



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

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

Agenda

Planning and Regulation Reports

Ordinary Council Meeting

Tuesday 26 June 2012

held at Murwillumbah Cultural and Civic Centre
commencing at 10.30am

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

Items for Consideration of Council:

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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

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

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

SUBMITTED BY: Director



Civic Leadership

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 2012 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

DA No.	DA11/0607
Description of Development:	Dwelling house
Property Address:	Lot 1 DP 1059093 No. 1 Gray Street, Tweed Heads West
Date Granted:	17/5/2012
Development Standard to be Varied:	Clause 32(4) - Aircraft Noise
Zoning:	2(a) Low Density Residential
Justification:	<p>This report relates to Clause 32(4) of LEP which states that the consent authority must not grant consent to the erection of a dwelling house within the 25 or higher ANEF contour unless it imposes a condition on that consent that the building is to meet the building construction requirements of Australian Standard AS2021-1994 (Acoustics-Aircraft noise intrusion-Building siting and construction).</p> <p>If Council accepts the construction component recommendations as contained within the Aircraft Noise Report it will not be in a position to impose a condition on any consent issued for the construction of the dwelling in accordance with the requirements of Clause 32 (4) of the LEP.</p>
Extent:	100%
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

No-Legal advice has not been received.
Attachment of Legal Advice-Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
- 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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9 [PR-CM] Development Application DA12/0164 for a 2 Storey Dwelling and Swimming Pool at Lot 56 DP 1027531 No. 9 Harper Court, Casuarina

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA12/0164 Pt1



Civic Leadership

SUMMARY OF REPORT:

The proposal is to construct a new two storey dwelling and in-ground swimming pool on the subject property.

The applicant has lodged a State Environmental Planning Policy No. 1 (SEPP No. 1) variation as the proposed development will result in overshadowing of the public foreshore.

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all SEPP No. 1 variations greater than 10% to be determined by full Council. Given that the Department of Planning and Infrastructure has advised Council Officers to be conservative with the application of the 10% rule and the difficulties in calculating 10% of the shadow development standard (as it is time based), it has been decided to report this application to Council.

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

RECOMMENDATION:

That:

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan 1988 regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- 2. Development Application DA12/0164 for a 2 storey dwelling and swimming pool at Lot 56 DP 1027531 No. 9 Harper Court, Casuarina 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. 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]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. 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 withstand loading from vehicles during construction and operation of the development.
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

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. 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 Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 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 Local Government Act will then NOT be required.

[PCC1145]

PRIOR TO COMMENCEMENT OF WORK

7. 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]

- 8. 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]

- 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 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]

- 11. 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. These measures are to be in accordance with any erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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]

12. 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]

DURING CONSTRUCTION

13. Zone Boundary

- (a) No construction work other than 1.2m high fencing is to be carried out in the 7(f) zone.
- (b) The 7(f) and 2(e) zone boundary is to be clearly identified on site by Registered Surveyor marks prior to start of work.
- (b) No overflow from an infiltration pit shall be discharged over the eastern boundary.

[DUR1035]

14. All landscaping is to comply with the 88B Instrument pertaining to the site.

[DUR1055]

15. 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]

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

[DUR2085]

17. Sewer connections within the 7(f) zone are to comply with the following:

- (a) Two inspection shafts shall be provided to each lot. The first shall be provided immediately adjacent to the connection point provided by the developer. The second inspection shaft at 0.5 metres inside the 2(e) zone boundary on each property. Inspection shafts are to be finished at surface level with a standard bolted trap screw cap and concrete surround.
- (b) Pipe work size for all lots under this approval are to have a 100mm diameter sewer.

[DUR2695]

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

[DUR2705]

19. 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]

20. 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]

21. 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]

22. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

23. 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]

24. 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]

25. 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]

26. 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]

27. 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]

28. 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]

29. 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]

30. 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]

- 31. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.**

[DUR1945]

- 32. 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]

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

[DUR0445]

- 34. 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]

- 35. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 36. Prior to the issue of an occupation certificate for the use of the swimming pool, the owner is to contact the local Rural Fire Services to arrange and install a static water supply identification plate.**

[POC0315]

- 37. 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]

38. 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]

39. 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]

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

[POC0435]

USE

41. 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]

42. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

43. 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]

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

[USE0505]

45. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

REPORT:

Applicant: Sea Breeze Trading Pty Ltd
Owner: Jokke Pty Ltd
Location: Lot 56 DP 1027531 No. 9 Harper Court, Casuarina
Zoning: 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)
Cost: \$660,000

BACKGROUND:

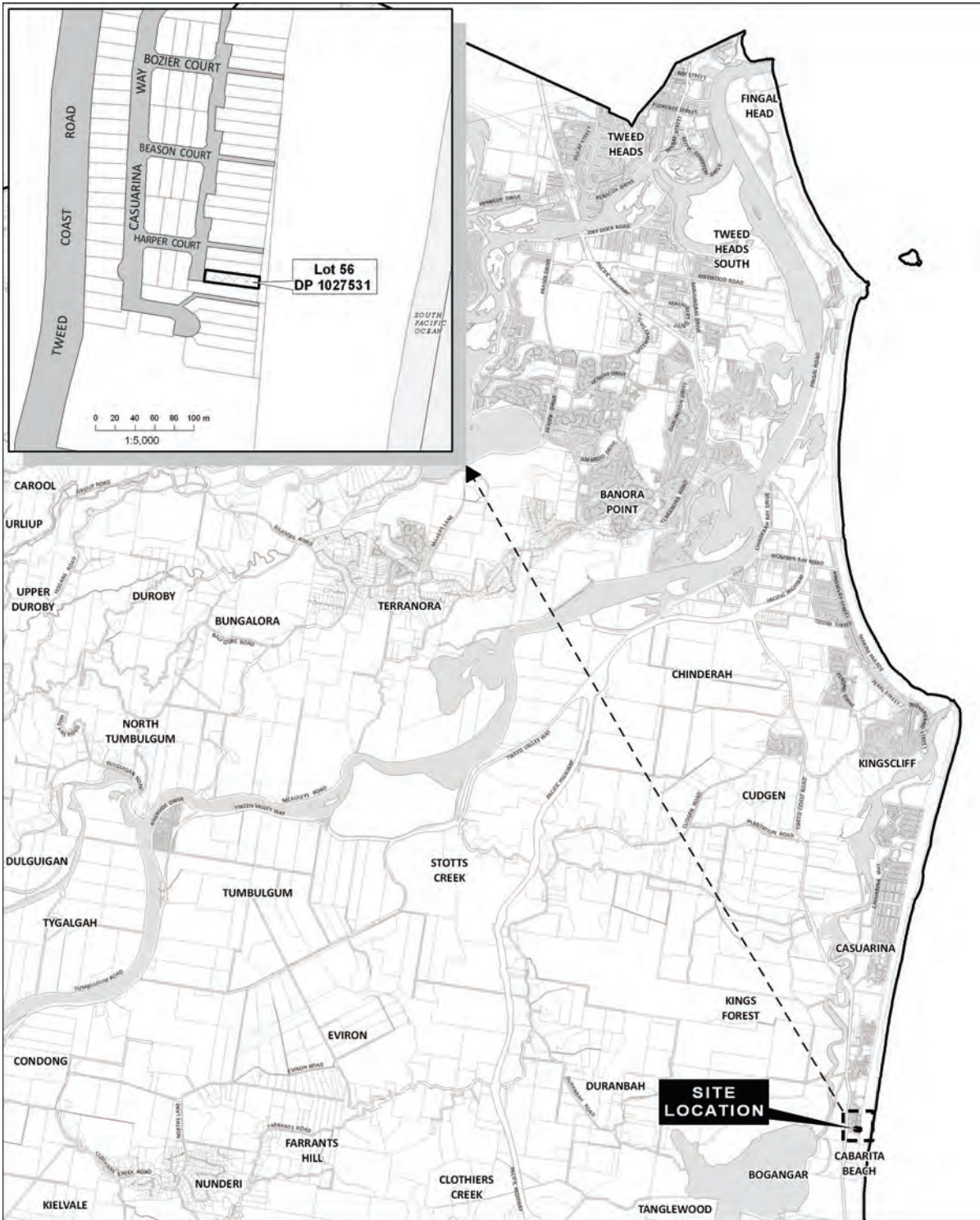
An application has been received to construct a two (2) storey dwelling with an in-ground swimming pool and fencing at the subject property. The property is situated on the eastern side of Harper Court, Casuarina and backs onto the coastal foreshore of Casuarina Beach.

The property is zoned 2(e) Residential Tourism under Tweed Local Environmental Plan 2000 (TLEP 2000) and is located on the eastern side of Harper Court, Casuarina.

A SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 (NCREP 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 application was not required to be notified to adjoining property owners and subsequently no submissions have been received in relation to the proposal.

SITE DIAGRAM:



