should have the conditions nominated added to the consent.

The proposal is considered to comply with the objective of the Clause, and the recommend conditions from the NSW Rural Fire Service to be added to the consent.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The subject site falls within the area to which the Policy applies and this clause is applicable to the proposal.

This Clause states that the following must be addressed:

- (2) *In determining an application for consent to carryout development on land to which the Coastal Policy applies, the Council shall take into account*

a) *The NSW Coastal Government Policy;*

The Coastal Policy contains a number of strategic actions relevant to development control as follows:

1.3.2 & 1.3.8 Stormwater Quality – A Stormwater Management Plan has been prepared. This has been reviewed by Council's Development Engineer who has applied relevant conditions of consent.

2.1.4 Acid Sulfate Soils - An Acid Sulfate Soil investigation has been conducted. The assessment concludes that the site is not impacted by actual or potential acid sulfate soils beyond the maximum depth of excavation. The report has been prepared in general accordance with NSW Acid Sulfate Soil Advisory Committee (ASSMAC) Guidelines 1998 and is considered adequate by Council's Environmental Health Officer.

3.2.1 North Coast Design Guidelines - See below.

3.2.4 Design and Location Principles – The proposed development is not considered to be inconsistent with these principles.

b) *The Coastline Management Manual: and*

The preparation of a Coastline Management Plan is yet to be completed by Council. Notwithstanding, the subject site is not identified as being affected by coastal processes within the recently completed Coastline Hazard Definition Study.

c) *The North Coast Design Guidelines*

The provisions of these guidelines have been incorporated into the design and form of the proposed structure, with particular reference to the articulation, variation, selected materials and sustainability principles contained within the attached design plans.

- (3) *The Council shall not consent to the carryout of development which would impede public access to the foreshore area,*

The site is separated from the any public foreshore access point. No impact to public access with result.

- (4) *The Council shall not consent to the carrying out of development*

a) *On urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie. if carrying out the development would result in beaches and adjacent open space being overshadowed before 3 pm mid-winter (standard time) or 6.30 pm mid-summer (daylight saving time): or*

The proposal does not result in adjacent open space being overshadowed before 3pm midwinter (standard time), but does cast shadow prior to 6.30pm midsummer (daylight saving time).

A SEPP No.1 objection to the development standard has been submitted.

The proposed development cause's overshadowing of the adjacent 6(a) open space land. The approximate area of overshadowing caused at 6.30pm December is 343.3m². The applicant provided justification to vary this development standard. The variation and justification is supported.

The proposal is generally considered to be consistent with the relevant provision of Clause 32B, with the exception of subclause (4) (a). However, the applicant has provided valid justification stating that strict compliance with the standard is considered both unjustifiable and unnecessary in the context of the proposed development.

Clause 43: Residential development

This Clause states that:

- (1) *The council shall not grant consent to development for residential purposes unless:*
- (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*

The proposed density is considered to be a reasonable response to the existing land use character of the area and will not result in the creation of any adverse physical impacts upon the locality.

- (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*

The existing road widths are no excessive and are suitable for the proposed development.

- (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*

Not Applicable

- (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*

The existing road network and the location of the subject site allow for public transport opportunities within the close vicinity.

- (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

A Sedimentation and Erosion Management Plan has been prepared. This has been reviewed by Council's Development Engineer who has advised that the erosion control proposed meets the minimum requirements for the area of development.

The proposal is considered to be consistent with the relevant provision of Clause 43 of NCREP 1988.

SEPP No. 1 - Development Standards

State Environmental Planning Policy No. 1 provides a mechanism in which a variation to a statutory development standard can be assessed and supported.

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

The subject application contains a SEPP 1 objection in relation to:

NORTH COAST REGIONAL ENVIRONMENTAL PLAN - REG 32B

Development control-coastal lands

32B Development control-coastal lands

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) **The council must not consent to the carrying out of development:**
 - (a) ***on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time)***

The proposed development causes overshadowing of the adjacent 6(a) open space land. The approximate area of overshadowing caused at 6.30pm December is 343.3m².

A new 5 part test was outlined by Chief Justice Preston in recent decision *Wehbe v Pittwater Council* (2007) NSW LEC 827. He also rephrased the assessment process as follows:

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

The applicant provided the following reasons as to why the standard was considered to unreasonable and unnecessary in their particular case:

- *The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the foreshore reserve;*
- *That area subject to overshadowing is no active recreation area or beach and is located adjacent to the at grade car parking within the Marine Parade Road reserve.*
- *The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve;*
- *The overshadowing is minor at 6.30pm midsummer and is non-existent at 3 pm midwinter.*
- *The proposal does not overshadow the beach.*

With regard to the above, it is considered that there is sufficient justification for the objection, as outlined further below.

2. *The consent authority must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3”.*

The aims of the policy are as follows:

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

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

The proposed development will not affect the proper management, conservation of natural resources as it is proposed within an existing residential environment. The proposed development is considered to be an orderly and economic use of the land. The proposal is consistent with the established development in the area.

3. *The consent authority must be satisfied that a consideration of the matters in clause 8(a) “whether non-compliance with the development standard raises any matters of significance for State or regional environmental planning; and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

It is considered that the proposed overshadowing is relatively minor and will not raise any matters for state or regional planning. The

overshadowing will not impede the overall objectives of the clause. It will not reduce the quality of the useable foreshore area for the benefit and enjoyment of the public.

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

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

In accordance, with the judgment by Chief Justice Preston “development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives.” Therefore in accordance with Clause 32B of the NCREP the development is relatively minor and will not be detrimental to future development in the area.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

This is not considered relevant to the subject proposal as the underlying objective and purpose of Clause 32B of the North Coast Regional Plan are considered relevant.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

It is considered that non-compliance with Clause 32B of the NCREP will not undermine the underlying objectives of the clauses.

4. *The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

The standard has not been virtually abandoned or destroyed by Council.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

This is not relevant to the subject development; however the zoning and height limitation in areas adjoining the foreshore will inevitably result in some overshadowing.

With regard to the justification provided by the applicant above it is considered that the SEPP 1 objection in relation to 32B of the NCREP is acceptable in this instance.

SEPP No. 55 - Remediation of Land

Clause 7 requires that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

The Contaminated Land Planning Guidelines (Department of Urban Affairs and Planning, Environment Protection Authority, 1998) provide information relating to preliminary contamination investigations. In addition, Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development. Section 3.4.1 of the Policy requires the applicant to provide responses to the following questions:

1. *Please specify all land uses to which the site has been put, including the current use.*

The site is currently improved by seven (7) small residential units within four (4) detached buildings. There have been no other uses that the applicant is aware of.

2. *Is the proponent aware of uses to which properties adjoining the site have been put? If so, please specify.*

All adjoining parcels were developed at the same time as the parent parcel.

3. *Do any of the uses correlate with the potentially contaminated activity set out in table 1 in schedule 1 of this policy?*

No.

4. *If the answer to 3 is yes - has there been any testing or assessment of the site and, if so, what were the results?*

Not Applicable

5. *Is the proponent aware of any contamination on the site?*

No.

6. *Has any remediation work been taken in respect to contamination, which is or may have been present on the site? (Carried out voluntarily or ordered by government agency)?*

No.

The information provided above is consistent with the requirements of SEPP 55 – Remediation of Land. The results of pre-demolition testing undertaken by Bordertech indicate that the site has not been subject to any potentially contaminating activities listed under Table 1 of the NSW Contaminated Lands Planning Guidelines or as set out in ANZECC/NHMRC “Guidelines for the Assessment and Management of Contaminated Sites”.

Furthermore, Council’s Environmental Health Officer has advised that it is unlikely that potentially contaminating activities have been undertaken on the site. The proposed development of the site and the proposal is considered to be consistent with the relevant provisions of SEPP No.55.

SEPP No. 65 - Design Quality of Residential Flat Development

This SEPP applies to buildings incorporating four (4) or more units and three (3) or more storeys. In this regard SEPP 65 applies to the proposal. Clause 30 of SEPP No.65 requires the consent authority to consider each of the ten (10) design quality principles when determining a development application for a residential flat building.

Principle 1: Context

Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

The subject site is rectangular in shape and is bounded by Marine Parade to the East, by Kingscliff Lane to the West, a two storey detached house to the north and another two storey detached house to the south.

The site is relatively flat and is currently occupied by a dilapidated single storey residential flat building.

The site is located across the road from extensive parklands adjoining the sand dunes and ocean. The site enjoys good views with a high level of visual amenity.

The surrounding properties are developed for residential purposes comprising of varying size, scale, height and density. It is noted that older properties in Kingscliff are being gradually redeveloped for higher density purposes consistent with the provisions of Tweed Shire Council's Planning Controls and the objectives for the 2(b) Medium Density Zone.

In terms of the greater surrounding area, a mixture of residential development of varying density and form is present, ranging from detached residential dwellings to residential flats buildings with similar scale and form. The areas character is clearly in a state of transition from the existing low density to the desired future medium density.

The proposal is similar in nature to the adjoining developments and therefore is appropriate development of the site.

Principle 2: Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

The proposal is for a three storey building, similar in scale and height to other existing residential flat buildings in the nearby vicinity. The proposal complies with the Building Height Controls outlined by Part C, Section A1

of the Tweed Development Control Plan and is consistent with the general scale of the existing streetscape.

The overall building scale is reduced through articulation of the balconies, screening, awnings and stepping of the façade. The hipped roof has been adopted to reduce building bulk at the edges and keep the apparent overall height to a minimum.

Principle 3: Built form

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

The proposed development achieves an appropriate built form for the site and addresses Marine Parade by way of a clearly defined entry area. This entry area articulates the building facade by breaking up the elevation into three distinct components. This break-up gives emphasis to the public entry to the middle of the site while private areas to either side of the entry door are clearly delineated.

Horizontal awnings on the upper level facing Marine Parade give further articulation to the street facade.

Deck areas facing the Marine Parade contribute to casual surveillance of the area and allows activation and interaction between the building and the street.

The elevation fronting Kingscliff Lane has been given equal design consideration to that of the Marine Parade elevation with provision of articulation and visual interest through screening and awning elements. This face of the building will be subjected to western afternoon sun, but the building design responds to this by adjustable screens and smaller window openings. This allows casual surveillance of the lane for security purposes without compromising the privacy and thermal comfort of the building residents.

The entry to the common basement is recessed into the face of the Kingscliff Lane elevation and is ramped below street level so not to present a harsh flat fronted face to the Lane.

The rear elevation of the building has been broken up into smaller vertical elements which help to reduce the apparent width of the overall building.

Both side elevations of the building (north and south) have been designed to ensure good articulation of the building edge. Deep recessed balconies will ensure good shadowing to these faces, while feature banding and glass block windows aid in providing further articulation to the wall within the middle of the elevation. A mix of glass and solid balustrades further break down of the overall scale of the building.

Principle 4: Density

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of Apartments or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The development proposes 6 units over a site area of 835m². A total Floor Space Ratio of 995m² is proposed which is consistent with the allowable 1002m² (1.2:1 of site area).

The density of the proposal is comparable to other similarly scaled developments on Marine Parade in the nearby vicinity of the site and will not result in a building form of an overbearing or incompatible scale.

Principle 5: Resource, energy and water efficiency

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

The proposed development has been assessed against the Building Sustainability Index (BASIX) and meets the requirements for sustainability set out by the NSW Government.

The proposal has been designed to include a number of passive design principals in the planning of the building such as:

- North East and South East orientation to living areas to all units to optimise solar access, daylight penetration and reduction of artificial lighting requirements.
- Orientation to allow for good access to cooling breezes to reduce artificial cooling requirements.
- Cross Ventilation to all units allowing reduction in artificial cooling requirements.
- Proposed selection of materials with good thermal mass and insulation properties to reduce artificial heating and cooling requirements.
- Openable and fixed sun screening particularly to the west to mitigate the adverse effects of unwanted solar gain.
- Minimal glazing to the west to reduce exposure to unwanted afternoon solar gain.
- Awnings to shade northern glazing to minimise unwanted direct heat gain during summer.

Principle 6: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.

The proposed landscaping design allows for adequate Deep Soil Zones to be provided to both the front and rear of the development whilst optimising the use of the garden areas by the residents. These deep soil zones will allow more significant plants to establish and contribute to the amenity of both the building's residents and the adjoining public areas. The landscaping will also provide a more amenable microclimate by reducing pavements.

Proposed plantings are to be suitable for the ocean front location and will generally be native species.

The proposed landscaping has been designed to provide adequate levels of privacy and separation between the ground floor dwellings and the public areas within the development.

Principle 7: Amenity

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

The proposed GFA for each unit is a minimum of 141m² thus allowing all rooms to be house like proportions, adequate in size for the intended occupants.

Each unit is provided with a primary deck area that is oriented to take advantage of the available ocean views, cooling summer breezes and winter solar gain.

These primary deck areas are suitably separated from the neighbouring units' decks so as to maintain privacy between units.

Each unit is provided with either a secondary service deck or a ground level outdoor area for clothes drying. These decks will provide increased separation between the proposed units and the adjoining houses to reduce privacy, amenity and acoustic issues.

Living areas are located to maximize availability of ocean views whilst also being located to allow maximum winter sun penetration and summer cooling breezes for ventilation.

Storage is provided throughout the units. Additional storage is provided to each unit's individual lockup garage. A communal swimming pool is to be provided for the enjoyment and common use of all residents.

Principle 8: Safety and security

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

The main pedestrian entry point accessible from Marine Parade is clearly visible from the street allowing safe entry and exit from the building.

The common entry lobby will only be accessible by way of key or intercom security from the individual units.

Each of the proposed decks and living areas overlook Marine Parade allowing passive and casual surveillance of the street and common entry area. In addition to this, the proposal has been modified in order to allow casual surveillance to Kingscliff Lane.

Access to the common garage area will also be way of remote key operation security roller door. Each unit is provided with individual lock up garages within the basement carpark.

Private ground floor outdoor spaces will be clearly delineated by way of fencing.

High quality lighting will be installed throughout the development to assist in securing the area at night.

Principle 9: Social dimensions and housing affordability

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.

The proposal is located within an existing residential neighbourhood. Access to all necessary facilities is the same as currently exist for the existing adjoining multi-unit developments.

The proposal includes 6 x 3 bedroom units. The unit mix and apartment sizes are considered appropriate for the area.

Principle 10: Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

The proposed development is consistent with other unit developments within the surrounding neighbourhood.

Proposed materials and textures have been selected to allow for variation in material and colour whilst being appropriate for the residential seaside location.

Selected materials include robust and easily maintained materials such as rendered and painted concrete block to the majority of external walls with marine grade colorbond steel to the roof and eaves gutters.

Feature tiles to wall of the entry area will add a richness of material and an added dimension of quality to the development whilst making the entry itself clearly defined and visible from the street.

Aluminium framed glass balustrades will minimise the visual clutter and the long term maintenance requirements of the building.

Sunshading and screening will be of materials that can withstand the harsh seaside environment whilst also being chosen to minimise the long term maintenance requirements.

Selected materials to the landscaped areas will be chosen to offer textural variety and of an appropriate colour to blend with the natural environment.

The articulation of the building has been designed so as to soften and add visual interest to the elevations, ensuring the building is in keeping with the current and future residential nature of the surrounds.

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles. It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design. The modern appearance of the building is in keeping with the existing character of the area.

SEPP No 71 – Coastal Protection

SEPP 71 – Matters for Consideration

(a) The aims of this Policy set out in Clause 2:

The proposed development is considered to be consistent with the aims of the policy as set out in clause 2.

(b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where

possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved

The proposal development will not alter or restrict the public's access to the foreshore reserve areas located adjacent to the Pacific Ocean.

- (c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability

The proposal does not generated any additional opportunities to improve public access to foreshore reserve areas and the like, nor are there any physical opportunities to do so given the spatial separation between the site and foreshore reserve.

- (d) The suitability of the development given its type, location and design and its relationship with the surrounding area

The proposed development is sited and designed in general accord with the relevant Council controls and is considered unlikely to create any form of adverse imposition upon the immediate area in terms of size, scale or usage. The design of the development is contemporary in nature incorporating a variety of elements consistent with current design trends for the area.

- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore

The proposal includes a SEPP No.1 objection to the development standard prescribed by the NCREP. The proposal casts a minor shadow on the public open space adjacent to Marine Parade prior to 6.30pm day light savings time mid summer.

The proposed variation is minor and will not result in any significant overshadowing impacts upon Coastal foreshore areas.

- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities

The proposal is unlikely to impact upon the scenic quality of the NSW coast, with the development being spatially separated from the Beach and Ocean. The proposal is consistent with the built environment of the Kingscliff area.

- (g) measures to conserve animals (within the meaning of the *Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act), and their habitats;

The proposal will not have an adverse impact upon threatened species. The subject site has been significantly developed over time for urban purposes and contains little vegetation or native habitat.