Locality Plan
 Lot 56 DP 1027531
 No. 9 Harper Court, Casuarina

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 10 days only from the date of supply.</small></p>	<p><small>Cadastré: 06 June, 2012 © Land and Property Management Authority (LPMA) © Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p>0 1 2 Km 1:75,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p><small>Map Projection: Universal Transverse Mercator Horizontal Datum: Geodetic Datum of Australia 1984 GDA Map of Australia, Zone 56</small></p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	 <p>TWEED SHIRE COUNCIL</p>
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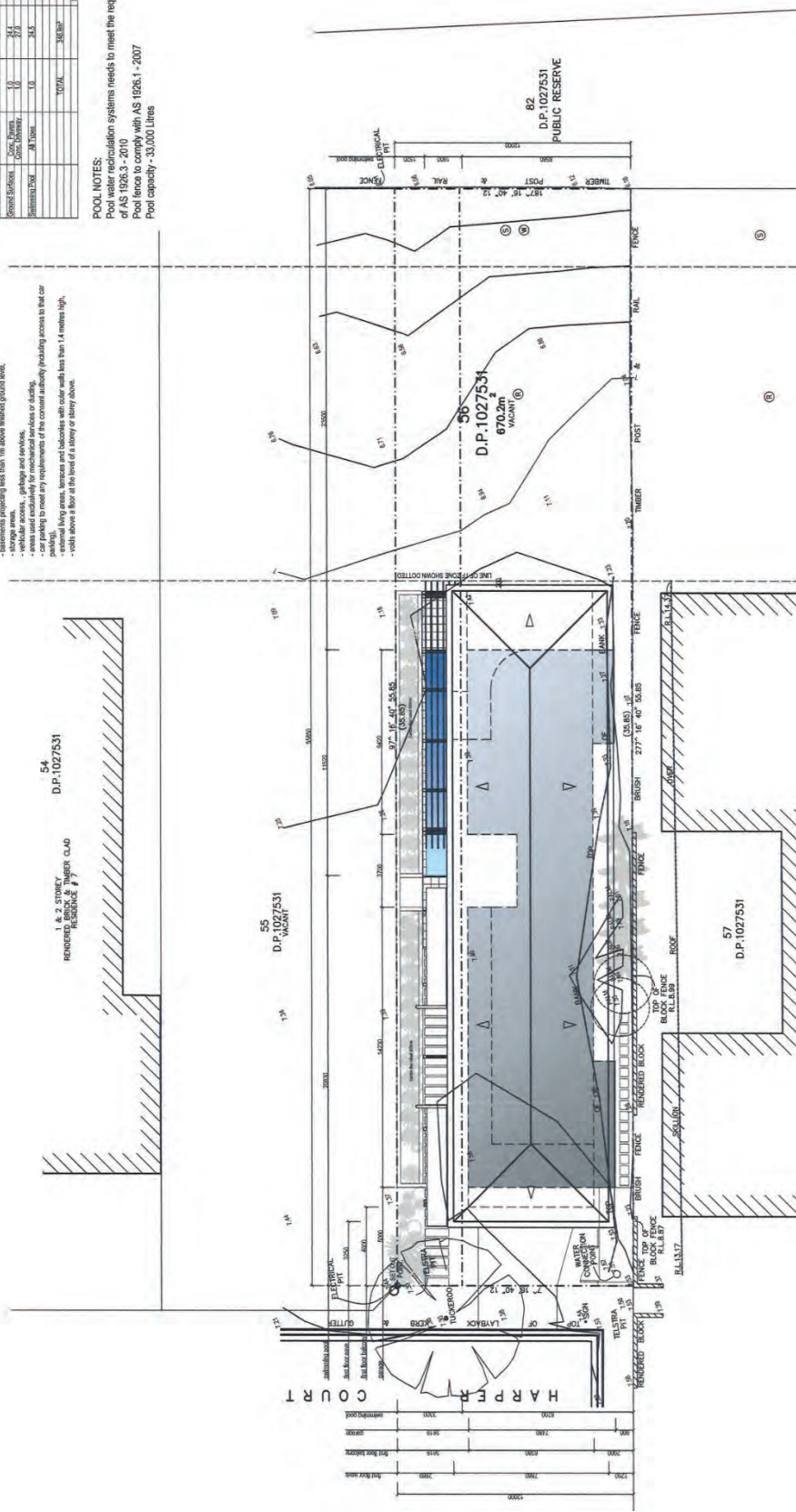
Area Summary:
 Floor Space Ratio (FSR): 4.7m²
 Total Habitable Ground Floor Area: 118.9m²
 Total Habitable First Floor Area: 101m²
 Total Habitable Area: 219.9m²
 Site Area: 670.2m²
 FSR: 219.9/670.2 = 0.327

TOTAL: 355m²

Category	Area (m ²)	Total (m ²)
Garage	17	17
GF Decks	17	17
GF Internal	101	118
Decks	10	10
FF Internal	101	101
TOTAL	355	355

POOL NOTES:
 Pool water recirculation systems needs to meet the requirements of AS 1926.3 - 2010
 Pool fence to comply with AS 1926.1 - 2007
 Pool capacity - 33,000 Litres

- FSR Calculation rules**
- the area of a mezzanine within the story;
 - any shop, auditorium, cinema, and the like, in a basement or attic, but excluding any area which is not above finished ground level;
 - storage areas, garages and service;
 - vehicular access, ramps and service;
 - car parking (including requirements of the council authority (including access to that car parking));
 - external living areas, terraces and balconies with outer walls less than 1.4 metres high;
 - vaulted above floor of the level of a story or entry space.



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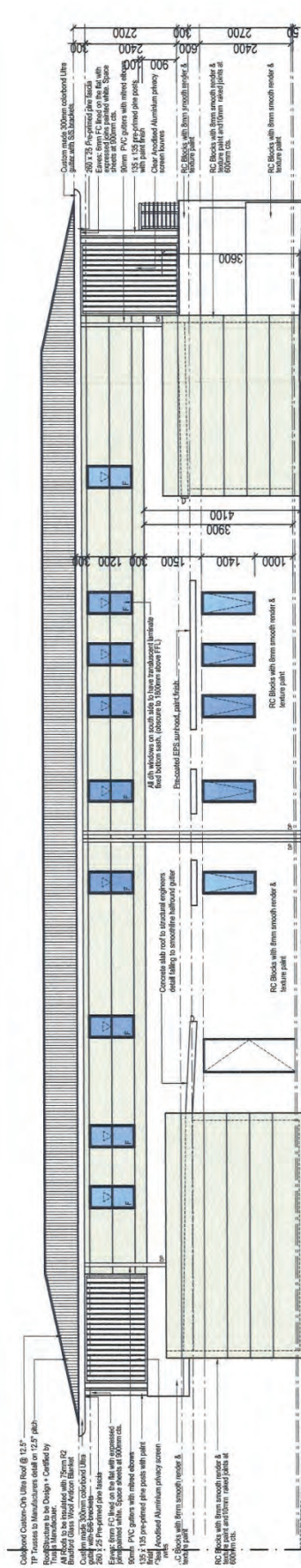
Harper Court Residence
 570 Casuarina Way, Casuarina Beach, NSW, 2487
 DATE: NOVEMBER 2011
 SCALE: 1:100(A3), 1:50(A1)
 DRAWING NO: DA01

NOTES:
 OWNER'S COLLECTION DRAWINGS
 Make any amendments to the drawings prior to commencement of work.
 Verify all dimensions on the plans to commencement of work.
 Verify all dimensions and materials on site to commencement of work.
 Verify all dimensions and materials on site to commencement of work.

ISSUE	DATE	DESCRIPTION
A	02/11/11	Initial Floor Plan
B	09/11/11	Structural Design
C	17/11/11	Approved Schematic Design
D	17/11/11	Approved Schematic Design
E	15/12/11	Development Application
F	28/03/12	Development Application
G	28/03/12	Development Application
H	02/04/12	Development Application



North Elevation



South Elevation

NOTES:

DO NOT SCALE OFF DIMENSIONS

Work shall be in accordance with the Australian Standards, L.A. 1000 of slab & reinforcement treatment in accordance with AS3600 and manufacturers specifications.

All hardware to be Spigot One

ISSUE	DATE	DISTRIBUTION
B	03/11/11	Approved Master Plan
C	11/11/11	Approved Structural Design
D	11/11/11	Approved Site Plan
E	02/01/12	Prism Estimating Drawn
F	02/01/12	Prism Estimating Drawn
G	20/03/12	Development Application
H	02/04/12	Development Application

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Harper Court Residence
LOT 564, HARBORCOURT, CASUARINA BEACH, NSW
North & South Elevations

DATE: NOVEMBER 2011
JOB NO: 1113
SCALE: 1:100 (S), 1:250 (N)

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 subject site is zoned 2(e) Residential Tourism. The primary objective of the zone is to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development.

The secondary objective is to permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the objectives of this clause.

Clause 8 - Zone objectives

The proposed development is consistent with the zone objectives.

Clause 15 - Essential Services

All the necessary essential services have been provided to the site as part of the original subdivision.

Clause 16 - Height of Building

The proposed overall height of 6.8m is less than the 9m permissible under Section A1 of Tweed Development Control Plan (Tweed DCP) and complies with the two storey requirement as detailed in Clause 53B of the Tweed LEP 2000.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the minor nature of the proposal, as the development is a single dwelling in residential area.

Clause 35 - Acid Sulfate Soils

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2m below surface level. The depth of the excavation for the dwelling and proposed in ground swimming pool is not anticipated to disturb acid soils in the area.

Other Specific Clauses

Clause 36 - Coastal Erosion Hazard Outside Zone 7(f)

The proposal is consistent with the considerations of this clause. The proposed development will not affect the beach or dune system and landscape or scenic quality of the locality, other than in relation to shadowing which is discussed in detail later in this report.

Council's mapping records indicate the subject site is not affected by the 100 year hazard line.

Clause 39A – Bushfire Protection

Council's records indicate the site is bushfire prone land and therefore the application will be conditioned accordingly to comply with the requirements of AS3959- Construction of Buildings in Bushfire Areas.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede the public's access to, and enjoyment of the foreshore zone.

The applicant's submission and shadow plans demonstrate that the carrying out of the development will result in the waterfront open space to the east of the site being overshadowed before 7.00pm midsummer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is consistent with the Coastline Management Manual.

SEPP No. 1 - Development Standards

An objection has been lodged under SEPP No. 1 to vary the development standard provided by clause 32B (4) of the NCREP 1988, which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 7pm mid summer. The shadow diagrams submitted show that the building will only overshadow the coastal reserve to the east at 7pm mid summer.

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(f) Environmental Protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP No. 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary:

- *The area of which will be over shadowed at 7.00pm midsummer is an area that is not useable passive open space.*
- *The existing trees on the foreshore reserve result in significant overshadowing of the reserve and the beach prior to 7.00pm midsummer and 3.00pm mid winter.*
- *The overshadowed area is not useable passive area and does not contain any public amenities or facilities and therefore is not affecting, restricting or alienating the use of a public area.*
- *The shadows do not extend to the beach area during winter.*

It should be noted that Council has previously considered and approved many other similar SEPP No. 1 variation applications for dwellings of a similar bulk and scale, along the Tweed Coast, particularly in the Casuarina subdivisions which have had minor overshadowing encroachments into the coastal foreshore. In relation to this specific proposal, the area of public foreshore land shaded by the dwelling at 7pm mid summer could be up to approximately 350m².

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a bicycle/pedestrian pathway, a grassed area and coastal dune vegetation. The shadow will not impact on any areas used by the public for formal recreational activities.

It should also be noted that the neighbouring southern side dwelling is substantially larger than the proposed dwelling and any shadow cast into the foreshore by the proposed dwelling will be generally overshadowed by the existing southern side dwelling, effectively reducing the shadow impact on the foreshore by the proposed dwelling.

Further to the above shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration. The beach is also over 120m from the rear of the property and therefore in this instance it is recommended that Council support this variation request as the shadow cast by the dwelling will have a minimal impact of the shadowing on this area.

SEPP No 71 – Coastal Protection

The development is consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a BASIX certificate for the proposal and this certificate is consistent with the energy efficiency target.

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

The development is consistent with the objectives of Councils Draft LEP.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools

Public Domain Amenity

Streetscape

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

The dwelling will be clearly visible from Harper Court and setback 4m from the front property boundary, which is consistent with the existing dwellings within the street and the permitted setback outlined in section B5-Casuarina Beach of Council Development Control Plan.

Public Views and Vistas

The proposal will not result in an unreasonable view loss of the beach and foreshore given the sympathetic overall height of the proposal. The proposed dwelling provides for view corridors for dwellings located on the western side of Harper Court between the dwelling and the side boundary setbacks.

Site Configuration

Impermeable Site Area

The area of the site is 669m², and therefore the maximum impermeable site area permitted at the completion of the development must be not greater than be 65%. The development will create an impermeable area of approximately 52% of the site and will comply with the design control.

External Living Areas

The dwelling makes provision for external living areas in the form of a patio and balconies adjacent to the pool area facing east at the rear property boundary which provide adequate solar access to the dwelling and private open space.

Landscaping

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the side boundaries and shrubs within the front and rear setbacks.

The proposal is consistent with this design control.

Topography, Cut and Fill

The site is relatively flat with a slight slope to the rear of the property. Minimal cut and fill is proposed for the development, which complies with the design controls for Cut and Fill.

Setbacks

The proposal will have a front setback of 4m and a 1.5m setback to the northern side boundary and a 0.9m setback from the southern side boundary, which is consistent with the design requirements outlined in section B5-Casuarina Beach of Councils Development Control Plan.

Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the Development Control Plan. Two off street car parking spaces are proposed behind Council's building and vehicle access to these spaces is considered adequate.

Building Amenity

Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of balconies and patio areas orientated north adjacent to the pool area and eastern rear boundary. The bulk and scale of the dwelling is in keeping with character of dwellings already approved in the area. As a result shadow impacts cast on neighbouring properties are consistent with what could have been reasonably anticipated by the construction of a dwelling on the subject property.

Visual Privacy

Overlooking into adjoining properties has been minimised with the provision of suitable screening, strategic window positioning along both sides of the dwelling and the use of obscure glass to assist in providing privacy between properties. Existing palm trees along the southern side boundary provide additional screening for the existing pool on the neighbouring property.

Acoustic Privacy

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating that the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

Natural Ventilation

The design of the dwelling provides for adequate natural cross flow ventilation by the use of a large breeze path that is orientated in an east – west direction.

Building Orientation

The dwelling has been sited on the property to optimise solar access and coastal views as well as providing an acceptable street presentation.

External Building Elements

Fences and Walls; Front, Side and Rear

There is no front fence proposed for the development other than a 1.7m wide and 1.6m high masonry wall providing screening to the bin storage area located in the front southern corner of the property.

The southern side boundary fence is an existing 1.8m high rendered concrete block and brush wood fence. On the northern side boundary a 1.8m rendered concrete block fence is proposed, incorporating a 1m wide planter box at its base.

The fencing proposed appears consistent with the design theme of the dwelling and generally consistent with the design controls outlined in Section A1 of Council's Development Controls Plan.

Roof

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

Building Performance

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

Swimming Pools

The proposed swimming pool is set back behind Council's Building line and 1.5m from the northern side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.65:1. The proposed dwelling is consistent with this design control having an FSR of approximately 0.32:1.

B5-Casuarina Beach

The development is consistent with the design and setback requirements outlined in above control with the open first floor deck being set back 4m from the front property boundary and garage door being sited 5m from the front property boundary. A stamped copy of Architectural plans from the Casuarina Architectural Review Committee has also been submitted to Council with the Development Application.

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

Clause 92(a) Government Coastal Policy

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

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

Context and Setting

The property is in a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed building of high quality and will be in keeping with the architectural style and residential character of the area.

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged and the site was cleared during the creation of the subdivision.

(c) Suitability of the site for the development

Surrounding Landuses/Development

It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site.

The design of the dwelling is in keeping with the residential character of the area

Site Orientation

The building has been centrally located on the property and has been orientated to take advantage of the ocean views to the east. The living areas of the dwelling have been centrally positioned within the dwelling to minimise potential overlooking onto adjacent properties.

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

The property was not required to be notified and subsequently no submissions have been received to the proposal.

(e) Public interest

The development will not prejudice the public interest.

OPTIONS:

1. Council assumes the Director-General's concurrence and approves the development application; or
2. Council does not assume the Director-General's concurrence and refuses the development application.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments with what is considered to be an acceptable variation of Clause 32B of the North Coast Regional Environmental Plan 1988, and is generally consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to the locality.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Finance Plan:

Not Applicable.

c. Legal:

Should the applicant be dissatisfied with the determination they will have the right to appeal the decision to the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.4 Assessment of new developments and building works (Building & Environmental Health unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

10 [PR-CM] Development Application DA12/0160 for a Two Storey Dwelling and Swimming Pool at Lot 14 DP 1066506 No. 26 North Point Avenue, Kingscliff

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA12/0160 Pt1



Civic Leadership

SUMMARY OF REPORT:

The proposal is to construct a new two storey dwelling and in-ground swimming pool on the subject property.

The applicant has lodged a State Environmental Planning Policy No. 1 (SEPP 1) variation as the proposed development will result in overshadowing of the public foreshore.

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 variations greater than 10% to be determined by full Council. Given that the Department of Planning has advised Council Officers to be conservative with the application of the 10% rule, the difficulties of calculating 10% of the shadow development standard (as it is time based), it has been decided to report this application to Council.

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

RECOMMENDATION:

That:

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan 1988 regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- 2. Development Application DA12/0160 for a two storey dwelling and swimming pool at Lot 14 DP 1066506 No. 26 North Point Avenue, Kingscliff 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. A Construction Certificate approval is to be obtained for all proposed pre-cast concrete panel fencing of any height and masonry fencing in excess of 1.2 metres in height, prior to any construction of the fence being commenced.

Site specific design details or approved generic details prepared by a practicing structural engineer are required to be submitted and approved as part of the Construction Certificate application.

Such structural engineers design details are to confirm that the fence proposal has been designed to take account of all site issues including the site's soil and load bearing characteristics, wind and other applied loadings, long term durability of all components particularly in relation to corrosion and compliance with Tweed Shire Council's policies for "Sewers - Building in Proximity" and provision of appropriate pedestrian sight clearances to footpaths in accordance with Australian Standard AS2890 "Parking Facilities".

[GEN0145]

4. 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]]

5. All fencing is to be non-combustible in accordance with the requirement of the 88b instrument for the property and the NSW Rural Fire Service document planning for bushfire protection 2006.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

7. 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) Surchage 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]

8. 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

9. 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]

10. 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]

11. 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]

12. 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]

13. 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]

14. 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. These measures are to be in accordance with any erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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

- 15. 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]

- 16. 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]

- 17. 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]

- 18. 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]

- 19. 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]

- 20. 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]

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

[DUR0445]

- 22. Construction of the dwelling shall comply with Bushfire Attack Level BAL 12.5 in accordance with Australian Standard 3959-2009 Construction of Buildings in Bushfire-prone Areas.**

[DUR0595]

- 23. 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]

- 24. 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]

- 25. 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]

- 26. 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]

- 27. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.**

[DUR1945]

- 28. 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]

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

[DUR2085]

30. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

31. 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]

32. 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]

33. 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]

34. 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]

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

[DUR2705]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

36. 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]

37. 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]

38. 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]

39. 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

40. 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]

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

[USE0505]

42. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

43. 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]

- 44. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

- 45. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USE1510]

REPORT:

Applicant: Paul Uhlmann Architects
Owner: Mr Paul J Beck
Location: Lot 14 DP 1066506 No. 26 North Point Avenue, Kingscliff
Zoning: 2(f) Tourism
Cost: \$900,000

BACKGROUND:

An application has been received to construct a two (2) storey dwelling with an in-ground swimming pool and fencing at the subject property. The property is zoned 2(f) Tourism under Tweed Local Environmental Plan 2000 (TLEP 2000) and situated on the eastern side of North Point Avenue, Kingscliff and backs onto the coastal foreshore of South Kingscliff Beach.

Under SEPP 1 a variation is sought to the North Coast Regional Environmental Plan 1988 (NCREP 1988) relating to overshadowing of waterfront open space. In this instance the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.