- (h) measures to conserve fish (within the meaning of Part 7A of the *Fisheries Management Act 1994*) and marine vegetation (within the meaning of that Par), and their habitats

The proposal is unlikely to have an adverse impact upon marine environments or habitats. Stormwater is to be appropriately treated in accordance with Councils requirements.

- (i) existing wildlife corridors and the impact of development on these corridors,

The proposal will not have an adverse impact upon wildlife corridors or the like.

- (j) the likely impact of coastal process and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards;

The subject site is not located within an area affected by Coastal Erosion (WBM Coastline Hazard Definition Study), and is landward of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by Coastal Processes

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities;

Not applicable.

- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals;

The subject site is not identified as a cultural place or the like.

- (m) likely impacts of development on the water quality of coastal waterbodies,

The proposal is unlikely to adversely impact upon the water quality of nearby waterways. Appropriate erosion and sediment controls will be put in place to ensure no sediment impacts on local waterways.

- (n) the conservation and preservation of items of heritage, archaeological or historic significance,

The subject site is not identified as land containing items of heritage, archaeological or historical significance.

- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities;

Not applicable.

- (p) only in cases in which a development application in relation to proposed development is determined:

- (i) the cumulative impacts of the proposed development on the environment; and

No cumulative impacts are likely as a result of the proposed development.

- (ii) measures to ensure that water and energy usage by the proposed development is efficient.

Appropriate measures have been adopted in terms of design to minimise energy usage including the orientation of the building to maximise solar access and allow natural light to filter into all dwellings. A BASIX certificate has been prepared and is attached at Appendix K to this submission.

It is considered the proposed development does not offend or compromise the intent or specific provisions of State Environmental Planning Policy No.71 – Coastal Protection.

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

The draft Tweed Local Environmental Plan 2010 zones the site R3 - Medium Density Residential.

This zone permits 'Multi dwelling housing' with development consent and as such, the proposed use remains consistent with the desired future use of the subject locality.

The draft LEP designates a Maximum Building Height of 13.6 metres and a Floor Space Ratio of 2:1. The height of the building will be 11.4 metres above finished ground level and the proposed FSR is 0.99:1. As such the proposal is considered to be generally consistent with the provisions of this Draft LEP.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Overall, the proposed development generally complies with the provisions of *Section A1 - Residential and Tourist Development Code (Part C - Residential Flat Buildings and Shop-top)*

A number of variations to A1 provisions were requested as follows:

Design Control 2– Site Configuration – Deep Soil Zones – Control e &g.

Control e; "Front Deep Soil Zones are to be the width of the site boundary minus the driveway width and the pathway width by the front setback depth."

Control g; 'Deep Soil Zones cannot be covered by impervious surfaces such as concrete, terraces, outbuildings or other structures.'

The proposal includes the provision of a 23m² pool within the front setback on the deep soil zone. The applicant has submitted a variation report regarding this matter. The following includes extracts from this report:

The proposed pool provides an area of 23m² within the front deep soil zone. As such a variation assessed against the objectives is respectfully sought. The proposal is considered to effectively meet the objectives, the following comments are provided:

Objectives

- *To ensure that land retains its ability to permeate water.*

Council is directed to the Design Plans under Appendix A. The sites ability to permeate water will not be effected. As shown on plan DA17 a compliant impervious area of 60% is achieved in accord with Councils controls. The proposed is compliant with this objective.

- *To ensure that each building lot has a deep soil zone of adequate area and dimension.*

The proposed front deep soil zone excluding the allowable pedestrian access and proposed pool provides an area of approximately 75.8m². Comparatively, a strictly compliant front deep soil zone (which is allowed to include impervious areas comprising a pedestrian access path and driveway) provides an equivalent front deep soil zone of 71.85m² (assuming a driveway of 5.5m wide by the front setback back depth of 4.9m). The inclusion of a pool does not result in a front deep soil zone of an area less than that allowed under a strictly compliant zone. The site's advantage in having rear lane access enables the development to provide an additional common facility for the use of residents with not impact to locality and without compromising the underlying objectives of the deep soil zone controls. The proposal effectively meets the objective.

- *To retain and enhance fauna and flora corridors throughout suburban areas.*

Council is directed to the Statement of Landscape Intent under Appendix G of the SEE. Flora and Fauna corridors are not compromised by the proposal with the Statement of Landscape Intent demonstrating the use of many native species and extensive plantings. The proposed is compliant with this objective.

- *To provide space for mature tree growth and vegetation.*

Council is directed to the Statement of Landscape Intent under Appendix H. The proposal incorporates and provides amply space for mature tree growth and vegetation within the site. The proposal is compliant with this objective.

- *To retain existing mature vegetation.*

No vegetation which could be considered mature is currently located onsite. The location of a pool within the front deep soil zone has no relevance in this instance. It is given the proposal does not compromise this objective.

Assessment of applicant's variation report.

In this instance the proposed swimming pool would not result in any additional impervious area to the front setback than that allowable for a front driveway and footpath. As vehicular access to the building is provided from Kingscliff Lane to the rear of the site it is considered that the proposed variation provides an adequate outcome to the site and does not reduce the area of the front Deep Soil Zone below that which is ordinarily required.

Overall, it is considered that the variations required are unlikely to result in unacceptable direct or cumulative impacts on the subject site or adjoining properties.

Accordingly, in the circumstances of this case non-compliance with the development control is justified. It is concluded that the variation request is considered not likely to negate the public interest and remain consistent with the broader objectives of the TLEP 2000.

Design Control 5– Building Footprint and Attics, Orientation and Separation – Building Separation – Control h.

Control h; “3m minimum separation between walls containing primary windows/ doors sleeping rooms (on the ground level only) to shared driveways, carports and garages.”

The proposal includes the provision of a fixed window to Bedroom 2 of Unit 2 facing the common driveway. The following comments are provided in relation to this;

Bedroom 2 of Unit 2 includes a fixed window facing the common driveway. The proposed windows are required to ensure compliance with the requirements of the Building Code of Australia. The following comments are provided against the objective:

- *To maintain privacy between dwellings*

The proposed window is to be treated with frosted or obscured glass to ensure the bedroom maintains privacy. The objective and controls does not prohibit the use of ‘built’ or technology’ items to provide compliance and as such the proposal is considered to comply with the objective.

Assessment of applicant’s variation report.

The proposed variation would not result in any negative impact arising from the proposal and it is considered that the methods outlined to achieve privacy are acceptable. The variation is unlikely to result in unacceptable direct or cumulative impacts on the subject site or adjoining properties. Accordingly, in the circumstances of this case, non-compliance with the development control is justified. It is concluded that the variation request is considered minor and not likely to negate the public interest.

Design Control 7– Building Amenity – Sunlight Access – Control b.

Control b; “Dwellings on allotments which have a side boundary with a northerly aspect are to be designed to maximise sunlight access to internal living areas by increasing the setback of these areas. In these cases a minimum side setback of 4 metres is required.”

It should be noted that this setback applied only to living room windows and/ or doors facing the side boundaries, as specified on p34 of this DCP. The following comments are provided against the objective:

“The attached ‘complying plans’ demonstrate the resulting alternative if a 4m setback is applied along the length of living and dining rooms for units 1, 3 and 5; refer mark up 3. The ‘complying design’ requires 17.5m of GFA to be deleted from each level. This is achieved by

removing the study and walk in pantry and compacting the kitchen and living room. The 'complying design' has a significant impact on unit usability and demonstrates a variation to Design Control 7 - Building Amenity - Sunlight Access - Control is warranted.

The livability issues of particular note have been highlighted by the project Architect and summarised as following dot point; it is also noted a number of the design changes required brings into question the proposals compliance with SEPP65. Variations to SEPP65 are clearly more significant than the proposed minor setback variation of 928mm.

- The complying design requires the study and walk in pantry to be deleted which would have otherwise contributed significantly to the usability of the unit;*
- The kitchen layout in this alternate scheme is significantly reduced to that of the preferred option (no walk in pantry therefore much less storage, a much smaller island bench which was always going to be a saleable feature of the unit and overall the reduced kitchen size doesn't fit with the overall intent for high quality residential flat and unit designs.*
- Setting the external wall of the dining and living room back to the 4m setback line also removes any possibility that the living and dining areas can be interchangeable should the unit occupant wish (2.8m is just too narrow to fit a lounge chair and television wall).*
- Setting the external wall of the dining and living room back to the 4m setback line that this scheme does, makes for a much narrower dining room (at 2.87m wide is not what would be expected of such a unit or any unit really, making access to the deck from the living room very tight and effectively disconnects the two areas.*
- Setting the external wall of the dining and living room back to the 4m setback line also requires narrowing of the Bi-fold door to the front balcony, given the ocean views, this is a major loss of amenity to the unit.*
- By removing the study and walk in pantry as this scheme does, and reducing the width of the door facing the ocean creates more focus from the living areas over the northern side boundary, effectively reducing privacy of the adjoining neighbour.*

Overall, the alternative scheme results in a significant loss of liveability within units 1, 3 & 5 and achieves nothing in the way of compliance with the two (2) relevant objectives underlying the design control, this is adequately proved by the previously submitted ABSA certificate which demonstrates the proposal provides heating and cooling loads significantly lower than the allowed maximums, there by proving the proposal passive design elements. The 'complying

design' only results in a loss of building amenity and achieves nothing in the way of greater compliance with the underlying objectives of Design Control 7 Building Amenity - Sunlight Access - Control b.

Assessment of applicant's variation report.

The proposed variation results in the provision of a study to within approximately 1.5m of the side boundary. This study is provided with a glass block window. Compliant plans would require this window to be located a distance of 4m from the side boundary but there would be no requirement for the materials used to be glass block. It is considered in this instance that the increase in usability of the unit, allayed with no net negative impact in relation to overlooking from this room due to the provision of the block window, that the proposed variation is acceptable in this instance.

Design Control 2– Site Configuration – Topography, Cut and Fill – Control h.

Control h; "Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m."

The second egress stairs proposed by the applicant to ensure compliance with BCA is located adjacent to the south side boundary, in contravention of this policy. The following comments are provided against the objective:

"An alternative complying location for the second egress stair has been thoroughly investigated and 'complying drawing' generated to show the alternative option, refer mark up sheets 1 & 2. While the alternative option resolves the non compliance with Design Control 2 - Site Configuration - Topography, Cut & Fill - Control B, it introduces three additional variations to the controls of Section A1 of TDCP 2008, sees a significant reduction to the usability of two of the basement garages and results in structural design issues. Specifically the 'complying design':

- Introduces a non compliance with Design Control 2 - Site Configuration - Deep Soil Zones - Control c. The rear deep soil zone becomes non compliance at 8.4m by 6.6m. Currently the proposal is compliant at 8.0m by 6.9m;*
- Introduces a non compliance with Design Control 4 - Car parking and Access - Basement Carparking - Control d. The access corridor and 1.2m width extends outside of the building line above towards the northern boundary. Currently the basement is fully contained within the line of the building over;*
- Introduces a non compliance with Design Control 3 - Setbacks - Side Setbacks - Control e. Part of the basement and access corridor is located at 0.9m from the northern boundary to facilitate access to the stair case.*

- *Significantly reduces the functionality of garages 5 and 6 in both size and security. These garages need to be reduced down from 6.45m by 6.2m and 6.4m by 6.2m respectively to 6.1m by 6.2m and the garages doors need to be removed.*
- *Introduces a significant structural design challenge, currently the design locates load bearing walls directly above the wall of the basement. The load bearing walls are shown in blue on the attached 'complying plans'. Amending the basement to provide a compliance second egress stair will see these walls come down in the middle of the access corridor.*

As described above and shown within the 'complying plans' the alternative option for a compliant second egress stair results in significant other non compliances and is clearly not an appropriate alternative. The proposed minor variation to Design Control 2 - Site Configuration - Topography, Cut & Fill - Control b as assessed in the previously submitted Variation Report meets the relevant objectives for the controls and is clearly the best design outcome. Council support for the minor variation is respectfully requested."

Assessment of applicant's variation report.

As outlined above, in order to provide this second basement egress to the proposal to ensure compliance with the BCA whilst maintaining the proposed built form, any alternative arrangements would require a greater number of variations to this DCP, relating to the basement footprint and the rear deep soil zone in particular. Complying plans have been submitted demonstrating this. It is considered that the variation request is relatively minor and not likely to negate the public interest.

A2-Site Access and Parking Code

DCP2 requires the provision of bicycle parking at a rate of 2/unit (class 2 AS 2890.1) and resident/visitor parking 2 spaces for 3 or more bedroom units, plus 1 space per 4 units for visitor parking. As the proposal involves 6 x 3 bedroom units a total of 12 bicycle parking spaces are required and a total of 14 car spaces (12 resident and 2 visitor) are required.

The proposed six-unit development incorporates a basement car park for twelve vehicles (with eight in tandem) and two visitor car park. The tandem spaces are to be assigned to an individual unit. A total fourteen spaces are provided and therefore the proposal complies with the requirements of this plan.

Vehicular access is proposed via Kingscliff Lane, while all internal circulation areas have been designed to comply with the relevant Council and Australian Standard.

The proposed access and car parking arrangement is considered satisfactory with regard to the requirements of A2.

A3-Development of Flood Liable Land

A3.2.5 – Emergency Response Provisions

The site is not identified as being subject to 1 in 100 year inundation, but mapped as subject to a PMF level of 8m AHD. As required by table 7.1 land above the ARI 100 years but below the PMF level is required to comply with the design flood level of the adjacent coloured areas on the flood mapping.

The site is identified as being located within the Probable Maximum Flood (PMF) area between the 7.9m AHD and 8.0m AHD contour lines. The proposal has a habitable floor level of 8.2m AHD and is above the PMF height. The site also has access to Marine Parade which is mapped above the PMF level and provides permanent evacuation routes to land above PMF level. The preparation of a Flood Response Assessment Plan is not considered required in this instance. The proposal complies with the requirements of A3.2.2.

The design flood level of 3.1m AHD is applicable to the site. The proposal provides a minimum habitable floor level of 8.2m AHD and complies with the requirements of this part.

The proposal is considered satisfactory with regard to the requirements of A3.

A9-Energy Smart Homes Policy

A BASIX certificate has been submitted and meets all relevant requirements. The proposal is considered satisfactory with regard to the requirements of A9.

A11-Public Notification of Development Proposals

The development application was publicly notified for a period of 14 days effective from 6 October 2010 to 20 October 2010 and one submission was received. This submission has been addressed later in this report. The proposal is considered satisfactory with regard to the requirements of A11.

B4-West Kingscliff

The objectives for development in the residential areas are to:

- encourage sufficient variety of housing form, size and locations so that residential choice in the area is possible;
- ensure convenient access from dwellings to destinations outside the area and to all necessary resources within the area;
- preserve existing landscape features and to use these features harmoniously; and
- encourage efficient use of land to facilitate more economical arrangement of buildings, circulation systems and utilities.

The proposed development consists of 6 units contained within one 3 storey building. This is consistent with other unit buildings within the locality. It is considered that the proposed development is in accordance with the above objectives for the area and will be in keeping with the local amenity. Therefore the proposed development complies with the objectives of the West Kingscliff DCP.

B9-Tweed Coast Strategy

The subject site is within an existing residential area and the proposed development is not considered to be inconsistent with B9.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy.

Clause 92(b) Applications for demolition

A separate development application will be lodged for demolition works.

Clause 93 Fire Safety Considerations

N/A

Clause 94 Buildings to be upgraded

N/A

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. Given the distance of the site from the coastline, the proposed development will not impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. The Management Plan objectives at Clause 3.1.1 are therefore satisfied. It is noted that the site is not located within a specific area identified under that Plan.

Tweed Coast Estuaries Management Plan 2004

This Plan does not apply to the proposed development.

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

This Plan does not apply to the proposed development.

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

Context and Setting

The proposed development is of a modern design and the building is considered to enhance the streetscape of the area as well as contribute positively to the quality and identity of the area.

The proposed development exhibits variation and articulation. As a result of this the bulk of the building is effectively distributed and exhibits a contemporary look.

Access, Transport and Traffic

The existing vehicular access is off Marine Parade via a concrete driveway which transitions into a grassed driveway within the property. The existing grassed driveway is located centrally through the property.

Proposed vehicular access is from the rear of the site off Kingscliff Lane. Access is proposed via 6.5m wide driveway, which grades down to a basement car parking. The proposed grades comply with Tweed Shire Councils maximum grades and transitions

There are no footpaths located within Kingscliff Lane. The closest footpath is located in Marine Parade. There is no pedestrian footpath constructed on the frontage of the site in Marine Parade. On the eastern side of Marine Parade is an existing constructed bicycle path. The applicant is required to construct a footpath on the frontage of the site (Marine Parade) as part of the construction (to be included in the conditions). As the existing driveway will not be utilised the driveway will be required to be demolished and the driveway section placed with kerbing and appropriate fill for the construction of a footpath.

The sites entry / exit are proposed off Kingscliff Lane. Previously the entry / exit was from Marine Parade. Kingscliff Lane is an Urban Local street with maximum target traffic volume for Laneways is 300vpd.