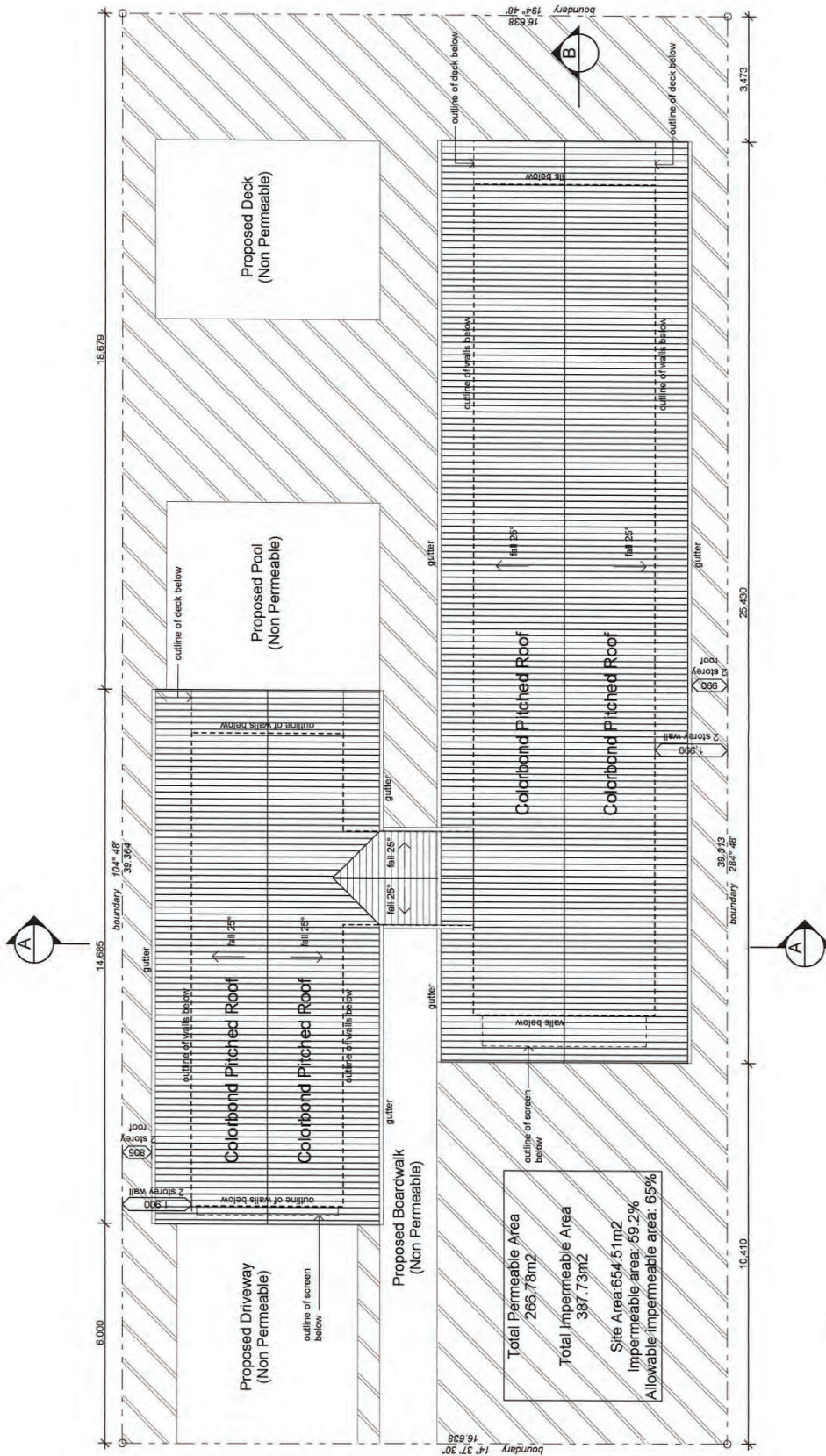
The application was not required to be notified to adjoining property owners and subsequently no submissions have been received in relation to the proposal.

SITE DIAGRAM:



Locality Plan
 Lot 14 DP 1066506
 No. 26 North Point Avenue, Kingscliff

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p> <input type="checkbox"/> Cadastre: 30 May, 2012 <input type="checkbox"/> Land and Property Management Authority (LPMA) <input type="checkbox"/> © Tweed Shire Council Boundaries shown should be considered approximate only. </p>		<p> Civic and Cultural Centre 3 Tumbulgum Road Murumbidgee NSW 2484 PO Box 816 Murumbidgee NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au </p>	
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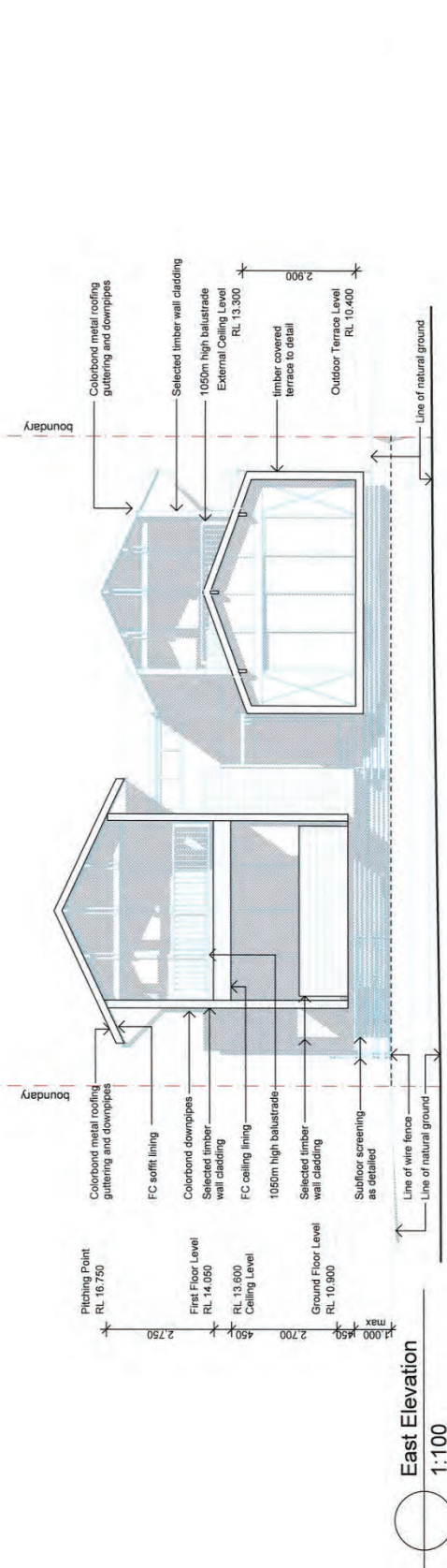
Roof Plan
1:100



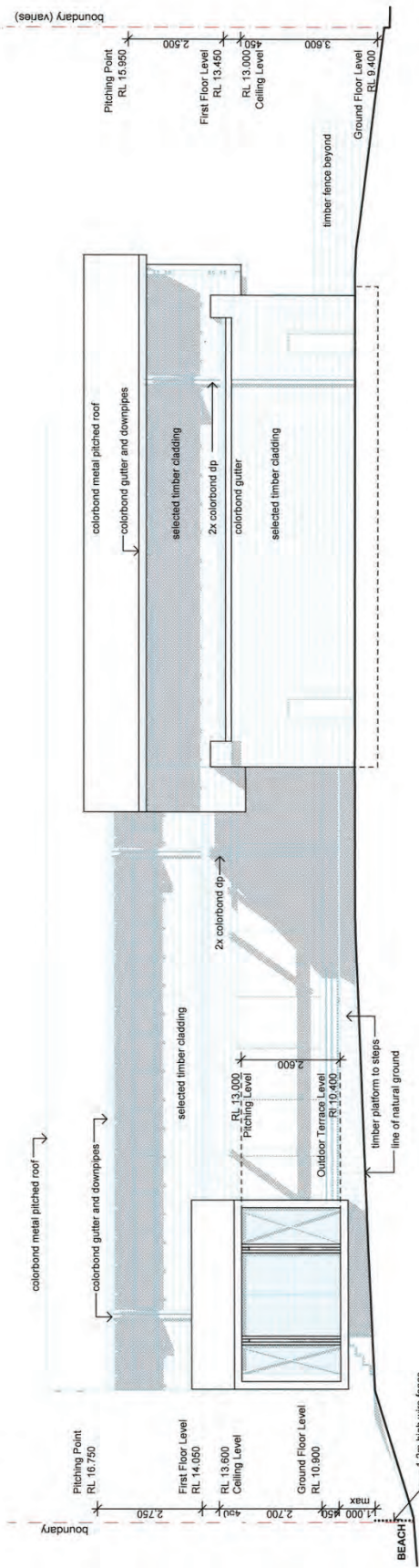
PRELIMINARY
NOT FOR CONSTRUCTION

DATE	27.05.12	Gen Tech Issue	16/116 Grims at conspicua	CLIENT	Paul Beck and Rebecca Hogan	DRAWING	Roof Plan
	27.05.12	Eng Issue			PROJECT		2 storey residence @ Lot 14 DP1066506
	12.04.12	DA Issue	approved 425	26 North Point Ave NSW	DATE	02.02.12	DRAWN
			ph +61 7 5338 3911		SCALE	1:100	CHK
			fx +61 7 5338 3944				
This document is subject to copyright. Verify all dimensions on site and do not scale from drawings. Refer any discrepancies to the architect.							





East Elevation
1:100

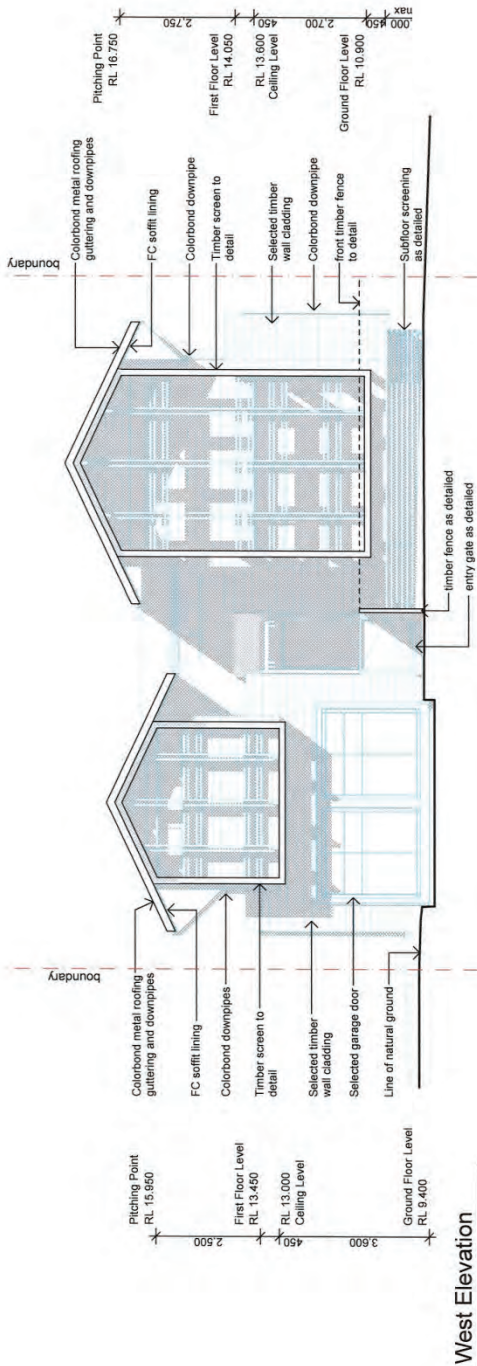


North Elevation
1:100

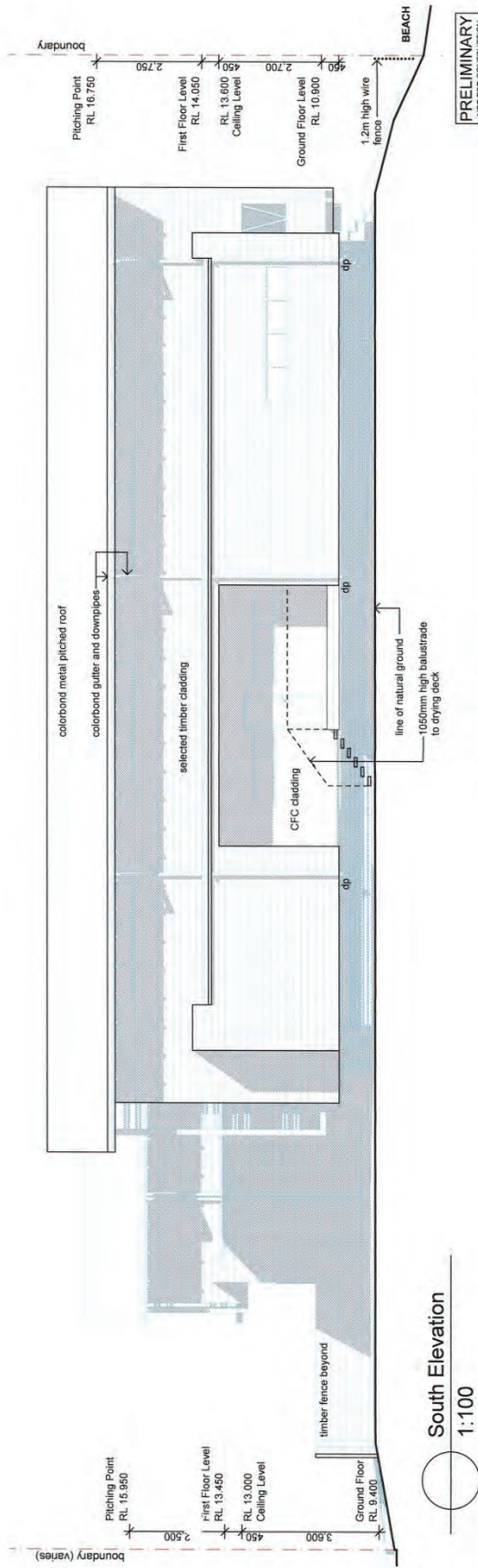
PRELIMINARY
NOT FOR CONSTRUCTION

DATE	REV	DESCRIPTION	CLIENT	DRAWING	PROJECT NO.	DRAWING NO.	SCALE	DRAWN	CC
27.03.12	A	Site plan issue	Paul Beck and Rebecca Hogan	19/119 griffin st po box 1307 cooragalla south australia 5225 ph: 447 7304 5225 fx: 4617 5338 3344 info@pau.com.au www.pau.com.au	2012	12.102	1:100	CC	CC
28.03.12	B	CF issue							
27.04.12	C	CF issue							
27.04.12	D	CF issue							

2 storey residence @ Lot 14, DP1 106606
20 North Point Ave NSW
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West Elevation
1:100



South Elevation
1:100

PRELIMINARY
NOT FOR CONSTRUCTION

DATE: 27.05.12	REV: A	CLIENT: Paul Beck and Rebecca Hogan	DRAWING NO: 12_102	PROJECT NO: 12_102	PROJECT: 2 storey residence @ Lot 14 DP 1066506	CLIENT: Paul Beck and Rebecca Hogan	DRAWING NO: 12_102	PROJECT NO: 12_102	PROJECT: 2 storey residence @ Lot 14 DP 1066506
27.05.12	B	19 116 Griffin Rd Cooberate SA 5225	12.02.12	12.02.12	26 North Point and NSW	19 116 Griffin Rd Cooberate SA 5225	12.02.12	12.02.12	26 North Point and NSW
28.05.12	C	www.paulhimm.com.au ph +61 7 8508 3911 fx +61 7 8506 3944	1:100	1:100	This document is subject to copyright. Verify all dimensions on site and do not scale from drawings. Refer any discrepancies to the architect.	www.paulhimm.com.au ph +61 7 8508 3911 fx +61 7 8506 3944	1:100	1:100	This document is subject to copyright. Verify all dimensions on site and do not scale from drawings. Refer any discrepancies to the architect.
28.05.12	D		SCALE	SCALE			SCALE	SCALE	
28.05.12			CC	CC			CC	CC	



PRELIMINARY
NOT FOR CONSTRUCTION

DATE 12/04/12	REV A	18/11/9 giffin st po box 1387 cooragang south coast nsw 2520 ph +61 7 8535 3815 fx +61 7 8535 3944	CLIENT Paul Beck and Rebecca Hogan	DRAWING 12.102	Shadow Diagram 21 January 12pm & 3pm
			PROJECT 2 storey residence @ Lot 14 DP-1066506 25 North Point Ave NSW	PROJECT NO. 02.02.12	DRAWING NO. WD.10.02
				DATE 02.02.12	SCALE 1:300
					DRAWN CC
This document is subject to copyright. Verify all dimensions on site and do not scale from drawings. Refer any discrepancies to the architect.					
 <p>pauluhmann architects Pty Ltd www.pua.com.au info@pua.com.au</p>					

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The subject site is zoned 2(f) Tourism. The primary objective of the zone relates to the provision of integrated tourist development and uses associated with, ancillary to or supportive of the tourist development.

The secondary objectives relate to the provision of high quality residential development being integral and supportive of the primary intent of this zone.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the objectives of this clause.

Clause 8 - Zone objectives

The proposed development is consistent with the secondary objective of the zone.

Clause 15 - Essential Services

All the necessary essential services have been provided to the site as part of the original sub-division

Clause 16 - Height of Building

The proposed overall height of the 8.5m is less than the 9m permissible under Section A1 of the Tweed Development Control Plan (DCP) and complies with the two storey requirement as detailed in Clause 53B of the TLEP 2000.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the minor nature of the proposal, as the development is a single dwelling in residential area.

Clause 35 - Acid Sulfate Soils

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2m below surface level. As approximately 2m of fill was placed on the site at subdivision stage, the depth of acid soils would be approximately 4m below current surface level. It is not anticipated that the development will impact on the acid soils in the area.

Other Specific Clause

Clause 36 - Coastal Erosion Hazard Outside Zone 7(f)

The proposal is consistent with the considerations of this clause. The proposed development will not affect the beach or dune system and landscape or scenic quality of the locality, other than in relation to shadowing which is discussed in detail later in this report.

Council's mapping records indicate the subject site is not affected by the 100 year hazard line.

Clause 39A – Bushfire Protection

Council's records indicate the site is bushfire prone land and therefore the application will be conditioned accordingly to comply with the requirements of AS3959- Construction of Buildings in Bushfire Areas.

North Coast Regional Environmental Plan 1988

Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore and a concrete public access pathway is positioned on the southern side of the neighbouring site which provides access to the foreshore.

The applicant's submission and shadow plans demonstrate that the carrying out of the development will result in the waterfront open space to the east of the site being overshadowed before 3pm mid winter (standard time) and 6.30pm mid summer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP 1 variation section within this report.

Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is consistent with the Coastline Management Manual.

State Environmental Planning Policies (SEPP)

SEPP No. 1 - Development Standards

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the NCREP 1988, which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 6.30pm mid summer. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(f) Environmental Protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary:

- *The proposed dwelling is generally consistent with the size, scale and setbacks of adjacent buildings in the street and the shadows cast are similar to those of neighbouring sites.*

It should be noted that Council has previously considered and approved many other similar SEPP 1 variation applications for dwellings of a similar bulk and scale, along the Tweed Coast, particularly in the Salt subdivision which had minor overshadowing encroachments into the coastal foreshore. In relation to this specific area of public foreshore land shaded by the dwelling at 6.30pm mid summer could be up to approximately 210m².

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation. The shadow will not impact on any areas used by the public for formal recreational activities.

It should also be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration. The beach is also over 100m from the rear of the property and therefore in this instance it is considered that Council should support this variation request given the minimal impact of the shadowing on this area.

SEPP No 71 – Coastal Protection

The development is consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a BASIX certificate for the proposal and this certificate is consistent with the energy efficiency targets.

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

The development is consistent with the objectives of Council's Draft LEP

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools

Public Domain Amenity

Streetscape

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

The dwelling will be clearly visible from North Point Avenue and setback 6m from the front property boundary, which is consistent with the existing dwellings within the street.

Public Views and Vistas

The proposal will not result in an unreasonable view loss of the beach and foreshore given the sympathetic overall height of the proposal. The proposed dwelling provides for view corridors for dwellings located on the western side of North Point Avenue between the dwelling and the side boundary setbacks.

Impermeable Site Area

The area of the site is 654.51m² and therefore the maximum impermeable site area permitted at the completion of the development must be not greater than be 65%. The development will create an impermeable area of approximately 60% of the site and will comply with the design control.

External Living Areas

The dwelling makes provision for external living areas in the form of a patio and terrace areas adjacent to the pool providing adequate solar access to the dwelling and private open space.

Landscaping

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the side boundaries and shrubs within the front and rear setbacks.

The proposal is consistent with this design control.

Topography, Cut and Fill

The site is relatively flat with the rear portion of the site sloping 1m towards the coastal reserve land at the rear of the property. The development itself proposes no cutting or filling of the site.

Setbacks

The proposal will have a front setback of 6m and will have 1.5m and 0.9m setback to the northern side boundary and 0.9m from the southern side boundary.

The set back from the rear boundary is 3m which is consistent the prescribed set back requirement in the 88b instrument for the subdivision.

Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. Two off street car parking spaces are proposed behind Council's building line and vehicle access to these spaces is considered adequate.

Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated north adjacent to the pool area and eastern rear boundary.

Visual Privacy

Overlooking into adjoining properties has been minimised with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

Acoustic Privacy

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

Natural Ventilation

The design of the dwelling provides for adequate natural cross flow ventilation by the use of a large breeze path that is orientated in an east – west direction.

Building Orientation

The dwelling has been sited on the property to optimise solar access and coastal views as well as providing an acceptable street presentation

Fences and Walls; Front, Side and Rear

The proposal incorporates a 1.5m high timber slatted front fence, sited 2.5m from the front property boundary. The design proposed appear consistent with the design theme of the dwelling and consistent with the design controls outlined in Section A1 of Councils development Controls Plan.

The side fences are existing 1.8m high masonry structures.

Roof

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

Building Performance

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

Swimming Pools

The proposed swimming pool is set back behind Council's building line and 1.5m from the northern side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.65:1. The proposed dwelling is consistent with this design control having an FSR of approximately 0.44:1.

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

Clause 92(a) Government Coastal Policy

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

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

Context and Setting

The property is in a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed

building of high quality and will be in keeping with the architectural style and residential character of the area.