The maximum target traffic volume per day for an Arterial Road is less than 10,000 vehicles per day. Marine Parade traffic data indicates that the road is already above 50% desirable capacity.

It is beneficial for the development to have access off a local laneway rather than a busy Arterial road. The increased traffic volume on Kingscliff lane is negligible given it's a small 6 unit development and the allowable maximum is 300 vehicles per day.

Utilities

Council's reticulated potable water supply is located on the frontage of the site in Marine Parade. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

Council's piped effluent disposal infrastructure is located at the rear of the site in Kingscliff Lane. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards.

Electricity services are currently provided to the area via Country Energy infrastructure and telecommunication services are currently provided to the area via Telstra infrastructure. Recommended conditions of consent shall require the applicant to provide services in accordance with the standards of the supply authority.

Earthworks

The proposal for earthworks consists of excavating the basement and removal of spoil material. The proposed earthworks are expected to be in the order of 1,800 m³ for the total development. It is expected that approximately 2.5 meters of cut is required to achieve a basement level of RL 5.35m AHD proposed.

A report from Border-Tech described that acid sulphate soils were not present at the subject site to 5.0m below the existing surface level. The basement excavation is proposed to be 2.5m below existing surface levels to achieve a basement level of RL 5.35m AHD.

All earthworks are required to be done to Level 1 Geotechnical Supervision and in accordance with the Erosion and Sediment Control Plan requirements as outlined in the plan prepared by Cozens Regan Williams Prove Pty Ltd.

Noise

Potential noise impacts may exist from the operation of swimming pool pumps and mechanical air ventilation systems. Potential impacts can be adequately controlled through the application of standard conditions.

Lighting

Outdoor and security lighting may impact on neighbouring residents. Potential impacts can be adequately controlled through the application of standard conditions.

Privacy

The proposed development is not considered to impact upon the privacy of the adjoining residents, as the main living areas are located towards Marine Parade and foreshore land.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The surrounding properties are developed for residential purposes comprising of varying size, scale, height and density. It is noted that older properties in Kingscliff are being gradually redeveloped for higher density purposes consistent with the provisions of Tweed Shire Council's Planning Controls and the objectives for the 2(b) Medium Density Zone.

In terms of the greater surrounding area, a mixture of residential development of varying density and form is present, ranging from detached residential dwellings to residential flats buildings with similar scale and form. The area character is clearly in a state of transition from the existing low density to the desired future medium density.

The proposal is similar in nature to developments in the locality and therefore is appropriate development of the site.

Acid Sulfate Soil

The proposal for earthworks consists of excavating the basement and removal of spoil material. The proposed earthworks are expected to be in the order of 1,800 m³ for the total development. A review of Council's Enlighten has revealed the site to be Class 5 ASS land. The application is

supported by an Acid Sulfate Soil Assessment prepared by Border-Tech dated May 2010. The assessment concludes that the site is not impacted by actual or potential acid sulfate soils beyond the maximum depth of excavation. The report has been prepared in general accordance with NSW Acid Sulfate Soil Advisory Committee (ASSMAC) Guidelines 1998 and is considered adequate.

Bushfire Hazard

The subject site is identified as bush fire prone. The application was forwarded to NSW Rural Fire Service for comment and recommended conditions of consent were provided.

Demolition

Existing structures will need to be demolished in order to enable construction of the proposed development. In this regard a separate development application for the complete and lawful demolition of all existing structures will be lodged with Tweed Shire Council at a later time.

A site inspection undertaken on 20 October 2010 by an Environmental Health Officer, revealed the existing structures to have slab on ground construction. Pre-Demolition Testing undertaken by Border-Tech dated May 2010 revealed all samples to be below analytical detection limits for organochlorine compounds. The report has been prepared in general accordance with Council Pre-Demolition Testing Policy and is considered adequate.

A condition of consent requiring a separate consent for demolition, inclusive of submission of a detailed demolition management plan will be required.

Waste Management

The proposal is to be serviced via individual bins. Each unit will be provided with a 240lt recycling 'wheelie bin' and 140lt refuse 'wheelie bin'. The bins are to be relocated to the Kingscliff Lane frontage by the unit tenant on the relevant day for collection. The individual bins will be stored within each unit's garage area.

Groundwater – The Acid Sulfate Soil Assessment prepared by Border-Tech dated May 2010 identified groundwater to be intercepted between 5.4 (BH1) and 6.8m (BH2) below existing ground surface levels. Groundwater is not anticipated to be encountered at the maximum depth of excavation and therefore a dewatering management plan has not been prepared. In the event that groundwater is encountered during excavations all work shall cease and preparation of a dewatering management plan shall be undertaken to the approval of Council's General Manager or delegate. A condition has been applied.

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

The development application was publicly notified for a period of 14 days effective from 6 October 2010 to 20 October 2010 and one submission was received.

One submission related to loss of sunlight, potential impacts on existing mature trees located within and along Lot 14 Section 5 DP758571,

overlooking, the visual appearance of the proposed development, and the potential stability issues associated with basement construction.

The issues raised in this submission were forward to the applicant for consideration. Below is a response to each of the issues raised.

Loss of sunlight

The proposal is in compliance with Councils DCP A1 in relation to the required amount of sunlight access available to the adjacent properties.

Officer Assessment

The proposal complies with Councils DCP A1 in relation to the requisite amount of sunlight available to the adjoining property. As such the proposal is considered acceptable in this regard.

Potential impacts on existing mature trees

An Arborist's report has been submitted as part of this application. It is noted within this report that there should be minimal damage to both Melaleucas overall health.

Officer Assessment

The arborist report submitted as requested in this submission. This has indicated that there would be minimal damage to the trees on the site.

Overlooking

Screening has been provided to the deck areas located to the southern elevation.

Officer Assessment

The proposed screening is considered to adequately address the issue of overlooking at this point.

Visual appearance & visual bulk

It is contended by the applicant that the proposal is designed to the highest design quality and is in keeping with the intended future character sought by Councils development controls.

Officer Assessment

The proposal is considered to be acceptable in terms of visual appearance, having regard to Councils design controls, to which it is considered to generally comply with. In relation to the bulk of the proposal, it is considered that the development is generally consistent with Council's zoning for a medium density residential use on the site as well as DCP A1.

Stability issues associated with basement construction.

The applicant has noted that the majority of basement excavations are set back a distance of 1.5m from the property boundary. In addition it is contended that the objections request that screw piling only be allowed is unrealistic as the ultimate construction method cannot be ascertained until further geotechnical work is undertaken once all structures are removed from the site.

Officer Assessment

It is noted that Councils Building Services section have provided recommended conditions of consent in relation to excavation which is likely to affect the integrity of the adjoining land. This would be attached as a condition of consent and is considered to address any issues raised in relation to the stability of the adjoining dwelling.

(e) Public interest

The issues raised, as a result of this proposal are not considered to be in conflict with the interest of general public. The development generally reflects the provisions of the appropriate plans and the site is suitable for this kind of development.

OPTIONS:

1. Adopt the recommendations made and approve the development application.
2. Refuse the development application for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The subject application seeks consent for the construction of a residential flat building comprising six (6), three (3) bedroom units. The proposed building is three (3) storeys in height and provides for basement car parking with access off Kingscliff Lane.

It is considered that sufficient justification has been provided to support the SEPP 1 objections made in relation to minor overshadowing of the foreshore.

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] Development Application DA11/0254 for a Shed at Lot 3 DP 211196, No. 385 Terranora Road, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA11/0254 Pt1

SUMMARY OF REPORT:

A development application has been lodged to construct a shed on the subject allotment.

The allotment fronts Terranora Road which is a designated road requiring a thirty metre (30m) building alignment under the provisions of part 5, clause 24 of the Tweed Local Environment Plan (LEP) 2000.

The Applicant has submitted an objection under the provisions of State Environmental Planning Policy (SEPP) 1 for the outbuilding to observe a building alignment of 10.0m.

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

The SEPP 1 objection is considered to be worthy of support. It is therefore recommended that the application be approved, subject to conditions.

RECOMMENDATION:

That:

- 1. State Environmental Planning Policy No. 1 objection to Clause 24 of Tweed Local Environmental Plan 2000 regarding setbacks to designated roads be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- 2. That Development Application DA11/0254 for a shed at Lot 3 DP 211196, No. 385 Terranora Road, Banora Point be approved subject to the following conditions:**

GENERAL

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.

[GEN0015]

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

[GEN0115]

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

[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

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

[PCC1145]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

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

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

[PCW0215]

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

[PCW0225]

8. Residential building work:

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

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

[PCW0235]

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

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

[PCW0255]

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

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

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

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

18. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction

Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

- 19. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority.**

Please note timber retaining walls are not permitted.

[DUR0845]

- 20. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -**

- Noise, water or air pollution**
- dust during filling operations and also from construction vehicles**
- material removed from the site by wind**

[DUR1005]

- 21. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.**

[DUR1875]

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

[DUR1955]

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

[DUR2185]

- 24. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.**

[DUR2255]

- 25. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:**

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

26. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0205]

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

[POC1045]

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

[POC1055]

USE

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

[USE0125]

31. The building is not to be used for any habitable commercial or industrial purpose.

[USE0455]

REPORT:

Applicant: Mr J Turner
Owner: Mr Wayne D Penfold & Mrs Lee Penfold
Location: Lot 3 DP 211196, No. 385 Terranora Road, Banora Point
Zoning: 1(c) Rural Living
Cost: \$70,000

BACKGROUND:

A development application has been lodged with Council to construct a detached shed on the subject allotment.

The land is zoned 1(c) *Rural Living* under Tweed Local Environmental Plan 2000, is located on the southern side of Terranora Road, has an existing two storey dwelling house and an existing swimming pool and slopes downhill from Terranora Road.

The allotment has frontage to Terranora Road which under the provisions of the Tweed Local Environmental Plan 2000 is a designated road.

The allotment has a maximum depth of 40.232 metres and encompasses an area of 2586m².

The allotment is accessed from Terranora Road.

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

The shed is proposed to be set back 10.0 metres from Terranora Road.

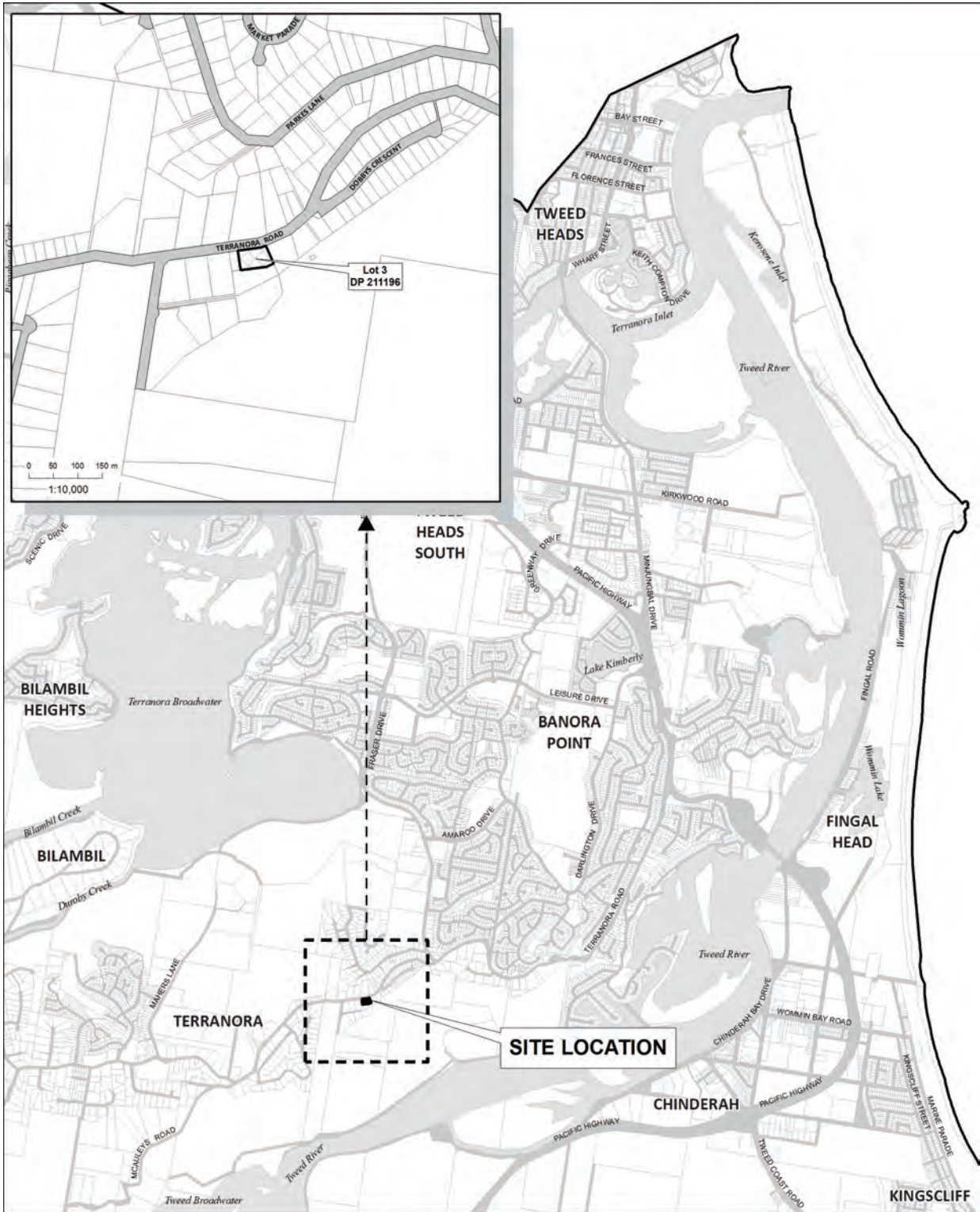
The existing dwelling house and swimming pool on the site currently encroaches into the thirty metre setback

The Applicant has lodged an objection to this requirement under the provisions of State Environmental Planning Policy No. 1 (SEPP 1) to consider a reduced building alignment of 10.0 metres for the outbuilding to Terranora Road.

The SEPP 1 objection is considered below in this report.

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

SITE DIAGRAM:



Locality Plan

Lot 3 DP 211196
No. 385 Terranora Road, Banora Point

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

Cadastre: 02 June, 2011
© Land and Property Management Authority (LPMA) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

0 0.5 1 Km
1:40,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED

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

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

T | (02) 6670 2400 | 1300 292 872
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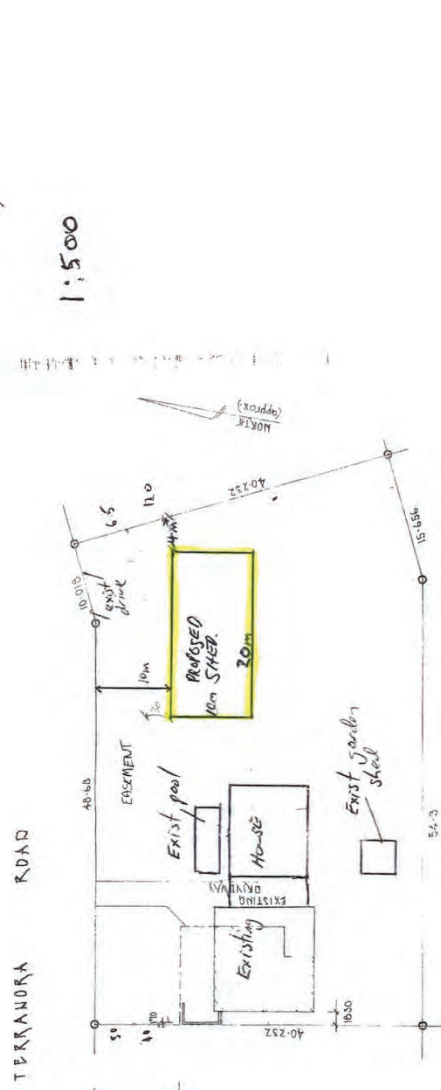
Filename: Z:\SRP\RU\STANDARD TEMPLATES\BASEMAPS\SMMap_LocalityPlan_A4P.mxd

Author: sbalshin Planning Reform Unit

Date Printed: 02 June, 2011

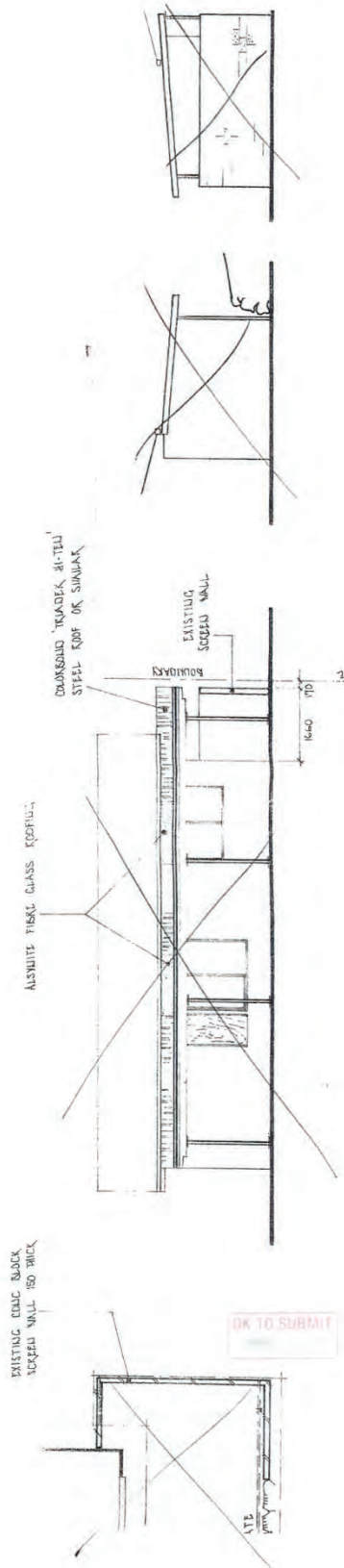
DEVELOPMENT PLANS:

Justin Erner 042133673



site plan

NOTE: ALL NEW DRAINAGE LINES TO BE DISCHARGED AND PROPERLY JOINTED. APPROVAL FROM COUNCIL APPROVED DRAINAGE LINES TO BE DISCHARGED TO THE SEWERAGE TREATMENT PLANT.