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged as the site has been cleared during the creation of the subdivision.

(c) Suitability of the site for the development

Surrounding Landuses/Development

It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site.

The design of the dwelling is in keeping with the residential character of the area

Site Orientation

The building has been centrally located on the property and has been orientated to take advantage of the ocean views to the east. The living areas of the dwelling have been centrally positioned within the dwelling to minimise potential overlooking onto adjacent properties.

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

The property was not required to be notified and subsequently no submissions have been received in relation to the proposal.

(e) Public interest

The development will not prejudice the public interest.

OPTIONS:

1. Council assumes the Director-General's concurrence and approves the development application; or
2. Council does not assume the Director General's concurrence and refuses the development application.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Clause 32B of the NCREP, and is generally

consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to the locality.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Finance Plan:

Not Applicable

c. Legal:

Should the applicant be dissatisfied with the determination they will have the right to appeal the decision to the Land and environment Court.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.4 Assessment of new developments and building works (Building & Environmental Health unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

11 [PR-CM] Development Application DA12/0125 for a Two Storey Dwelling and Inground Swimming Pool at Lot 46 DP 1027531 No. 7 Beason Court, Casuarina

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA12/0125 Pt1



Civic Leadership

SUMMARY OF REPORT:

An application has been received to construct a two storey dwelling and inground swimming pool on 7 Beason Court, Casuarina. The property is a beachfront lot and is affected by a number of constraints such as bushfire.

The applicant has lodged a State Environmental Planning Policy No. 1 (SEPP No. 1) variation as the proposed development will result in overshadowing of the public foreshore.

This development application is being reported to Council to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all SEPP No. 1 variations greater than 10% to be determined by full Council. Given that the Department of Planning and Infrastructure has advised Council Officers to be conservative with the application of the 10% rule and the difficulties in calculating 10% of the shadow development standard (as it is time based), it has been decided to report this application to Council.

The application was notified to adjoining property owners (2 letters) and one (1) submission was received. The objectors' main concerns with the proposal were the overlooking issues from the rooftop garden and that a portion of the dwelling was located within the 7(f) zone. The proposal was modified showing the proposed dwelling clear of the 7(f) zone and the application will be suitably conditioned prohibiting the use of the rooftop garden area as an external living area.

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

RECOMMENDATION:

That:

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan 1988 regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**

2. **Development Application DA12/0125 for a two storey dwelling and in-ground swimming pool at Lot 46 DP 1027531 No. 7 Beason Court, Casuarina 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. **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]]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. 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]

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. 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 Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 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 Local Government Act will then NOT be required.

[PCC1145]

PRIOR TO COMMENCEMENT OF WORK

7. 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]

8. 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]

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 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]

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

[PCW1005]

12. 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. These measures are to be in accordance with any erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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]

13. Residential building work:

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

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

- in the name and licence number of the principal contractor, and
- the name of the insurer by which the work is insured under Part 6 of that Act,

(i) in the case of work to be done by an owner-builder:

- the name of the owner-builder, and
- if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

(b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to

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

[PCW0235]

DURING CONSTRUCTION

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

[DUR0005]

15. **Zone Boundary**

- (a) No construction work other than 1.2m high fencing is to be carried out in the 7(f) zone.
- (b) The 7(f) and 2(e) zone boundary is to be clearly identified on site by Registered Surveyor marks prior to start of work.
- (c) No overflow from an infiltration pit shall be discharged over the eastern boundary.

[DUR1035]

16. All landscaping is to comply with the 88B Instrument pertaining to the site.

[DUR1055]

17. 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]

18. Construction of the dwelling shall comply with Bushfire Attack Level (BAL) 19 in accordance with Australian Standard 3959-1999 Construction of Buildings in Bushfire-prone Areas.

[DUR0595]

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

[DUR2705]

20. 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]

21. 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]

22. 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]

23. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

24. 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]

25. 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]

26. 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]

27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

32. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

33. 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]

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

[DUR0445]

35. 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]

36. 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]

37. 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]

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

[DUR2085]

39. The swimming pool pump shall be located and installed so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DUR2835]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

40. 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]

41. 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]

42. 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]

43. 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]

44. Upon completion of the pool the builder is to submit to the Principal Certifying Authority a certificate stating that the "Water Recirculation System" has been installed in accordance with AS 1926.3-2010.

[POC0905]

USE

45. 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]

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

[USE0505]

47. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

48. 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]

49. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

50. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USE1510]

51. The planted roof above the proposed garage is not to be used as an external living area

[USENS01]

REPORT:

Applicant: Drew Heath Architects
Owner: Mr Steven L Snow
Location: Lot 46 DP 1027531 No. 7 Beason Court, Casuarina
Zoning: 2(e) Residential Tourist & 7(f) Environmental Protection (Coastal Lands)
Cost: \$450,000

BACKGROUND:

The property is zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands) under Tweed Local Environmental Plan 2000 (TLEP 2000) and is located on the eastern side of Beason Court, Casuarina. The property is currently vacant and is bounded by residential land to the north, a beach access path to the south and to the east a coastal reserve (waterfront open space).

An application has been received to construct a new two (2) storey dwelling and inground swimming pool on the subject property.

A SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 (NCREP 1988) relating to overshadowing of waterfront open space, as the proposed two (2) storey dwelling will cast a shadow on the adjacent waterfront open space.

SITE DIAGRAM:



Locality Plan

Lot 46 DP 1027531
No. 7 Beason Court, Casuarina

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Cadastre: 02 May, 2012
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Boundaries shown should be considered approximate only.

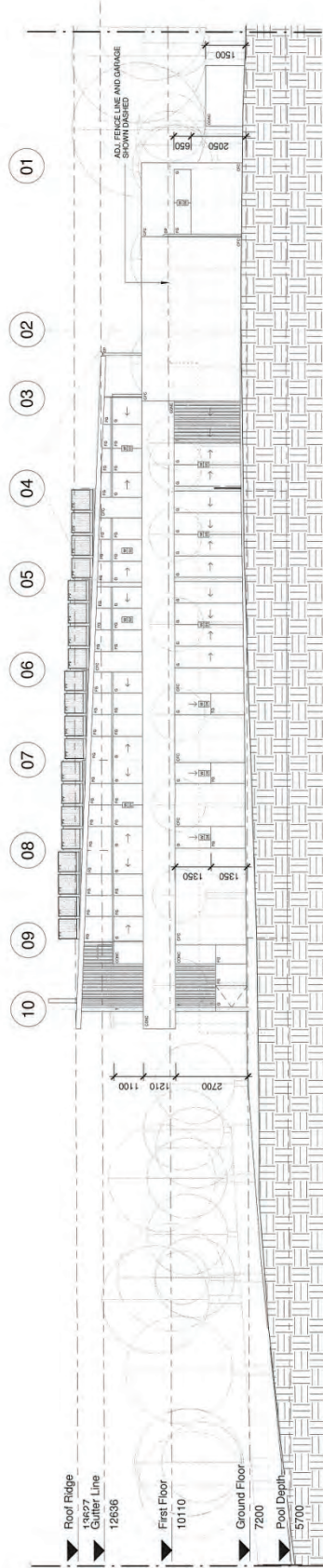


GDA Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1984
Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2464
PO Box 816
Murwillumbah NSW 2484



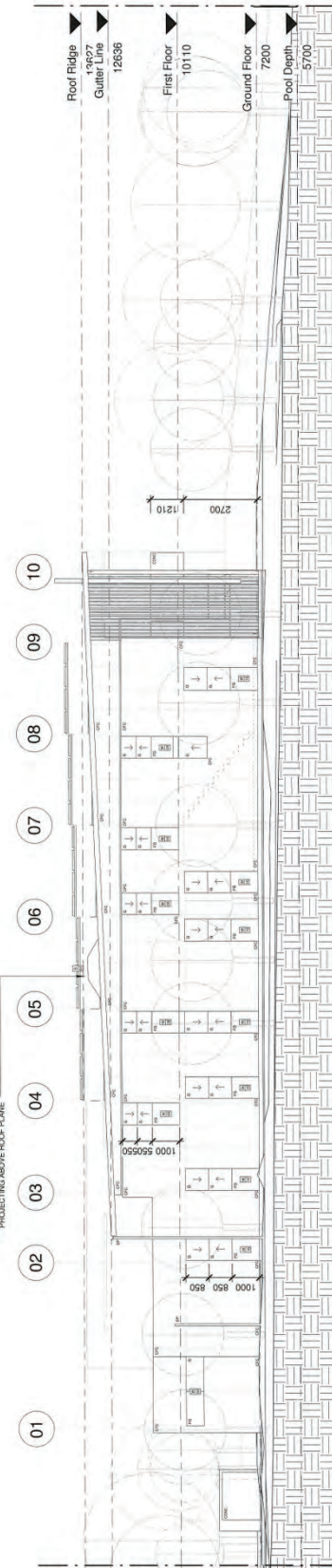
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E | planning@om.s@tweed.nsw.gov.au



NORTHERN ELEV.

VIEW FROM NO. 6 BEACON COURT

SKYLIGHT ABOVE MASTER BATHROOM PROJECTING ABOVE ROOF PLANE



SOUTHERN ELEV.