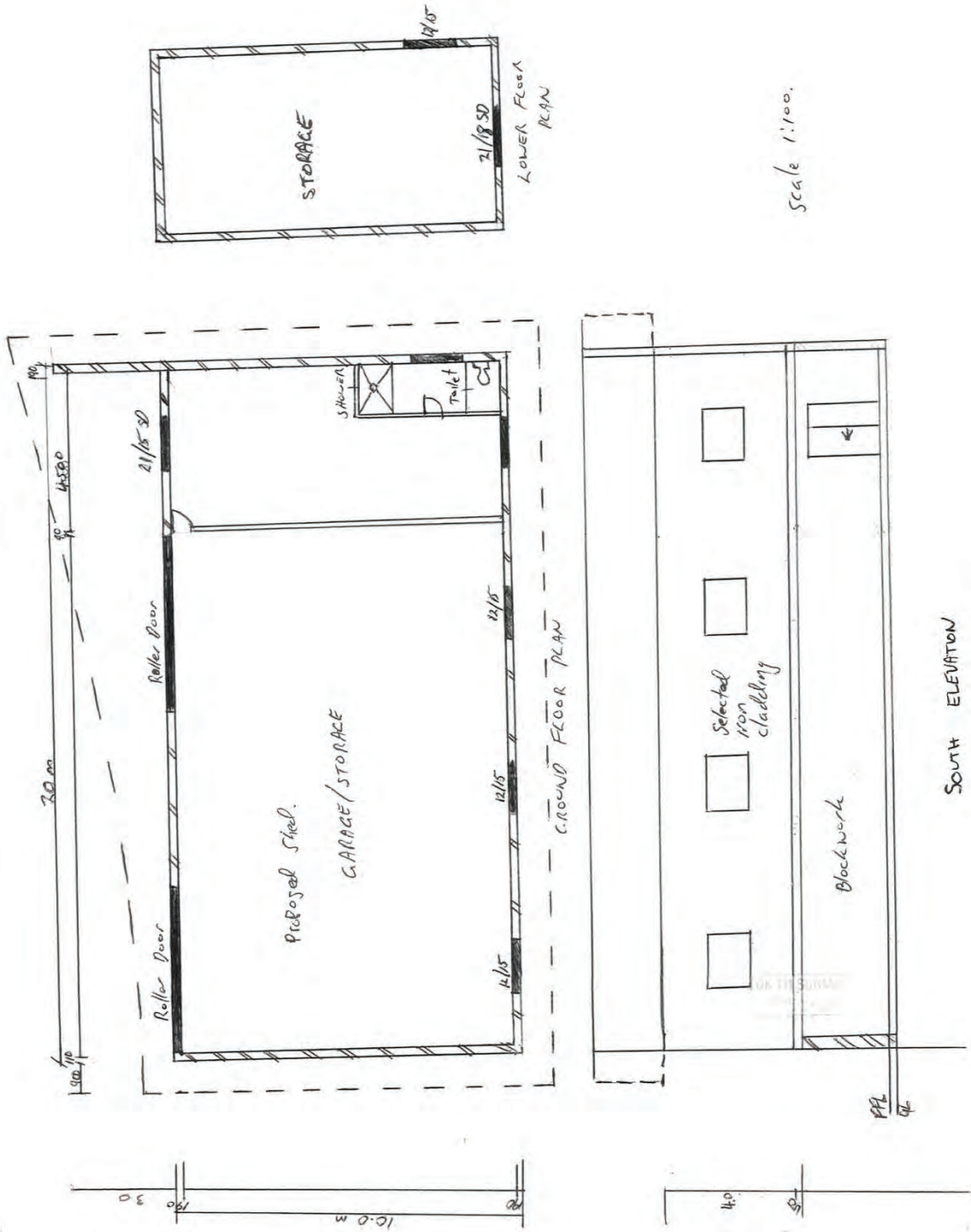


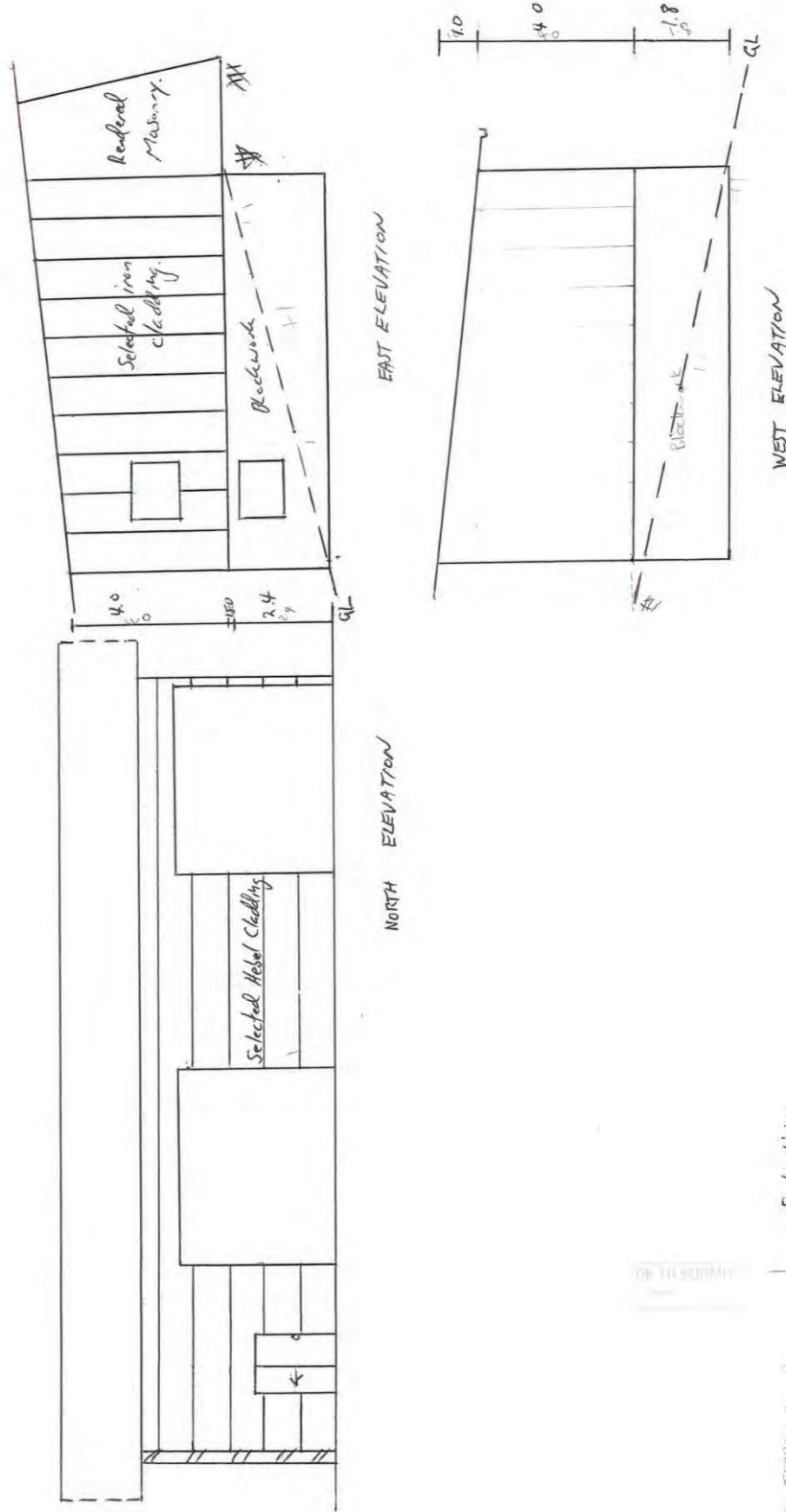
end elevations

elevation to road

OK TO SUBMIT
Christiano Rose
May 20 2011 8:15 AM

IN





Scale 1:100.

355 TERRAUNA ROAD
 RANGA ROAD LOT 3 DZ1116
 PREPARED CARTER-STORACE
 MR JUSTIN TORRES 17-5-11

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal satisfies the aims of the plan.

Clause 5 - Ecologically Sustainable Development

Proposal satisfies the objectives of this plan.

Clause 8 - Zone objectives

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

Clause 15 - Essential Services

All required essential services are available and adequate.

Clause 16 - Height of Building

The proposed shed including an undercroft storage area is considered to be two storeys in total in accordance with the definition of 'storey' of the Tweed Local Environmental Plan 2000. This height is permissible in this area. The height & scale of the proposal is consistent with surrounding development.

Clause 17 - Social Impact Assessment

Approval of the proposal is considered to be unlikely to result in any negative social impact issues.

Clause 24 – Designated Roads.

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

Clause 35 - Acid Sulfate Soils

Allotment is not affected by acid sulfate soils.

Other Specific Clauses

N/A

The SEPP 1 objection is supported and is discussed below.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

SEPP No. 1 - Development Standards

A SEPP 1 objection has been lodged against the requirement under clause 24 of the Tweed LEP 2000 for the dwelling house to observe a thirty (30) metre building alignment to Terranora Road, which is a designated road.

The Applicant has made the following submission in support of their request for a SEPP 1 variation:

'This objection accompanies a development application for the construction of a shed at Lot 3 DP 211196 – 385 Terranora Road, Terranora.

The objective of this Development Standard include:

- *To control development along designated roads.*

The proposed shed will be located a minimum of 10m from the alignment of Terranora Road and therefore the development does not comply with the 30m setback requirement. It is submitted that the development standard requiring a 30 m setback is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *There are other structures located along Terranora Road within this immediate locality that also encroach within the 30m setback from the designated road. See submitted Statement of Environmental Effects.*
- *The existing house and pool are also within the 30m setback with the house being setback 10m.*
- *The site is sloping away from Terranora Road with the level of the land near at the shed site much lower than the level of Terranora Road.*
- *Existing and mature vegetation on the site which will be retained acts as an excellent visual screen from Terranora Road.*
- *It is unlikely that the structure would significantly compromise traffic along Terranora Road.*

- *No additional vehicular accesses are proposed. The existing access arrangements will be retained.*

For the above reasons, Council is requested to uphold the objection and grant consent to the development application as proposed.'

Access to the site from Terranora Road will be retained.

The floor level of the shed will be substantially below Terranora Road and therefore it is considered that traffic using Terranora Road will not be impacted on by the proposed development in relation to sight lines or other distractions nor will traffic have an adverse impact on the shed.

Furthermore the existing vegetation located between the front boundary and the northern side of the proposed shed will screen the shed from public view.

The objectives of part 5 (Roads) clauses 22, 23 and 24 of the Tweed LEP and a response to each objective is as follows –

Clause 22 – Development near designated roads

- **To protect and improve the capacity, efficiency and safety of designated roads.**

Response – The existing vehicular access to the subject site off Terranora Road will be retained and therefore the capacity, efficiency and safety of Terranora Road will not be compromised.

- **To prevent development on designated roads that would detract from the scenic attractiveness of the area of the Tweed.**

Response - the proposed development will comprise a shed which will be consistent with the rural residential character of the area, and other similar structures in the vicinity of the site.

This subdivision was approved to permit the construction of single dwelling houses and ancillary structures and is therefore considered impractical to enforce a thirty metre building alignment to Terranora Road.

Furthermore as the site slopes away from the roadway it is considered that the proposal will not have an adverse impact on the scenic attractiveness of the area.

- **To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.**

Response - the shed will be set back 10.00 metres from Terranora Road.

Due to the slope of the allotment and the level of the allotment below Terranora Road the shed will be at a level considerably below Terranora Road which will lessen the impact of traffic noise on the proposed shed. Furthermore as the proposed shed is not habitable it is considered that noise nuisance from traffic on Terranora Road is not an issue.

Clause 23 – Control of access

- **To control access to designated roads.**

Response – The existing vehicular access from Terranora Road will be retained.

Clause 24 – Set backs to designated roads

- **To control development along designated roads.**

Response - the allotment exists in an area which is zoned for rural residential use and in a subdivision which was specifically created for residential dwelling houses therefore the proposal is considered to be consistent with the objectives of the zoning of the area.

SEPP No 71 – Coastal Protection

The proposal is located within the boundary of the SEPP and based on the nature and scale of the development, the proposal is unlikely to have any adverse impacts in this coastal location. The proposed development is considered compatible with the intent for the development of the locality.

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

The draft Tweed Local Environmental Plan (LEP) 2010 was considered in the assessment of this application.

The proposal is not inconsistent with the aims & objectives of this instrument.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant has applied for a variation to the DCP controls for cut and fill. The applicant is proposing a maximum cut depth of 1.8m. This exceeds the maximum allowable cut depth (being 1m) by 800mm.

The variation to the design control is supported due to the particular circumstances of the site. This relates to the size of the allotment and the setbacks of the structure from the boundaries which will not adversely affect the neighbouring properties.

DESIGN CONTROL 2 – Topography, Cut and Fill

Objectives

- To retain the existing landform.
- To limit the extent of excavation.
- To moderate the effects of building height and bulk on sloping land.
- To minimise the extent of earth works on residential land and earthworks associated with residential development.
- To ensure that the building design is appropriate for site topographical conditions.
- To ensure development is sympathetic with the existing topography and water cycle of the site.

Controls

- a. Building siting is to relate to the original form of the land.
- b. Alternatives to slab on ground construction are to be encouraged where it is obvious that due to the gradient and characteristics of the site, major excavation or filling as a result of raft slab, construction would be inappropriate. Example of alternative construction includes: Bearer and joist construction; Deepened edge beam; Split level design; Suspended slab design.
- c. On sloping sites step buildings or utilize site excavation and suspended floors to accommodate changes in level rather than levelling the site via cut and fill.
- d. Dwellings must not be designed to be on a contiguous slab on ground type if the building site has a slope of greater than 10%. Development on such land is to be of pole or pier construction or multiple slabs or the like that minimise the extent of cut and fill.
- e. Site excavation / land reforming is to be kept to a minimum required for an appropriately designed site responsive development.
- f. The maximum level of cut is 1m and fill is 1m.
- g. Retaining walls maximum 1.2m.
- h. Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.

- i. Cut and fill batters shall not exceed a slope of 1:2 (v:h) unless geotechnical reports result in Council being satisfied with the site stability. All batters are to be provided with both short term and long term stabilization to prevent soil erosion.
- j. Excavations in excess of one metre within the confines of the building and on driveways may be permitted, to allow for basement garages providing the excavations are adequately retained and drained, in accordance with engineering details.
- k. Filled areas are to be located where they will not impact on the privacy of neighbours.
- l. Stormwater or surface water runoff shall not be redirected or concentrated onto adjoining properties so as to cause a nuisance and adequate drainage is to be provided to divert water away from batters.
- m. The top of any battered cut (or retaining wall) and the toe of any battered fill (or retaining wall) is not to be closer than 900mm for cut and 1.5m for fill to any property boundary, where the overall height at any point exceeds 500mm.

Variations to Cut and Fill Design

- m. Variations to the requirements above will be permitted to create a flat yard space not exceeding 15% of the area of the lot for the purposes of outdoor living, recreation, clothes drying, swimming pool and the like.
- n. Proposed variations to the controls must demonstrate that the excavation or filling of the site is in harmony with the natural landform/environment and will not adversely affect the adjoining properties.
- o. Where a property is burdened by stormwater or water and sewerage mains then Council will generally preclude any excavation or filling within that easement.

Justification

Tweed Development Control Plan section A1- Residential and Tourist Development Code allows for variations to the mandatory controls in the following circumstances:

“Only in exceptional circumstances will Council consider a relaxation or variation to a mandatory control.

A variation or relaxation will only be considered where it has been demonstrated (through architectural and/or landscape drawings) how

and why the mandatory controls cannot work on a particular site. This requires the Applicant to design a solution using the mandatory controls.

Generally Council will only consider a relaxation or variation to a mandatory control due to excessive constraints including;

- *the site being located as an infill (infill development is any allotment that is neighbored or adjoins a property that supports a building, including sites within new subdivisions, where that development has already occurred, and to the extent only that an existing building hinders the achievement of the mandatory control).*
- *established dwellings located in subdivisions created prior to the year 2000*
- *sites with highly irregular geometry,*
- *sites with major topographical or geotechnical constraints.*

The proposed cut of 1.8m is considered to acceptable for the following reasons:

- The site is infill development and there are other existing structures on the site including a dwelling and a swimming pool created prior to the current DCP.
- The topographical constraints of the site in terms of it being a steep sloping site.
- The site contains an established dwelling and other ancillary structures in a subdivision that was created prior to the year 2000.
- The cut will be wholly within the confines of the proposed building.
- The setback to the cut will be 4m from the side boundary and it is considered unlikely to adversely affect the adjoining properties.
- It is considered that the flat yard space created by the proposed cut will not be more than 15% of the area of the lot.

The proposal, whilst not fully consistent with the requirements of the Design Controls, is considered to be generally consistent with the objectives of the DCP.

The location of the shed is considered to be the desired location with respect to existing access to the site.

The proposal is regarded as being worthy of approval.

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

Clause 92(a) Government Coastal Policy

The proposal is located within the boundary and based on the nature and scale of the development, the proposal is unlikely to have any adverse impacts in this coastal location. The proposed development is considered compatible with the intent for the development of the locality.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

This clause is not applicable to the proposed development.

Clause 94 Buildings to be upgraded

This clause is not applicable to the proposed development.

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

Tweed Shire Coastline Management Plan 2005

N/A

Tweed Coast Estuaries Management Plan 2004

N/A

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

N/A

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

Context and Setting

The allotment is located in a residential subdivision and contains a variety of dwelling types.

The proposal is considered to be consistent with the existing and future character of the area.

Access, Transport and Traffic

The existing vehicular access to the property from Terranora Road will be retained.

Flora and Fauna

The site does not contain any flora or fauna of any significance in proximity to the shed location, although it is noted that the development will involve the removal of an existing palm tree.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The allotment is surrounded by similar residential allotments to the east, south west and north.

Flora and Fauna

The site does not contain any flora or fauna of any significance in proximity to the shed location, although it is noted that the development will involve the removal of an existing palm tree.

Topography

The allotment slopes moderately downhill from north to south.

Site Orientation

The allotment has a northern orientation.

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

There have been no submissions made in relation to this application.

(e) Public interest

There is no adverse public interest issues anticipated should this application be approved.

OPTIONS:

1. Approve the application with conditions, or
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Refusal of the application may expose Council to a challenge in the Land & Environment Court.

POLICY IMPLICATIONS:

Approval of this application is considered to be unlikely to undermine the enforcement of Council's policies in this matter.

Each application is considered on its merits and the variations from Development Control Plan A1 and the Tweed LEP 2000 have been considered and are regarded as being worthy of approval due to the particular circumstances of the site.

CONCLUSION:

Under the circumstances it is considered that the proposal to construct a shed with a minimum building line of 10.00 metres to Terranora Road is reasonable for conditional approval.

The SEPP 1 objection to reduce the statutory building line has been considered and under the circumstances it is considered that the variation is justified and should be supported.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

10 [PR-CM] Development Application DA11/0169 for The Australian Volunteer Coast Guard at Lot 287 DP 542598, Sutherland Street, Kingscliff

ORIGIN:

Building & Environmental Health

FILE NO: DA11/0169 Pt1

SUMMARY OF REPORT:

The applicant, The Australian Volunteer Coast Guard Association, has requested a refund of Council's fees associated with the Development and Construction Applications for a minor awning addition to the emergency building Rotary Park Kingscliff. The applicant is a 'not for profit' community organisation and the work proposed will benefit the community and other organisations such as the NSW Police who make regular use of the building.

The total amount requested is \$385.94, with a breakdown of Council's fees as follows:

DA Fee	\$110.00
Environment Enforcement Levy	\$2.28
Construction Certificate Fee	\$158.65
Inspection Fee	\$115.01
TOTAL	\$385.94

The Australian Volunteer Coast Guard Association has not received any donations applicable under Council's Donations Policy in the last three year period.

Council's donation policy states: *That an individual or an organisation shall not be eligible for any more than two donation grants in any consecutive three year period.*

RECOMMENDATION:

That Council's fees associated with Development Application DA11/0169 and Construction Certificate CC11/0158 for an awning be donated to The Australian Volunteer Coast Guard Association with this being noted as the first donation under the donation policy.

REPORT:

Applicant: The Australian Volunteer Coast Guard Association
Owner: Tweed Shire Council
Location: Lot 287 DP 542598 Sutherland Street, Kingscliff
Zoning: 6(a) Open Space
Cost: \$2,276

BACKGROUND:

As per summary.

OPTIONS:

1. Council donates a total of \$385.94 to the applicant, being the fees associated with DA11/0169 and CC11/0158.
2. Council declines to donate Council's fees associated with DA11/0169 and CC11/0158.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The applicant's request for a refund of Council's fees associated with the Development Application and Construction Certificate is supported as the applicant is a 'not for profit' organisation with the subject development providing a public benefit to the community.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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11 [PR-CM] Development Application DA10/0626 for a Two (2) Lot Subdivision at Lot 2 DP 231691, Tweed Valley Way, Burringbar

ORIGIN:

Development Assessment

FILE NO: DA10/0626 Pt1

SUMMARY OF REPORT:

The proposed development involves an allotment with the zoning being part 1(a) Rural and part 2(d) Village. The area of the lot is 13.94ha. The applicant is seeking approval for a two (2) lot subdivision of land. The purpose of the subdivision is to separate the village part of the site from the rural part of the site. The 2(d) zoned land will be contained within proposed Lot 1.

The proposal incorporates a SEPP 1 Objection in relation to the 1(a) portion of the site being less than the minimum lot size (40ha). The proposal is being reported to Council for determination as a result of the variation being greater than 10% of the development standard. Concurrence from the Department of Planning and Infrastructure has been granted.

The subdivision will result in two (2) allotments with areas of 11.97ha and 1.97ha. Lot 2 (Zoned 1(a) Rural) will contain an existing two storey dwelling house.

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

RECOMMENDATION:

That Development Application DA10/0626 for a two (2) lot subdivision at Lot 2 DP 231691, Tweed Valley Way Burringbar be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos sheet 1 of 1 - revision D prepared by Brown and Haan and K1909 P000 - P003 prepared by Knobel Consulting Pty Ltd and dated April 2011, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0125]

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

[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

[PCC0275]

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

[PCC0285]

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

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

- (a) **Contours and terraces where the height exceeds 1m.**
- (b) **Cover with topsoil and large rocks/dry stone walls in terraces as necessary.**
- (c) **Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.**
- (d) **Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.**

[PCC0455]

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

[PCC0465]

8. Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, Tweed Shire Council Development Control Plan Part A1 and Councils Development Design and Construction Specifications.

Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

[PCC0475]

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

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

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

[PCC0585]

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

[PCC0865]

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

URBAN ROAD

- (a) Construction of an urban bitumen sealed road formation classified as Laneway, 6m minimum width continuing from the

termination of Station Street road formation, centrally through Fourth Avenue to the Lot 2 DP 231691 rural property boundary.

- (b) The urban bitumen sealed road (Fourth Avenue) is to provide a turnaround for vehicular traffic at the rural property boundary.
- (c) The rural dwelling shall have a sealed driveway, constructed from the road to 3m inside the property boundary. A gate shall be installed for the driveway in the boundary fence. The driveway location must be such that internal two (2) wheel drive access can be constructed from the driveway to the nominated building site.

[PCC0875]

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

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

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

[PCC0985]

14. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.

- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area along the haul route immediately before the extension of Station Street.

[PCC1105]

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

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

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

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

[PCC1145]

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

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

[PCC1155]

17. Where water is to be drawn from Councils reticulated system, the proponent shall:

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.

- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

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

[PCW0225]

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

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.

[PCW0375]

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

[PCW0745]

22. Civil work in accordance with a development consent must not be commenced until:

(a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

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

- (i) has appointed a principal certifying authority,
- (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

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

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

- 27. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

- 28. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.**

[DUR0815]

- 29. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority.**

Please note timber retaining walls are not permitted.

[DUR0845]

- 30. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**

[DUR0985]

- 31. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.**

[DUR0995]

32. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- **Noise, water or air pollution**
- **dust during filling operations and also from construction vehicles**
- **material removed from the site by wind**

[DUR1005]

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

[DUR1015]

34. Landscaping of the site shall be carried out in accordance with the approved landscaping plans.

[DUR1045]

35. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

36. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.**
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.**
- (c) That site fill areas have been compacted to the specified standard.**
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.**

[DUR1805]

37. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:

- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

38. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

39. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

40. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:-

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Final inspections - on maintenance
- (h) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling

- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

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

[DUR1955]

42. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

43. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

44. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

45. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

46. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

47. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

48. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

49. **Section 94 Contributions**

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

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

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

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a

construction certificate. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

\\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

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

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

Water DSP6:	1 ET @ \$11020 per ET	\$11020
Pottsville/Burringbar Water Levy:	1 ET @ \$1457 per ET	\$1457
Sewer Burringbar/Mooball:	1 ET @ \$5295 per ET	\$5295

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

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

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

51. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$1124 per Trips	\$7306
(\$1021 base rate + \$103 indexation)	
S94 Plan No. 4	
Sector11_4	

(b) Open Space (Casual):

1 ET @ \$526 per ET	\$526
(\$502 base rate + \$24 indexation)	
S94 Plan No. 5	

(c) Open Space (Structured):

1 ET @ \$602 per ET	\$602
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	

(d) Shirewide Library Facilities:

1 ET @ \$792 per ET	\$792
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	

(e) Bus Shelters:

1 ET @ \$60 per ET	\$60
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- (f) Eviron Cemetery:
 (\$60 base rate + \$0 indexation)
 S94 Plan No. 12
 1 ET @ \$120 per ET \$120
 (\$101 base rate + \$19 indexation)
 S94 Plan No. 13
- (g) Extensions to Council Administration Offices
 & Technical Support Facilities
 1 ET @ \$1759.9 per ET \$1759.90
 (\$1759.9 base rate + \$0 indexation)
 S94 Plan No. 18
- (h) Cycleways:
 1 ET @ \$447 per ET \$447
 (\$447 base rate + \$0 indexation)
 S94 Plan No. 22
- (i) Regional Open Space (Casual)
 1 ET @ \$1031 per ET \$1031
 (\$1031 base rate + \$0 indexation)
 S94 Plan No. 26
- (j) Regional Open Space (Structured):
 1 ET @ \$3619 per ET \$3619
 (\$3619 base rate + \$0 indexation)
 S94 Plan No. 26

[PCC0215/PSC0175]

52. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

53. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

54. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

55. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[PSC0785]

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

[PSC0825]

57. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.

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

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

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

[PSC0835]

58. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

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

The following information must accompany an application:

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

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

[PSC0885]

60. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Drainage

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works

Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.

- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".**

[PSC0915]

- 61. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and sewerage system installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.**

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

- 62. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.**

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

[PSC1115]

- 63. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of all allotments has been completed.**

[PSC1165]

- 64. Electricity**

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and**

- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.**

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

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

[PSC1185]

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

1. At the issue of subdivision certificate an in perpetuity, the land surrounding the existing dwelling, to a distance of 20 metres, shall be maintained as an inner protection area (IPA) as outlined within Appendices 2 & 5 of 'Planning for Bush fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
2. The existing dwelling is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

REPORT:

Applicant: Mr S Parnell
Owner: Mr SA Parnell
Location: Lot 2 DP 231691 Tweed Valley Way, Burringbar
Zoning: Part 1(a) Rural and Part 2(d) Village
Cost: Nil

BACKGROUND:

Council is in receipt of a development application for a subdivision.

The subject site is legally described as Lot 2 DP231691 and is located at Tweed Valley Way, Burringbar. The allotment is irregular in shape and has an overall area of 13.94 hectares. The site contains an existing two storey dwelling located in the south western section of the site, with access via Station Street. The area to the north and east of the existing dwelling is predominantly vegetated and the area to the south and west of the existing house is predominantly cleared.

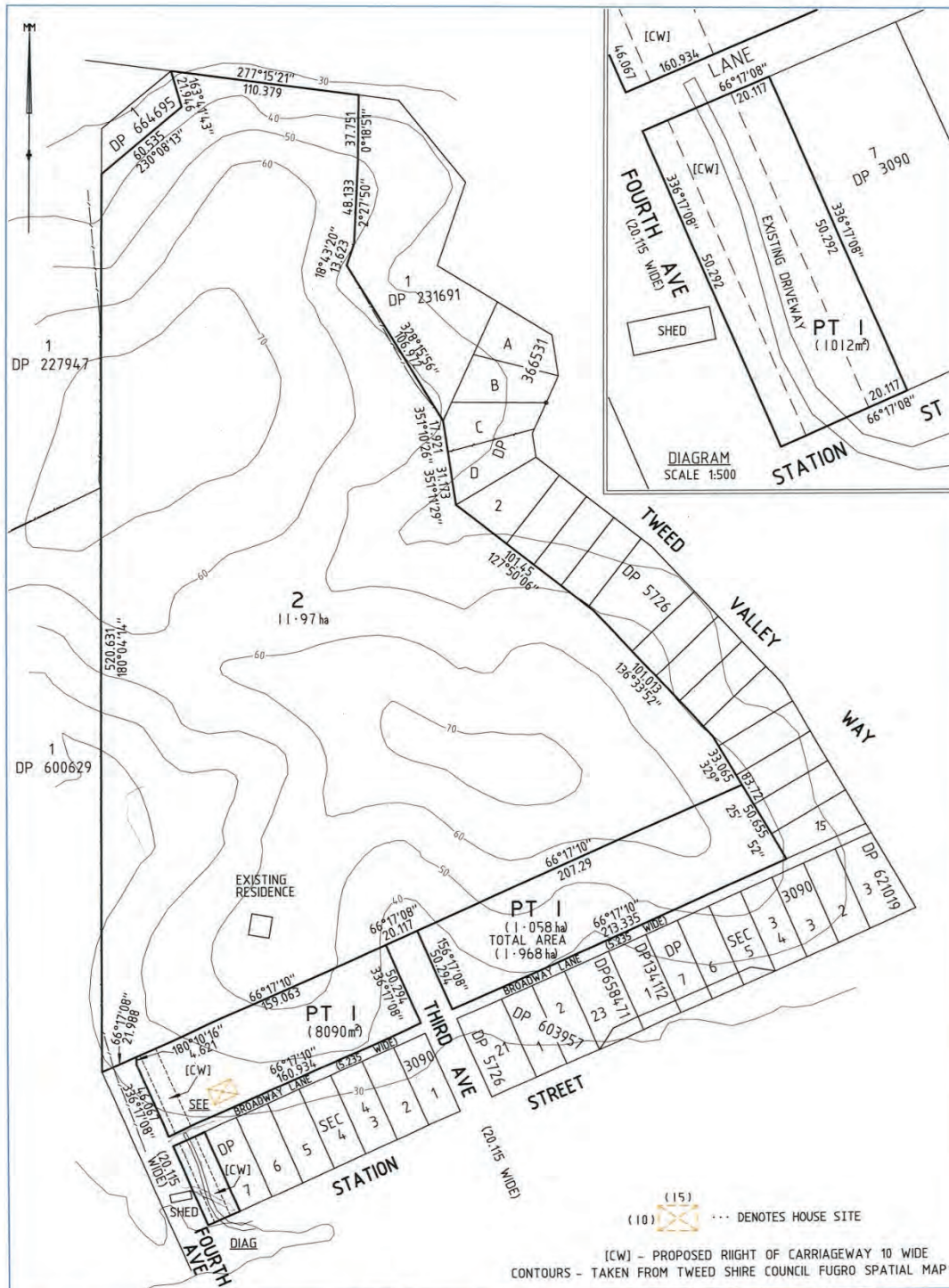
Proposed Lot 1 containing the 2(d) Village part will meet minimum lot size and future development of this site will be subject to a separate development application.

Proposed Lot 2 containing the 1(a) Rural part will not meet the minimum lot size requirements for the zone although it is unlikely to have any impact upon the potential for agricultural use of the site, as the existing allotment is not currently used for agricultural purposes.

A SEPP 1 Objection has been lodged in relation to the 1(a) portion of the site being less than the minimum lot size (40ha). As the proposal incorporates a variation greater than 10% of the development standard, the application is being reported to Council for determination. The Director-General's concurrence has been granted for the proposed development.