VIEW FROM ADJ. LANEWAY TO BEACH

NOT FOR CONSTRUCTION

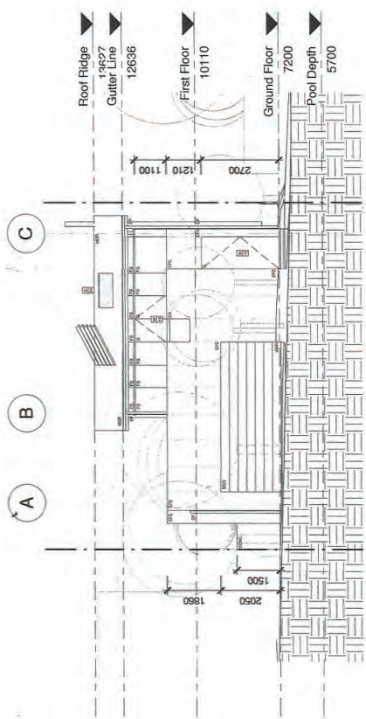
ISSUE	DATE	DESCRIPTION
01	25/04/2012	ISSUED FOR PERMIT
02	05/05/2012	ISSUED FOR PERMIT
03	05/05/2012	ISSUED FOR PERMIT
04	05/05/2012	ISSUED FOR PERMIT
05	05/05/2012	ISSUED FOR PERMIT
06	05/05/2012	ISSUED FOR PERMIT
07	05/05/2012	ISSUED FOR PERMIT
08	05/05/2012	ISSUED FOR PERMIT
09	05/05/2012	ISSUED FOR PERMIT
10	05/05/2012	ISSUED FOR PERMIT

LEGEND	REVISIONS
<ul style="list-style-type: none"> 1. FINISHES 2. WALLS 3. FLOORS 4. ROOFS 5. CEILING 6. GLASS 7. METALS 8. PAINTS 9. PLASTER 10. CARPET 11. TILES 12. STONE 13. WOOD 14. BRICK 15. CONCRETE 16. BLOCK 17. BRICKWORK 18. STAIRS 19. BALCONY 20. TERRACE 21. DRIVEWAY 22. GARAGE 23. POOL 24. FENCE 25. GATE 26. LIGHTING 27. LANDSCAPE 28. FURNITURE 29. APPLIANCES 30. FIXTURES 31. FITTINGS 32. EQUIPMENT 33. MECHANICAL 34. ELECTRICAL 35. PLUMBING 36. HVAC 37. SOUND 38. VIBRATION 39. SECURITY 40. ACCESSIBILITY 41. SUSTAINABILITY 42. SMART BUILDING 43. GREEN BUILDING 44. WELLNESS 45. BIODESIGN 46. ADAPTIVE DESIGN 47. RESILIENT DESIGN 48. FUTURE PROOFING 49. CIRCULAR ECONOMY 50. ZERO CARBON 51. NET POSITIVE 52. WELL-BEING 53. COMMUNITY 54. SOCIAL 55. ECONOMIC 56. ENVIRONMENTAL 57. CULTURAL 58. HISTORIC 59. HERITAGE 60. LANDSCAPE ARCHITECTURE 61. ARCHITECTURAL INTERIORS 62. PRODUCT DESIGN 63. USER EXPERIENCE 64. SERVICE DESIGN 65. SYSTEMS DESIGN 66. INTEGRATED DESIGN 67. COLLABORATIVE DESIGN 68. PARTICIPATORY DESIGN 69. TRANSFORMATIVE DESIGN 70. REGENERATIVE DESIGN 71. RESTORATIVE DESIGN 72. REGENERATIVE ARCHITECTURE 73. BIOMIMICRY 74. BIODESIGN 75. BIOMIMETIC DESIGN 76. BIOMIMETIC ARCHITECTURE 77. BIOMIMETIC INTERIORS 78. BIOMIMETIC PRODUCT DESIGN 79. BIOMIMETIC SERVICE DESIGN 80. BIOMIMETIC SYSTEMS DESIGN 81. BIOMIMETIC INTEGRATED DESIGN 82. BIOMIMETIC COLLABORATIVE DESIGN 83. BIOMIMETIC PARTICIPATORY DESIGN 84. BIOMIMETIC TRANSFORMATIVE DESIGN 85. BIOMIMETIC REGENERATIVE DESIGN 86. BIOMIMETIC RESTORATIVE DESIGN 87. BIOMIMETIC REGENERATIVE ARCHITECTURE 88. BIOMIMETIC BIODESIGN 89. BIOMIMETIC BIODESIGN 90. BIOMIMETIC BIODESIGN 	<p>draw heath architects a. 10 Marshall St. Melbourne VIC 3060 t. 03 9449 7200 www.drawheath.com.au All architectural drawings are the property of draw heath architects and are not to be reproduced, copied, or used in any way without the written consent of draw heath architects. This document is for the use of the client only and is not to be used for any other purpose. The client is responsible for ensuring that the drawings are used in accordance with the intended purpose. draw heath architects is not responsible for any errors or omissions in the drawings. The drawings are provided as a guide only and are not to be used for construction without the supervision of a registered architect. The drawings are provided as a guide only and are not to be used for construction without the supervision of a registered architect. The drawings are provided as a guide only and are not to be used for construction without the supervision of a registered architect.</p>

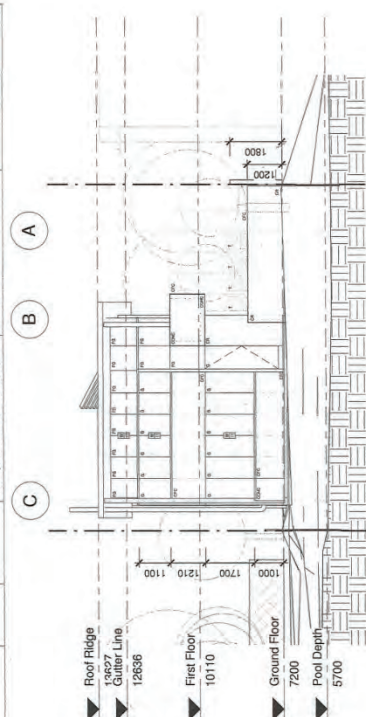
PROJECT INFORMATION	
PROJECT NUMBER	DA001302 Show
DATE	25th April 2012
DRAWN BY	DJA
APPROVED BY	Stewart Snow
SCALE	SCALE @ A2
PROJECT NAME	
NORTH & SOUTH ELEVATION	
DATE	
DA 08/14	

Skylight no.	Maximum area (sqm)	Type	Shading
81	0.8	aluminum, moulded plastic single clear	no shading

Window/ glazed door no.	Orientation	Maximum area (square metres)	Type	Shading	Overhanging
W1	N	20.0	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W2	N	8.3	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W3	N	5.5	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W4	N	8.5	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W5	N	25.9	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W6	N	1.7	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	none	not overhanging
W7	S	1.7	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	none	not overhanging
W8	S	6.7	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W9	S	2.5	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W10	S	15.1	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W11	E	26.6	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W12	W	8.8	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away
W13	W	3.0	improved aluminum, single pyrolytic low-e (U-value=1.48, SHGC=0.46)	esw/veranahipogpabakatory 450 mm	2.4m high, 5.4 m away



WESTERN ELEV.
VIEW FROM BEASON COURT (STREET FACADE)



EASTERN ELEV.
VIEW FROM COASTAL LANDS

NOT FOR CONSTRUCTION



<p>ISSUE DATE DESCRIPTION</p> <p>01 10/11/11 EASTERN & WEST ELEVATION</p> <p>02 09/14/11 EASTERN & WEST ELEVATION</p> <p>03 09/14/11 EASTERN & WEST ELEVATION</p> <p>04 09/14/11 EASTERN & WEST ELEVATION</p> <p>05 09/14/11 EASTERN & WEST ELEVATION</p> <p>06 09/14/11 EASTERN & WEST ELEVATION</p> <p>07 09/14/11 EASTERN & WEST ELEVATION</p> <p>08 09/14/11 EASTERN & WEST ELEVATION</p> <p>09 09/14/11 EASTERN & WEST ELEVATION</p> <p>10 09/14/11 EASTERN & WEST ELEVATION</p> <p>11 09/14/11 EASTERN & WEST ELEVATION</p> <p>12 09/14/11 EASTERN & WEST ELEVATION</p> <p>13 09/14/11 EASTERN & WEST ELEVATION</p> <p>14 09/14/11 EASTERN & WEST ELEVATION</p> <p>15 09/14/11 EASTERN & WEST ELEVATION</p> <p>16 09/14/11 EASTERN & WEST ELEVATION</p> <p>17 09/14/11 EASTERN & WEST ELEVATION</p> <p>18 09/14/11 EASTERN & WEST ELEVATION</p> <p>19 09/14/11 EASTERN & WEST ELEVATION</p> <p>20 09/14/11 EASTERN & WEST ELEVATION</p>	<p>LEADER</p> <p>01 EASTERN & WEST ELEVATION</p> <p>02 EASTERN & WEST ELEVATION</p> <p>03 EASTERN & WEST ELEVATION</p> <p>04 EASTERN & WEST ELEVATION</p> <p>05 EASTERN & WEST ELEVATION</p> <p>06 EASTERN & WEST ELEVATION</p> <p>07 EASTERN & WEST ELEVATION</p> <p>08 EASTERN & WEST ELEVATION</p> <p>09 EASTERN & WEST ELEVATION</p> <p>10 EASTERN & WEST ELEVATION</p> <p>11 EASTERN & WEST ELEVATION</p> <p>12 EASTERN & WEST ELEVATION</p> <p>13 EASTERN & WEST ELEVATION</p> <p>14 EASTERN & WEST ELEVATION</p> <p>15 EASTERN & WEST ELEVATION</p> <p>16 EASTERN & WEST ELEVATION</p> <p>17 EASTERN & WEST ELEVATION</p> <p>18 EASTERN & WEST ELEVATION</p> <p>19 EASTERN & WEST ELEVATION</p> <p>20 EASTERN & WEST ELEVATION</p>	<p>BAR CODES</p> <p>01 EASTERN & WEST ELEVATION</p> <p>02 EASTERN & WEST ELEVATION</p> <p>03 EASTERN & WEST ELEVATION</p> <p>04 EASTERN & WEST ELEVATION</p> <p>05 EASTERN & WEST ELEVATION</p> <p>06 EASTERN & WEST ELEVATION</p> <p>07 EASTERN & WEST ELEVATION</p> <p>08 EASTERN & WEST ELEVATION</p> <p>09 EASTERN & WEST ELEVATION</p> <p>10 EASTERN & WEST ELEVATION</p> <p>11 EASTERN & WEST ELEVATION</p> <p>12 EASTERN & WEST ELEVATION</p> <p>13 EASTERN & WEST ELEVATION</p> <p>14 EASTERN & WEST ELEVATION</p> <p>15 EASTERN & WEST ELEVATION</p> <p>16 EASTERN & WEST ELEVATION</p> <p>17 EASTERN & WEST ELEVATION</p> <p>18 EASTERN & WEST ELEVATION</p> <p>19 EASTERN & WEST ELEVATION</p> <p>20 EASTERN & WEST ELEVATION</p>	<p>EAST & WEST ELEVATION</p> <p>drawn by: DAVID J. COLE</p> <p>checked by: DAVID J. COLE</p> <p>DATE: 09/14/11</p> <p>SCALE: A2</p> <p>1:100</p>
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Zone objectives

The subject site is zoned 2(e) Residential Tourist. The primary objective of the zone is to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities. The secondary objectives permits other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.

The proposed development is generally consistent with the objectives of the zone.