The proposed development includes the construction of a 6m wide laneway for the length of Fourth Avenue to provide access to proposed Lot 1 and Lot 2. Reticulated water is to be provided along the length of Fourth Avenue. Underground power, communications and reticulated sewer services are to be constructed within the Third Avenue road reserve.

SUBDIVISION PLAN



(15) ... DENOTES HOUSE SITE

[CW] - PROPOSED RIGHT OF CARRIAGEWAY 10 WIDE
 CONTOURS - TAKEN FROM TWEED SHIRE COUNCIL FUGRO SPATIAL MAP

DRAWING TITLE PLAN OF PROPOSED SUBDIVISION OF LOT 2 DP 231691 THIRD AND FOURTH AVE, BURRINGBAR CLIENT: STEVE PARNELL	LEVEL DATUM	SCALE 1: 2000	BROWN and HAAN REGISTERED SURVEYORS & DEVELOPMENT CONSULTANTS Suite 7 Carinya, Cnr Commercial Rd & King St, Murwillumbah NSW Ph. (02) 6672 1256 Fax (02) 6672 1276 email: bandh@landsurv.com.au
	DATE OF SURVEY	REVISION D	
	DATE 27.08.10	SHEET 1 OF 1	
	DRAWN GMB	JOB No	
	CHECKED MH	20909	
CAD FILE No. 20909_PROP			

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

The proposed boundary adjustment is minor and is not detrimental to the vision of the Tweed Shire.

The purpose of the proposed 1 into 2 lot subdivision is to separate the village part of the site from the rural part of the site. This will contribute to local growth whilst not impacting significantly upon the natural character, ecological character and cultural fabric of the area. The proposed development is consistent with Council's long term housing provision intentions within the Burringbar locality. Therefore, the proposal is consistent with the vision of Tweed Shire.

Clause 5 - Ecologically Sustainable Development

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

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

Clause 8 - Zone objectives

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

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

As noted below, the proposed development is considered to meet the primary objective of the zones by way of taking into account agricultural matters and environmental constraints. The proposal generally complies with Clause 8(a).

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

Given that the subject allotments will only have a minor change in configuration of the allotment and one (1) additional lot, the proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

Clause 11 – Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject site consists of 1(a) Zoned land under the provisions of the LEP. The objectives of this zone are:

Primary objective

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

Secondary objective

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

The established use of the rural part of the site is as a dwelling house and no change is proposed in relation to the use of the land. The dwelling house use of the land is not unsuitable in or near the surrounding village areas.

The proposal does not involve fragmentation of the rural zoned part of the site given that all of the rural zoned part of the site is to be contained within one allotment. This will ensure that the site will remain available for agricultural or natural resource utilisation purposes and associated development. This will also retain and protect the rural character and amenity of the area.

The objectives of the 2(d) Village zone are as follows:

Primary objectives

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

The separation of the village zoned part of the land into a single allotment facilitates the subsequent provision for residential development and any other appropriate services and facilities traditionally associated with a rural village without the development being burdened by the rural zoned part of the site. The subdivision does not prevent the village zoned part of the land from being developed for purposes that are of a design and scale that make a positive contribution to the character of the village, however such development is not the subject of the current development application.

Overall, the proposed subdivision of 1 into 2 lots is consistent with the zone objectives.

Clause 15 - Essential Services

Clause 15 of the TLEP requires the provision of essential services to be available to the site.

An existing 100mm diameter water main is located within Station Street. The connection to the existing house on Lot 2 is proposed by extending the water main to the property boundary in Fourth Avenue. Water supply into Lot 2 will be constructed as part of the approved development application.

Council's piped effluent disposal infrastructure is not currently available within the area. Correspondence with Council's Sewer and Water Design Engineer indicates that Tweed Shire Council proposes to construct a sewer rising main and gravity for Station Street. The sewerage system is under contract review and an estimated time for completion is expected for April 2011.

The proposed sewerage connection for the existing house is through Third Avenue. This will ultimately connect into the future sewerage proposed. Council's Sewer and Water Design Engineer indicated that the future sewerage will service the proposed subdivision including future subdividing of the 2(d) Village land.

Electricity services are currently provided to the area via Country Energy. The existing over head electricity servicing the existing house transverses through the 1012m² Village Lot (Lot 2 DP 231691). The proposal is to remove the over head power and provide under ground power through Third Avenue. The smaller Lot will have electrical power via an existing power pole located on the frontage of the site.

Telecommunication services are currently provided to the area via Telstra. The proposed communications will be parallel to the electrical cable within Third Avenue, up to the rural Lot boundary.

Clause 16 - Height of Building

There are no new dwellings proposed. The proposal will not change the existing two storey dwelling located on the allotment and therefore the proposal complies with this clause.

Clause 17 - Social Impact Assessment

It is not considered that the proposed development will result in an adverse social impact.

Clause 20 - Subdivision of Land Zoned 1(a), 1(b2), 7(a), 7(d) or 7(l)

This Clause requires a minimum lot size of 40 hectares. Proposed Lots 2 and 3 will provide lot areas that do not comply with this development standard. A State Environmental Planning Policy No. 1 Objection was undertaken and sent to the Department of Planning for Concurrence. On 8 October 2010 the Department of Planning granted concurrence in this instance as:

- no fragmentation of rural land will occur and the rural character and amenity will remain the same;
- the proposed subdivision is unlikely to undermine the objectives of the 1(a) land as the existing rural lot size remains unchanged; and
- there is no public benefit in maintaining the standard in this case.

Clause 22 – Development Near Designated Roads

This clause applies to land that:

- (a) *has frontage to a designated road, or*
- (b) *relies on a designated road for its sole means of vehicular access, or*
- (c) *is within Zone 1(a), 1(b), 1(c), 5(a), 7(a), 7(d), 7(f) or 7(l) and has direct access to another road at a point less than 90 metres from that road's intersection with a designated road.*

The northern fringe of the subject site is bounded by Tweed Valley Way, which is a Council designated road. The proposed development is not captured within any of the above criteria.

Clause 35 - Acid Sulphate Soils

The site contains Class 5 Acid Sulphate Soils. The proposed development does not include works which may lower the watertable below 1m AHD in any class 1, 2, 3 or 4 land.

The proposal complies with this Clause.

Clause 39A - Bushfire

The subject site is located within a Bushfire Prone area. As such the proposal was referred to the NSW Rural Fire Service for comment. The NSW Rural Fire Service responded on 2 November 2010 with conditions of approval to be included in the recommendations.

Dwelling Entitlement

The subdivision will result in the loss of the dwelling entitlement for proposed Lot 2 however the site retains an existing use right for a dwelling as it existed prior to 29 May 1964.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

This clause requires Council to consider the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land. The proposed subdivision is unlikely to have any impact upon the surrounding agricultural land, given that the proposed Lot 2 (rural part) is under the 40ha minimum and does not have significant agricultural potential.

It is also noted that in granting concurrence for the proposed subdivision, the Department of Planning was satisfied that the proposal is consistent with the objectives of the zone. As such, the application is considered to meet the provisions of Clause 12.

Clause 15: Wetlands or Fishery Habitats

This Clause requires the consent authority to take into account the likely impact of the proposed development on rivers, streams and wetlands. An existing watercourse is located within the south western fringe of the Fourth Avenue road reserve.

The proposed laneway will be constructed within the Fourth Avenue road reserve, with some dedication of land from the subject site at the corner of Station Street and Fourth Avenue to avoid the existing watercourse.

It is considered that approval of the application would not create any additional impact to any river stream or wetland and would not be inconsistent with this Clause or any other relevant provisions of this Plan.

SEPP No. 1 - Development Standards

The proposed development incorporates a SEPP 1 Objection which relates to the proposal not meeting the minimum 40 hectare allotment size requirement, pursuant to Clause 20(2) of the Tweed Local Environmental Plan 2000.

The applicant has submitted the following in support of the SEPP 1 objection:

“This SEPP 1 objection has been prepared in response to the minimum allotment area planning control under clause 20 of the LEP. The site comprises an area of 2(d) zoned land totalling 1.968 hectares, with the remainder of the site (11.97 hectares) being within the 1(a) zone. Proposed Lot 1 accommodates all of the 2(d) zoned land and does not contain land within any other zone, and its area complies with the minimum area development standard for the erection of a dwelling house on 2(d) zoned land of 450m² pursuant to clause 11 of the LEP. This SEPP 1 objection is not required to consider proposed Lot 1 further.

Proposed Lot 2 is entirely within the 1(a) zone and will accommodate all of the 1(a) zoned land in the site. The area of proposed Lot 2 is 11.97 hectares which is less than the 40 hectare minimum allotment area development standard for lots within the 1(a) zone.

Development Standard to which this Objection relates

Specifically in relation to the circumstances of the case, clause 20 of the LEP states in part:

20 Subdivision in Zones 1(a)

(1) Objectives

- *to prevent the potential for fragmentation of ownership of rural land that would:*
 - (i) adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*

- to protect the ecological or scenic values of the land.
- to protect the area of Tweed's water supply quality.

(2) Consent may only be granted to the subdivision of land:

- (a) within Zone 1(a)..... if the area of each allotment created is at least 40 hectares, or
- (b)

(3) Despite subclause (2), consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares,....., if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purpose, for which consent could be granted.

(4) "

The LEP map extract provided in the Statement of Environmental Effects confirms that the land is partly within the 1(a) zone and partly within the 2(d) zone. The 1(a) zoned part occupies the majority of the northern part of the site, with the 2(d) zone generally occupying a narrow strip along the southern boundary of the site. The 1(a) zoned part of the site has an area of approximately 11.97 hectares and all of the 1(a) zoned part of the site is contained within proposed Lot 2 in the subdivision. Proposed Lot 2 has an area which is less than the 40 hectare minimum allotment area planning control. This development application does not propose the use of the 1(a) zoned part of the site for a purpose other than an agricultural or a residential land use and accordingly cannot rely on subclause (3).

Purpose

The purpose of this objection is to permit the proposed development with development consent, because it is understood that Council is not empowered to grant development consent to the proposal in the absence of an objection, pursuant to SEPP 1, to the minimum lot area development standard applicable to the 1(a) zone. The grounds of the objection are discussed in the following sections.

Questions to be answered in assessing a SEPP 1 objection

Talbot J in *Winten Property Group vs North Sydney Council* (NSWLEC 46) established that there are five questions that are required to be answered in the assessment of an objection pursuant to SEPP 1. The questions are:

1. Is the planning control a development standard?
2. What is the underlying object or purpose of the development standard?

3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 (the 'Act')?*
4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
5. *Is the objection well founded?*

These questions are answered in the context of the provisions of SEPP 1 having regard to the characteristics of the environment and the proposed development, as follows:

1. Is the planning control a development standard?

The minimum allotment area planning control applicable to the 1(a) zone is a development standard because it is a provision of the LEP (which is an environmental planning instrument in accordance with the definition in section 4 of the Act), being a provision by or under which a requirement is specified and a standard is fixed in respect of the area of land (note in particular part (a) of the definition of development standards in section 4 of the Act).

2. What is the underlying object or purpose of the development standard?

The stated objectives of the development standard are provided in LEP subclause 20(1), viz:

- *to prevent the potential for fragmentation of ownership of rural land that would:
 - (i) *adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.**
- *to protect the ecological or scenic values of the land.*
- *to protect the area of Tweed's water supply quality.*

The objectives of the 1(a) zone provided in clause 11 of the LEP are also considered to be relevant to the objective of the development standard, and these are:

Primary objectives

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

- *to protect rural character and amenity.*

Secondary objectives

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

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act?

The aim of SEPP 1 is to:

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

In this regard the objects of Section 5(a)(i) and (ii) of the Act are:

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

The part of the site which is within the 1(a) zone and, hence, the area of proposed Lot 2 is fixed and cannot be changed. In zoning the land or creating Lot 2 DP 231691, Council made the decision that the 1(a) zoned part need not comply with the 40 hectare minimum lot area development standard. The existing dwelling house is located on the 1(a) zoned part of the site and in conjunction with the landscape of the site, establishes the character of the rural part of the land. Council has recognised the importance of the 2(d) zoned part of the site as an extension to the Burringbar Village by zoning that area for village purposes, and it is appropriate to excise that part of the land from the rural part.

The area of proposed Lot 2 is considered to be adequate in the circumstances of the case because of the following grounds of this SEPP

1 objection which are directly related to the objectives of clause 20 and the 1(a) zone:

Clause 20

- *All of the 1(a) zoned part of the parent allotment is to be contained within proposed Lot 2 and accordingly the development does not involve fragmentation of ownership of rural land that would:
 - (i) *adversely affect the continuance or aggregation of sustainable agricultural units – the land is not used for any agricultural purpose, is limited in its potential to be used for agricultural purposes (having regard to the information provided on Council’s website) and there is no scope to increase the 1(a) zoned part of the site for agricultural purposes given the cadastral limitations;*
 - (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner – no change is proposed to the existing occupation of the rural part of the site by a single dwelling house which is fully established and not required to be provided with further public amenities or services as a consequence of the proposed subdivision.**
- *The 1(a) zoned part of the site is not proposed to be physically affected by this development application, and the ecological and scenic values inherent in that part of the site are able to be protected.*
- *Proposed Lot 2 is not within a part of the Tweed’s water supply catchment area and the proposal will not adversely affect water supply quality.*

1(a) Zone Objectives

Primary objectives

- *The proposed subdivision is intended to separate the 2(d) village zoned part of the site from the 1(a) rural zoned part of the site and will accommodate all of the 1(a) zoned part of the site in one allotment. No change is proposed to the rural part of the site which might reduce its ability to be utilised for ecologically sustainable development within any part of that land which might be suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *The proposed subdivision involves no change to the established rural character and amenity of the rural part of the site but instead merely proposes to separate the village part of the site from the rural part of the site.*

Secondary objectives

- *The established use of the rural part of the site is as a dwelling house and no change is proposed in relation to that use of the land. This development application does not propose another type of development such as agri- or eco tourism and does not prevent such land uses establishing on appropriate rural land in the locality.*
- *The dwelling house use of the rural part of the land is not unsuitable in or near urban areas.*
- *This development application does not involve the unnecessary fragmentation or development of the rural zoned part of the site because it proposes to accommodate all of the rural zoned part of the land in one allotment and involves no change to the established use of the rural zoned part of the land. This is achieved whether or not the rural zoned part of the land may be needed for long-term urban expansion (or in this case, expansion of the Burringbar Village), given that the rural part of the land is not being fragmented or developed but rather maintained in one allotment.*
- *This proposal maintains the rural zoned part of the land within one allotment and will not impact upon any established non-urban break between settlements that gives a physical and community identity to each relevant settlement.*

4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

On the basis of these grounds which directly relate to the stated and underlying objects of the development standard, requiring strict compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and tend to hinder the attainment of the relevant objects of the Act. That is, requiring strict compliance with the development standard would hinder the proper management, development and conservation of available resources for the purpose of promoting social and economic welfare and a better environment, and would hinder the promotion and co-ordination of the orderly and economic use and development of the land. The proposed development represents the appropriate response to the control of development given the desired future village use of the 2(d) zoned part of the site and the containment of all of the 1(a) zoned part of the site within one allotment including the maintenance of the rural use that is established on that land.

5. *Is the objection well founded?*

It is submitted that it would be both unreasonable and unnecessary to require strict compliance with the development standard in this case on the basis of the grounds provided in answer to question 3. This objection demonstrates that compliance with the development standards would be both unreasonable and unnecessary and tend to hinder the attainment of the referenced objects of the Act, and is well founded accordingly."

Assessment of the applicant's submission:

It is considered that compliance with the 40 hectare development standard in this instance would unreasonably prevent the appropriate subdivision of the site as this development application does not involve the unnecessary fragmentation or development of the rural zoned part of the site because it proposes to accommodate all of the rural zoned part of the land in one allotment and involves no change to the established use of the rural zoned part of the land. In addition, Council has recognised the importance of the 2(d) zoned part of the site as an extension to the Burringbar Village by zoning that area for village purposes, and it is appropriate to excise that part of the land from the rural part.

Furthermore, the application was referred to the Department of Planning for concurrence. In a letter dated 8 October 2010, concurrence was granted by the Director-General to vary the 40ha minimum lot size development standard contained in clause 20(2)(a) to permit proposed Lot 2 – 11.97ha. Concurrence was granted in this instance for the following reasons:

- no fragmentation of rural land will occur and the rural character and amenity will remain the same;
- the proposed subdivision is unlikely to undermine the objectives of the 1(a) land as the existing rural lot size remains unchanged; and
- there is no public benefit in maintaining the standard in this case.

Accordingly, in the circumstances of this case non-compliance with the development standard is well founded. It is therefore concluded that upholding the Objection is considered to be in the public interest and consistent with the objects of the Act.

SEPP No. 55 - Remediation of Land

The land currently comprises an existing dwelling house and the separation of the village zoned part of the land into a single allotment facilitates the subsequent provision for residential development and any associated village uses.

A Preliminary Site Contamination Investigations has been prepared by HMC Environmental Consulting Pty Ltd dated January 2011 including soil sample analysis. The report has been prepared in general accordance with the EPA Guidelines for Assessing Banana Plantation Sites and is considered adequate. The report concludes that the subject site is suitable for its proposed use. No further considerations required.

SEPP (Rural Subdivision) 2008

Clause 10 - Matters to be considered in determining development applications for rural subdivisions or rural dwellings

The applicant has provided the following assessment of the matters to be considered as follows:

- (a) *the existing uses and approved uses of land in the vicinity of the development,*

The existing dwelling house on the rural part of the land is to be maintained and no change is proposed in this regard.

- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*

The proposed development is consistent with the preferred and predominant land uses in the vicinity of the development. The zones reflect Council's preferred land uses for each relevant part of the land. The predominant land uses near the village zoned part of the land are of a village nature and the proposed development will facilitate a future development in keeping with the established village character of the adjacent village development. The rural part of the site adjoins rural land uses to the west and the retention of the existing dwelling house on the site maintains the rural character of that part of the land.

- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*

The proposal is compatible with nearby land uses.

- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*

The site does not adjoin land within a rural residential zone.

- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

There is no known incompatibility with nearby land uses.

The applicant's assessment of the abovementioned matters has been taken into consideration. The proposed development is consistent with the preferred and predominant land uses in the vicinity of the development. The land uses will generally remain the same. The established use of the rural part of the site will remain available for agricultural or natural resource utilisation purposes. The separation of the village zoned part of the land into a single allotment facilitates the subsequent provision for residential

development and any other appropriate services and facilities traditionally associated with a rural village.

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

Under the Draft LEP 2010, the subject site has a similar zoning to the current LEP 2000 in that the 1(a) Rural part is zoned RU2 – Rural Landscape and the 2(d) Village part is zoned RU5 – Village. The proposed development is considered to be consistent with the objectives of each applicable zone.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. That is, the RU2 land currently zoned 1(a) is identified as Lot Size code AB2, which requires 40ha.

The applicant has lodged a written request that seeks to justify the contravention of the development standard (SEPP1 Objection).

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

A5 – Subdivision Manual (DCP 16)

This DCP contains Council's guidelines for the preparation of applications for subdivision and aims to facilitate Council's assessment and consideration of such applications. A number of factors are required to be assessed including environmental constraints, land forming, design specifications, storm water runoff, drainage, waterways and flooding, setbacks and buffers (where appropriate). Where applicable, these matters have been discussed below.

Physical Constraints – The land is zoned into two parts being 1(a) Rural and 2(d) Village. The rural component is 11.97 hectares and the village component is 1.968 hectares. The village component is separated into three (3) parts by road reserves, being Fourth Avenue, Third Avenue and an unnamed laneway (referred to as Broadway Lane on the plans). The smaller of the 2(d) Village Lots is located at the intersection of Fourth Avenue and Station Street and has an area of 1012m². The two larger 2(d) Village Lots are located at the intersection of Third Avenue and the unnamed road reserve and has an approximate areas of 7868m² and 10800m².

Environmental Constraints – The site is bushfire prone land as per GIS. Future subdivision would appear to be constrained by the presence of existing bushland on the site, the mapping of this bushland as Secondary Koala Habitat and the mapping of part of the site as Grey Ironbark/White Mahogany/Grey Gum, the latter of which is a known Primary Koala Food Tree.

Landforming – There are limited earthworks proposed for the site. The earthworks involve a small amount of cut and fill for the proposed road.

Stormwater Runoff, Drainage, Waterways & Flooding – The proposed 6m wide road does not indicate drainage off the road (no gully pits or stormwater runoff from the site) to a legal point of discharge and provide permanent water quality control as per Tweed Shire Councils Development Design Specification – D7 Stormwater Quality. After the last RFI (letter dated 1 April 2011 from Knobel Consulting) the applicant has provided two gully pits to drain Fourth Avenue.

An existing water course is located south-west of the proposed road formation. The configuration of the existing water course is adjacent to the proposed road with an existing batter greater than 2.5% for the first 2.4m. The road formation proposed is close to the existing creek, which may have an effect on the stability of the banks. The applicant is to demonstrate stability of the exiting creek bank and to provide protection against further scouring. An RFI received from Knobel Consulting (letter dated 1 April 2011) a rock gibbon wall has been provided as protection on the bank.

Lot Layout – The proposal does not involve fragmentation of the rural zoned part of the site given that all of the rural zoned part of the site is to be contained within one allotment. This will ensure that the site will remain available for agricultural or natural resource utilisation purposes and associated development. This will also retain and protect the rural character and amenity of the area.

The separation of the village zoned part of the land into a single allotment facilitates the subsequent provision for residential development and any other appropriate services and facilities traditionally associated with a rural village without the development being burdened by the rural zoned part of the site.

Infrastructure – Council's Development Engineer has assessed the proposed development against the relevant standards pertaining to road ways, reticulated water, reticulated sewer, electricity and telecommunications. Appropriate conditions of consent have been applied with regard to infrastructure requirements.

The development is subject to s64 water and sewer charges based on 1 ET as one new lot will be created.

Based on the above assessment, the proposed subdivision to create proposed Lot 1 (1.97ha) and proposed Lot 2 (11.97ha) is considered to meet the provisions of Section A5 of Council's Consolidated DCP.

A13 – Socio-Economic Impact Assessment (DCP45)

In accordance with clauses A13.5.1 and A13.5.2 the proposed development will not require a Socio-Economic Impact Assessment. It is considered that the proposed development will not result in any negative socio-economic impacts.

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

There are no matters prescribed by the Regulations applicable to the proposed subdivision.

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

The proposed development will involve the construction of a laneway and extension to the water reticulation within the Fourth Avenue road reserve. Construction work within the Third Avenue will include the extension of the sewer reticulation, under ground electricity and telecommunications. It is considered that the proposed development will not generate any impacts that would warrant refusal of the application.

(c) Suitability of the site for the development

The proposed development is considered to be suitable for the site, subject to appropriate conditions of consent.

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

Department of Planning

After reviewing the SEPP1 Objection to Clause 20(2) of the LEP, the Department provided the following comments:

“Following consideration of the application, concurrence has been granted to vary the 40ha minimum lot size development standard contained in clause 20(2)(a) of the Council’s planning instrument to permit proposed Lots 2 with an area of 11.97ha.

Concurrence was granted in this instance for the following reasons:

- *no fragmentation of rural land will occur and the rural character and amenity will remain the same;*
- *the proposed subdivision is unlikely to undermine the objectives of the 1(a) land as the existing rural lot size remains unchanged; and*
- *there is no public benefit in maintaining the standard in this case.”*

The Department of Planning have not included any conditions to be placed in the recommendations. It is therefore considered that the proposal has satisfied the requirements.

NSW Rural Fire Service

The proposed development was referred to the NSW Rural Fire Service for comment as the land has been identified as being Fire Prone Land. The Rural Fire Service has provided conditions on 2 November 2010 to be included in the recommendations. The conditions relate to Asset Protection Zones and Design and Construction. The proposal will comply with these conditions and is therefore considered to satisfy the requirements.

(e) Public interest

The proposed development is generally considered to reflect the provisions of all applicable development control plans. Appropriate conditions of consent have been applied in an effort to limit any impact upon the surrounding residences and agricultural landowners.

OPTIONS:

1. Approve the application subject to the recommended conditions of consent.
2. Refuse the application, with reasoning.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unsatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court.

POLICY IMPLICATIONS:

The proposed development has been assessed on its merits and having regard to the applicable legislation and for that reason the development does not generate a policy implication for Council.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation to Clause 20 of the Tweed LEP 2000. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

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.

12 [PR-CM] Tweed Development Control Plan Section B24 - Area E Urban Release Development Code

ORIGIN:

Planning Reform

FILE NO: GT1/LEP/2000/10 Pt6

SUMMARY OF REPORT:

This report provides an update on the progress of the Tweed Development Control Plan, Section B24 – Area E Urban Release Development Code (“the Code”), prior to it being reported to the July meeting for approval to commence public exhibition.

Area E has been recognised for many years by both Tweed Shire Council and the NSW Department of Planning and Infrastructure as an important strategic site for urban land release to accommodate future housing needs through the planned supply of about 1632 lots, catering for an additional residential population of about 4,000 people.

In accordance with the Local Environmental Plan gazetted for this site in 2007, Council’s planning and engineering staff are preparing a Draft Development Control Plan (DCP) and Section 94 Plan (s. 94 Plan) to facilitate the orderly and economic development of Area E. The DCP has been prepared as a Section of the Tweed DCP 2008, titled *Area E Urban Release Development Code* (“the Code”). The Code represents the most detailed level of the strategic planning framework and seeks to guide the future development of the Area E release area through a variety of strategies and development controls.

As part of the preparation process, Council’s Planning Reform Unit (PRU) staff has worked with the landowners of Area E to undertake extensive landowner consultation, which comprised of three intensive participatory workshops hosted at Tweed Heads.

The Draft Code is now presented in three ‘precincts’ enabling the local community to identify with guidelines and controls customised to the unique features, characteristics and specific contextual issues of these distinct precincts.

In recognition of the intricacies, constraints and ‘uniqueness’ of Area E, and in response to the outcomes of the landowner workshops, a number of controls have been specifically tailored and such vary the generic standard requirements of the Tweed DCP s A1 Residential and Tourist Development Code. These variations will be reported in greater detail in the July report.

The Code has attempted to address landowners and the Council officers concerns through a detailed investigation of the sites opportunities and constraints by utilising various contemporary best practice planning processes that include:

- Constraint and Site Analysis
- Developing steep sites analysis and interpretation
- Built form and design-lead solutions to balance environmental protection, open space and the built environment.

It is envisaged that the key outstanding issue involving the proposed location of the future Broadwater Parkway road will also be concluded by July. As a secondary consideration, this timeline enables the Code to best integrate into the Part 3A Major Project Application before the Department of Planning and Infrastructure, which the Department have advised the applicant to undertake.

RECOMMENDATION:

That the report on Tweed Development Control Plan Section B24 – Area E Urban Release Development Code be received and noted.

REPORT:

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

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

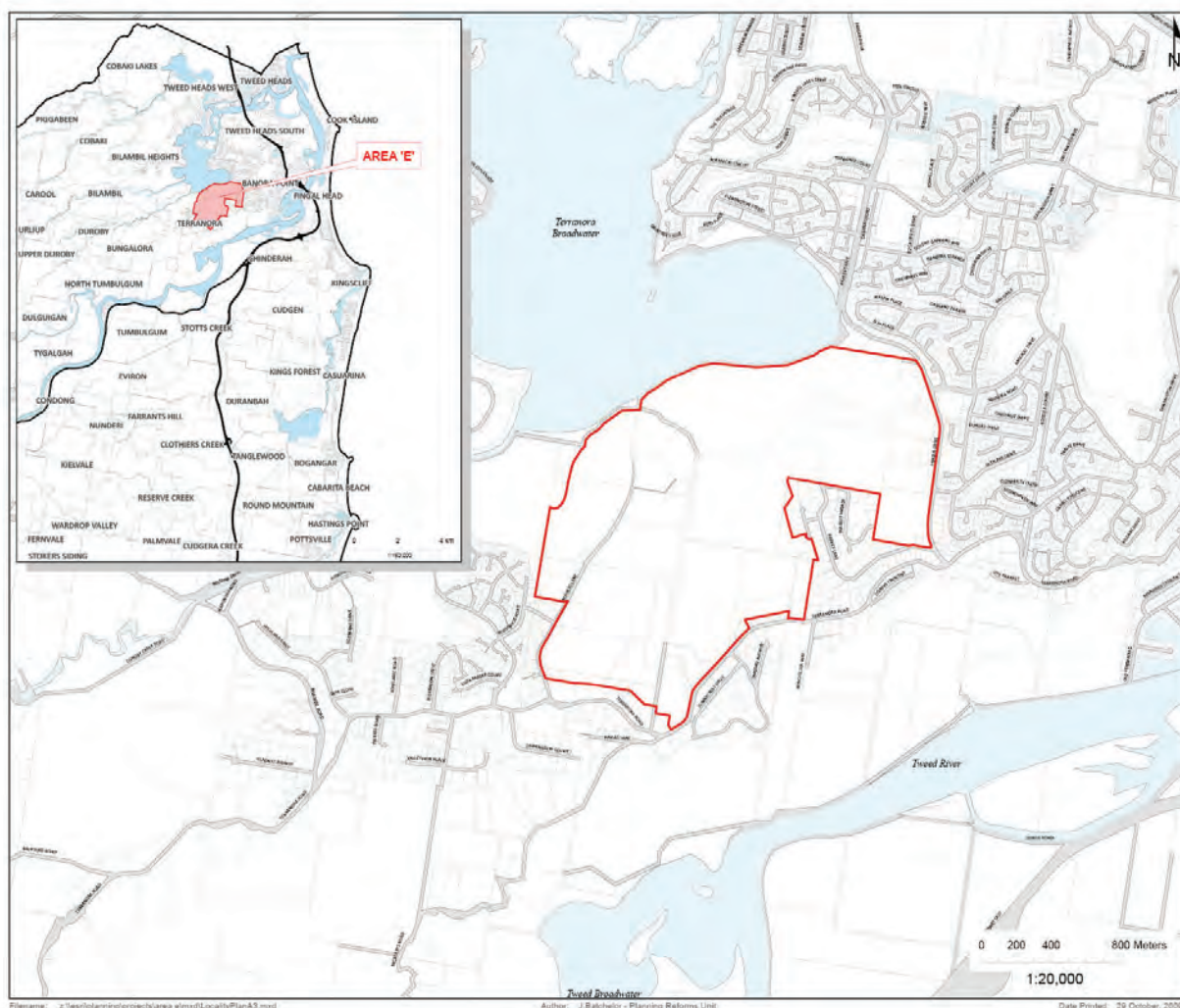
- 5(a) Special Uses (School);
- 2(c) Urban Expansion;
- 7(a) Environmental Protection (Wetlands and Littoral Rainforests); and
- 7(d) Environmental Project/Scenic Escarpment.

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

- (2) *The object of this clause is:*
 - (a) *to ensure a development control plan has been developed for the land to which this clause applies to avoid ad hoc development....*
- (3) *The consent authority must not consent to development on land to which this clause applies unless it is satisfied that:*
 - (a) *a development control plan has been prepared for the land, and*
 - (b) *any contaminated land has been identified to the extent necessary to allow for the appropriate location of sensitive land uses, and*
 - (c) *any wetland on the land will be restored and managed to the consent authority's satisfaction to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges, and*
 - (d) *the development will generally comply with the Tweed Urban Stormwater Quality Management Plan as adopted by the Council on 19 April 2000.*

In accordance with the above, Council officers have undertaken the preparation of a new locality based DCP, Draft Area E Urban Release Code (“the Code”), to facilitate the orderly and economic development of the Area E release area.

The Code is at an advanced stage and key strategies and a draft structure plan have already been presented to landowners as part of the landowner consultation engagement strategy. Following the current refinements and reaching a concluded position on the location of the future Broadwater Parkway by July, the Draft Code would have reached a stage where general public consultation and input is required. This is a critical stage of the plan preparation process as it will enable the broader community to evaluate and express their level of acceptance or otherwise to the proposed development strategies.



KEY COMPONENT OF THE CODE

Broadwater Parkway

As reported within the 19 April 2011 Council meeting (report can be found within Attachment 1), Area E is a complex site, with fragmented ownership of land and the intertwined relationship of onsite constraints. Principally, the location, design, connection and construction of the trunk road, known as Broadwater Parkway, linking Mahers Lane to Fraser Drive, is critical and essential infrastructure to the development of Area E.

As part of the DCP preparation, a number of potential alignments to Broadwater Parkway have been identified and considered at a desktop level. Generally, the constraints that impact upon the ultimate alignment of Broadwater Parkway include:

- Topography;
- Existing dwelling houses
- Areas of environmental protection; and
- Integration into the wider road network.

Through the landowner workshops hosted, several landowners whom own land on, or immediately adjoining the proposed alignment, have raised strong objection. The area of discussion is identified within Figure 1 below as 'Section 3'.

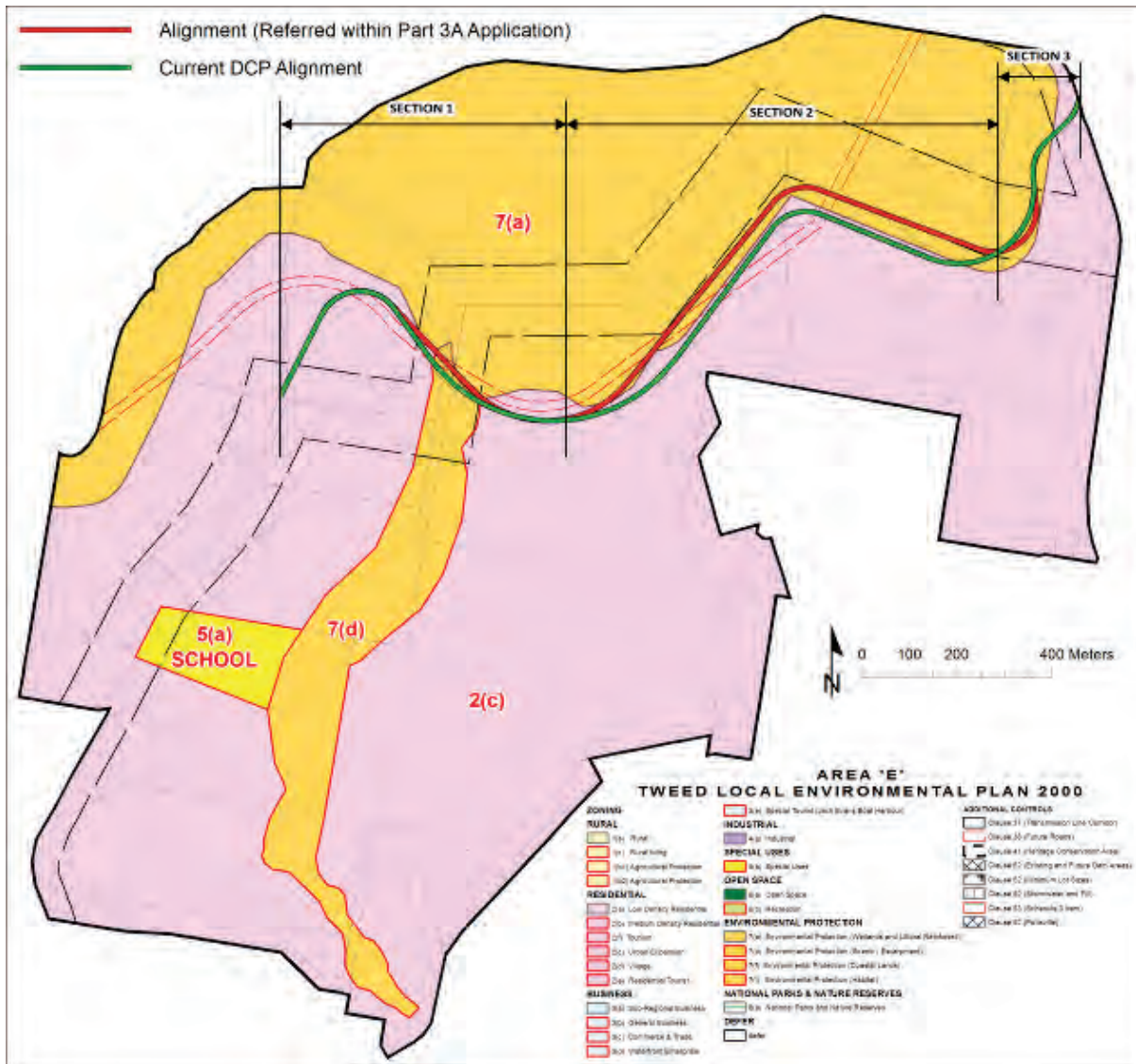


Figure 1 – Broadwater Parkway – Section 3

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

To progress Broadwater Parkway Council will need to exercise its land acquisition powers to obtain the land necessary. Accordingly, Council officers have scheduled meetings to discuss the matter with these landowners prior to the July Council meeting.

Alternative Opportunities

Within the landowner meetings, alternative alignments have been suggested by a variety of landowners, several of those a briefly detailed below.

- Wetland Options

As part of the landowners consultation, a landowner cited that the alignment of Broadwater Parkway be adjusted to intersect the SEPP 14 Wetland, or 'hug' it's extent and join further to the North. These options are displayed below in Figures 2 and 3

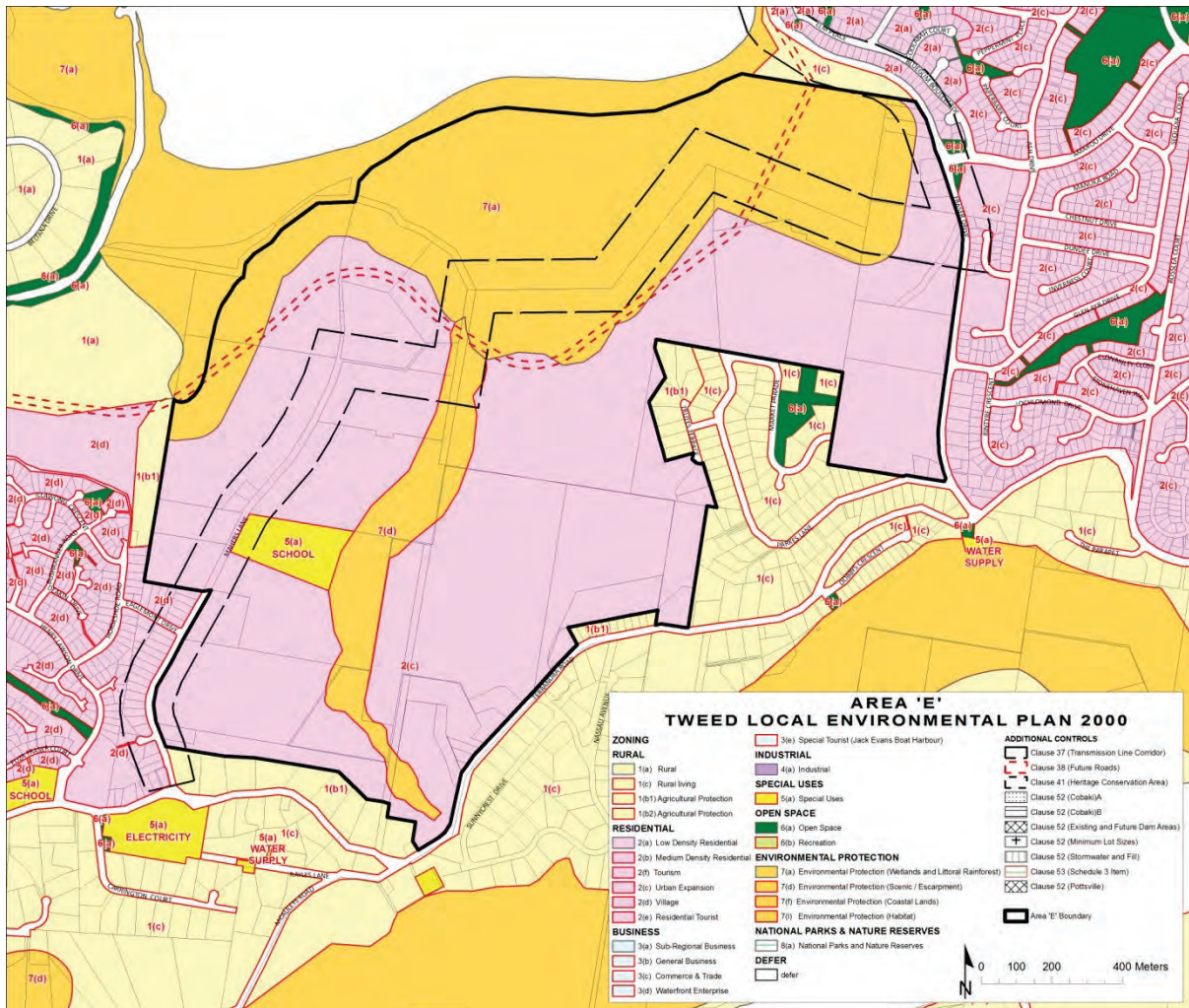


Figure 2 – Current Tweed LEP 2000 Road Corridor Annotation

- Loss of approximately 0.7 hectares of native vegetation from within the mapped SEPP 14 boundary.

Based on the assessments undertaken, the landowners prepared DCP that was previously submitted to Council concluded:

"it is most unlikely that development consent under Part 4 of the Environmental Planning and Assessment Act or Major Project approval under Part 3A of the Environmental Planning and Assessment Act would be issued for the route through the wetland (Option 2) or the alignment on the eastern side of the wetland (Option 1) given the potential impacts on endangered ecological communities, wetland vegetation and potential changes which would arise to the hydrological regime within the wetland."

The above findings are still considered valid within current planning frameworks and it is therefore concluded that these alignments should not be pursued further by Council. Should the landowners group now be of a different opinion to that previously stated, it is open to them to investigate this opportunity further.

- Further north

Opportunities to provide an alignment further to the north of Amaroo Drive may be present; however they have not been extensively investigated internally by Council officers. Any such alignment would result in significant tree clearing and the alignment being imposed over an additional number of properties, further fragmenting land.

- Further South

Further opportunities for the Broadwater Parkway alignment to be varied to the south have not been extensively investigated internally by Council officers. Whilst the topography of the land immediately limits any alignment further to the south, Council's engineers have also advised that it is highly desirable to discourage traffic 'rat-running' via Glen Ayr Drive or Amaroo Drive, necessitating network connection to be provided to the North of these streets. Should Council wish to explore alignments without these constraints, further design analysis could be undertaken.

Summary

The alignment, funding and construction of Broadwater Parkway is possibly the greatest challenge to the development of Area E. The road is viewed as a necessity to Area E and provides very limited public benefit to the wider traffic network, resulting in it thus far not being included within the general works program contained within Council's Tweed Road Contributions Plan. A variety of alignments have been discussed throughout the LES, LEP and Code preparation processes.

In light of all the constraints the Code has progressed on the basis of the alignment displayed in Figure 1, as it was viewed as the best option considering triple bottom line sustainable development principles. To this point, no alternative alignment with

corresponding engineering and environmental detail has been submitted to Council for consideration displaying an improved outcome.

MAJOR PROJECT UPDATE

As reported within the 19 April 2011 Council report, NSW Department of Planning and Infrastructure (DoPI) is currently considering, as the consent authority a 321-lot community title subdivision within the eastern portion of Area E, under Part 3A of the Environmental Planning and Assessment Act 1979. This arrangement has been maintained under the savings and transitional arrangements included within recent Part 3A legislative changes.

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

The submission period has now closed and the submission lodged made available to the applicant for their consideration. In addition, DoPI raised the following issues that are relevant to the contents of this report:

Area E Planning – the current proposal has limited regard to the development of plan for the whole Area E. The Department sees the major project application as being the first stage of a coordinated development of land across Area E. While the Department recognises that at the time of the EA being lodged limited progress had been made on the development of a DCP for the Area E site, it is understood this process is now sufficiently advanced for more integration to occur. However the Department currently understands the relevant planning documents for this area (Development Control Plan, Section 94 contributions plan and supporting documents) are expected to be on public display by June 2011. As such the DCP and supporting documents submitted to Council in 2008 (and prepared by Darryl Anderson) are now out of date.

- *Failure to have sufficient regard to the current DCP process is inconsistent with the stated objects of the Act that clearly promote coordinated, orderly, and economic use and development of land. The Department requests the proponent more closely align their development with the current DCP process for Area E or clearly identify and justify departures from this process. The proponent should endeavour to undertake workshops/consultation with Council to ensure coordinated development outcomes are met.*
- *In this regard the Department generally supports the nature and content of Council's submission on the proposal – except where variations are proposed below.*

Relevant Council officers have held a preliminary meeting with the applicant, whom presented a revised subdivision layout for the site. Upon the receipt of detailed information, further review will be undertaken to ensure a positive outcome for the site.

CONCLUSION:

The draft Code has been prepared on the basis of extensive landowner consultation and having regard to the site conditions. The project has reached a stage where the principles, ideas, and controls within the code need to be 'tested' for their level of acceptance within the broader community, once the Broadwater Parkway issue is resolved. The provision of Broadwater Parkway is a key component of the Area E Urban Release Area and any alignment considered has a number of sensitivities. Council's internal working group for the Area E Urban Release Development Code consider that an appropriate alignment has generally been identified, however it is recognised that further options could be investigated or proposed for an alternative alignment. This would best be achieved through the future public exhibition of the Code.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

To progress Broadwater Parkway Council will need to exercise its land acquisition powers to obtain the land necessary. This action will have legal, resource and potentially financial implications.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Council report of 19 April 2011 (ECM 33945212)
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13 [PR-CM] Visitor Carparking at Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads

ORIGIN:

Director Planning and Regulation

FILE NO: PF4980/130 Pt2

SUMMARY OF REPORT:

Following earlier reports to Council on this matter, Council resolved the following in respect of a report to the Council meeting of 15 February 2011:

“That:

The Owners Corporation for Strata Plan 35133 be advised in writing that Council is taking no further action in this matter and that the vehicles being parked on the driveway that is part of the common property not designated as visitor spaces either on the plans subject of the development consent or building approval is a private matter that can and should be dealt with by the Owner’s Corporation for the Strata Plan.”

Council has received a letter from the Office of NSW Ombudsman (ONO) dated 26 May 2011 stating that a complaint had been received in respect of this matter, alleging that Council had failed to act on a complaint made by a unit owner of the subject premises.

In reviewing this complaint, the ONO has made the following suggestion under section 31AC of the Ombudsman Act 1974:

“That Council take legal action against the body corporate for non-compliance with development consent 88/21.”

The ONO has further requested a response to this suggestion, and if no action is to be taken, the reasons for this decision.

It is recommended that Council write to the ONO stating that it re-affirms its previous resolved position from the February 2011 Council Meeting, on the grounds that it is satisfied with the veracity and rationale of previously received legal advice that taking action against the Owners Corporation of the subject premises is not warranted, and that taking legal action on this matter is likely to incur significant costs to Council, both financially and in terms of staff resources.

RECOMMENDATION:

That:

- 1. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
- 2. Council writes to the Office of NSW Ombudsman in response to their letter dated 26 May 2011, relating to the premises Lot 1 DP 525502, SP 35133, No. 4 Second Avenue, Tweed Heads, stating that it reaffirms its previous resolved position of 15 February 2011, on the grounds that it is satisfied with the veracity and rationale of previously received legal advice that taking action against the Owners Corporation of the subject premises is not warranted, and that taking legal action on this matter is likely to incur significant costs to Council, both financially and in terms of staff resources.**

REPORT:

BACKGROUND:

Council previously considered reports regarding this issue on 17 August, 16 November 2010, and 15 February 2011. At the Council meeting of 15 February 2011 the following was resolved:

“That:

The Owners Corporation for Strata Plan 35133 be advised in writing that Council is taking no further action in this matter and that the vehicles being parked on the driveway that is part of the common property not designated as visitor spaces either on the plans subject of the development consent or building approval is a private matter that can and should be dealt with by the Owner’s Corporation for the Strata Plan.”

Complaint received by the Office of NSW Ombudsman

By letter dated 26 May 2011, Council received a letter from the Office of NSW Ombudsman (ONO) stating that a complaint had been received in respect of this matter, alleging that Council had failed to act on a complaint made by a unit owner of the subject premises. A copy of this letter is provided as a confidential attachment to this report, as it makes direct reference to a legal opinion received from Council’s solicitors.

In reviewing this complaint, the ONO has made the following suggestion under section 31AC of the Ombudsman Act 1974:

“That Council take legal action against the body corporate for non-compliance with development consent 88/21.”

The ONO has further requested a response to this suggestion, and if no action is to be taken, the reasons for this decision.

Section 31AC of the Act states:

“31AC Ombudsman may furnish information to public authority

- (1) *The Ombudsman may, at any time:*
 - (a) *furnish to a public authority information obtained by the Ombudsman in discharging functions under this Act with respect to a complaint against or relating to the public authority, and*
 - (b) *make such comments to the authority with respect to the complaint as he or she thinks fit.*
- (2) *The Ombudsman may also furnish any or all of the information referred to in subsection (1) to any other public authority, and may make such*

comments (if any) to that public authority as the Ombudsman considers appropriate, if:

- (a) the Ombudsman is satisfied that the information concerned is relevant to the functions, policies, procedures or practices of that other public authority, and
- (b) the information does not disclose any personal information (within the meaning of the Privacy and Personal Information Protection Act 1998 or the Health Records and Information Privacy Act 2002).

Under this section the ONO has the ability to make comment or suggested actions to Council, but Council is under no obligation to act on this advice.

In considering the advice of the ONO, it is recommended that Council write to the ONO stating that it re-affirms its previous resolved position from the February 2011 Council Meeting, on the grounds that it is satisfied with the veracity and rationale of previously received legal advice that taking action against the Owners Corporation of the subject premises is not warranted, and that taking legal action on this matter is likely to incur significant costs to Council, both financially and in terms of staff resources.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Legal advice from Council's solicitors was reported on this matter to the 15 February 2011 Meeting. The advice clearly gave the opinion that given the history of approvals relating to the development on the subject premises, and the subsequent actions of individual unit owners on this site, there was insufficient grounds to necessitate Council initiating legal action on the car parking matter, and that any inconsistencies with the original car parking layout would be more appropriately dealt with through the Owners Corporation. It is also acknowledged that a legal action of this nature would likely to be a major resource burden upon Council.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. **Confidential Attachment** letter from the Office of the NSW Ombudsman Office 26 May 2011 (ECM 34273682)
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