The subject site is also part zoned 7(f) Environmental Protection (Coastal Lands). The proposed development does not encroach this zone.

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

The proposed development is two storeys with a maximum height of 7m and therefore complies with the maximum height limits of TLEP 2000 and Tweed Development Control Plan Section A1 (Tweed DCP Section A1).

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The area contains class 4 acid sulphate soils, which exist at a depth of greater than 2m below surface level. Given that the site was disturbed and filled during the creation of the subdivision it is not anticipated that the development will impact on the acid soils in the area.

Other Specific Clauses

Clause 36 - Coastal Erosion Hazard Outside Zone 7(f)

The proposal is consistent with the considerations of this clause. The proposed development will not affect the beach or dune system and landscape or scenic quality of the locality, other than in relation to shadowing which is discussed in detail later in this report.

Council's mapping records indicate the subject site is clear of the 100 year hazard line.

Clause 39A – Bushfire Protection

Council's records indicate that the site is bushfire prone. The proposal is consistent with the considerations of this clause. Conditions placed on this consent are in keeping with the Planning for Bushfire Protection 2006 document.

State Environmental Planning Policies (SEPPs)

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the waterfront open space to the east of the site being overshadowed before 3pm mid winter (standard time) and 7pm mid summer (daylight saving time).

The applicant is seeking Council's support to assume the concurrence of the Director-General of the Department of Planning and Infrastructure in this

instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is not inconsistent with the Coastline Management Manual.

SEPP No. 1 - Development Standards

An objection has been lodged under SEPP No. 1 to vary the development standard provided by Clause 32B (4) of the NCREP 1988, which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 7pm mid summer. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east only in mid summer beginning at 5pm.

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(f) Environmental Protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP No. 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary:

- *"The proposed development is consistent with other development throughout the area which also overshadow the open cycle way area.*
- *The proposed development is smaller than the neighbouring dwellings and setback 20m from the rear boundary.*
- *There will not be any overshadowing to the beach itself.*
- *The area that is overshadowed is also vegetated and is not as such a usable area for people."*

Generally, the above points are agreed to and it is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation and a cycle way. The shadow will not impact on areas used for formal recreational activities.

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration and in the most part intercept the dwelling shadows. The beach is over 100m from the rear of the property.

Council has granted many other approvals for dwellings along the Tweed Coast, particularly in the Salt and Casuarina subdivision that have similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should also support this request.

SEPP No 71 – Coastal Protection

The development is generally consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

SEPP (Building Sustainability Index: BASIX) 2004

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

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

None apparent.

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

Tweed Development Control Plan (Tweed DCP)

A1-Residential and Tourist Development Code

This section applies to all residential and tourist development within Tweed Shire, except to the extent of inconsistency with a site specific development provision contained in the TLEP 2000 or adopted area specific Tweed DCP.

Public Domain Amenity

Streetscape

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

Public Views and Vistas

The proposal will not result in an unreasonable view loss of the beach and foreshore given that the proposed height of the new dwelling complies with the two (2) storey limitation as specified in the TLEP 2000 and the 9m maximum height in Tweed DCP Section A1.

Site Configuration

Deep soil zones (DSZs)

The front and rear deep soils zones comply with the controls and objectives of the plan.

Impermeable Site Area

The current provisions of Tweed DCP Section A1 limit the maximum allowable impervious surface area of the site to 65% for allotments between 500m² and 750m². The area of the subject site is 684m² and therefore the maximum

impermeable area permitted at the completion of the development would be 404m². The proposal has a calculated impervious area of 64%.

External Living Areas

The dwelling makes provision for external living areas in the form of a patio and terrace areas adjacent to the pool providing adequate solar access to the dwelling and private open space.

Landscaping

The applicant has provided a landscape plan in conjunction with the proposal which is considered generally consistent with this design control.

Topography, Cut and Fill

Minimal cut and fill is proposed with the construction of the dwelling, which complies with the design controls outlined in Tweed DCP Section A1.

Setbacks

The proposed development is setback 4.8m from the front boundary which is considered acceptable and consistent with the controls with the dwelling on the adjoining property to the north setback 3.75m from the front boundary.

A rear setback of 20m is proposed and complies.

Side setbacks of 900mm are proposed and do not comply with the required 1.5m setback for a two (2) storey dwelling specified under Tweed DCP Section A1. However the side setbacks do comply with the required side boundary setbacks prescribed within the Site Specific Tweed DCP Section B5 Casuarina and are therefore considered acceptable.

Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the Tweed DCP. Two (2) off street car parking spaces in the garage located at ground floor level within the dwelling are proposed. Vehicle access to these spaces is considered adequate

Height

Building Height

The maximum height of the dwelling is 7m which is consistent with the current maximum design control of 9m.

Ceiling Height

The architectural plans show a minimum floor to ceiling height of 2.7m and 2.4m which complies with the relevant controls.

Building Amenity

Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated north adjacent to the pool area and eastern rear boundary.

Overshadowing will occur on the adjoining properties however impacts are considered in keeping with what could be reasonably expected by the neighbouring dwelling as the proposed development is in keeping with the bulk and scale of existing dwellings in the area.

Visual Privacy

Overlooking into adjoining properties has been minimised with the provision of suitable setbacks and strategic window positioning along both sides of the dwelling.

Acoustic Privacy

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

View Sharing

This matter has been discussed previously in this report and found to be satisfactory.

Natural Ventilation

The design of the dwelling provides for adequate natural ventilation.

Building Orientation

The dwelling has been sited on the property to optimise solar access and coastal views as well as providing an acceptable street presentation.

Roof

The design of the roof being generally flat is consistent with the design requirements of Tweed DCP Section A1. A condition regarding the implementation of non-reflective roof materials has been recommended in the conditions.

Building Performance

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

Swimming Pools

The proposed swimming pool is set back behind Council's Building line and over 1.5m from the northern side property boundary and is consistent with the design control objectives for swimming pools in Tweed DCP Section A1.

Floor Space Ratio (FSR)

The current Tweed DCP Section A1 provisions control the maximum allowable floor area of a dwelling in relation to the total area of the site, as a means of matching the building scale with the capacity of the site and local area.

The proposed site has an area of 684m² and the dwelling has an approximate 'floor area' as defined by the DCP of 321m² which complies with the current prescribed allowance applying the 0.65:1 ratio being 0.47:1.

A2-Site Access and Parking Code

The development will comply with the requirements of Tweed DCP Section A2 in relation to vehicle access and parking. Two (2) car spaces have been provided in the garage located at ground floor level within the dwelling.

A11-Public Notification of Development Proposals

In accordance with Tweed DCP Section A11, the development was notified to the adjoining property owners. During the two (2) week notification period, one (1) objection was received.

The main points of the objection received include:

1. The encroachment of the balcony/verandah at the rear of the proposed dwelling into the 7(f) zone.
2. The use of the planted roof as an entertainment area, which would affect the privacy of the adjoining property at No. 6 Beason Court.

The proposal was modified showing the proposed dwelling clear of the 7(f) zone and the application will be suitably conditioned prohibiting the use of the rooftop garden area as an external living area to address the issues raised in the objection.

B5-Casuarina Beach

The proposed development is generally consistent with the applicable design principles outlined in Tweed DCP Section B5 with a minor variation required in relation to the front setback being 4.856m. A minimum 5m setback to the wall of

a double garage is required under Tweed DCP Section B5 however a variation of 144mm is considered acceptable and consistent with other developments throughout the area.

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

Clause 92(a) Government Coastal Policy

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

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

Context and Setting

The property is within a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed building of high quality and will be in keeping with the architectural style and residential character of the area.

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged, the site has been cleared during the creation of the subdivision.

(c) Suitability of the site for the development

Surrounding Landuses/Development

It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site.

The design of the dwelling is in keeping with the residential character of the area.

Topography

The building platform was created at subdivision stage and is generally flat, but has an approximate fall of 10% from the building platform to the eastern rear property boundary.

Site Orientation

The building has been located 4.865m back from the front property boundary. The site is rectangular in shape with the western front boundary facing Beason

Court, the northern side boundary adjoining another residential property, the eastern rear boundary adjoins a coastal reserve and the southern side boundary adjoins a beach access path.

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

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

One (1) submission was received in response to Council's notification of this Development Application, raising concerns for the development. These matters have been addressed previously in this report.

(e) Public interest

The development will not prejudice the public interest.

OPTIONS:

1. Council assumes the concurrence of the Director-General of the Department of Planning and Infrastructure and approves the development application; or
2. Council does not assume the Director General's concurrence and refuses the development application, providing reasons for refusal.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Clause 32B of the NCREP 1988, and is generally consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to the locality. It is considered that the proposed development is suitable for approval, subject to conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The applicant or objectors have the right to appeal the decision which would incur financial costs to Council in defence.

c. Legal:

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environmental Court.

Should the application be approved there is potential for the objectors to lodge an appeal against the adequacy of the processing of the application.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.4 Assessment of new developments and building works (Building & Environmental Health unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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12 [PR-CM] Development Application DA11/0230 for an Eight (8) Lot Subdivision at Lot 2 DP 626198 No. 178 Byangum Road, Murwillumbah

SUBMITTED BY: Development Assessment

FILE NUMBER: DA11/0230 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of an application for an eight (8) lot subdivision at the above address. During assessment of the application, a number of issues were raised, in particular with respect to stormwater drainage, geotechnical stability and the ecological impact of the proposal.

Due to the topography of the site, stormwater drainage is currently conveyed through adjoining allotments, in some cases through Council piping infrastructure (though not formalised easements). The proposed development is considered to increase the quantity of stormwater which would be conveyed through these adjoining allotments.

The applicant has not demonstrated to Council that adequate stormwater infrastructure will be provided to service the subject development. It is considered that easements through adjoining allotments are required in order to provide sufficient stormwater drainage to the proposal. The applicant has indicated that he has not been able to negotiate the provision of these and has requested that Council resume the easements to facilitate the development. Council officers are not in favour of this course of action and as such, it is not possible to determine that adequate stormwater provision has been provided as part of this application.

The application is reported to Council on the recommendation of the Director Planning and Regulation.

The requested information in relation to geotechnical or ecological issues has not been submitted to Council officers to allow adequate assessment to be undertaken in this regard.

Having regard to relevant statutory controls the proposed development would contravene the provisions of the Tweed Local Environmental Plan 2000, the North Coast Regional Environmental Plan 1988, and Tweed Shire Council's Development Control Plan A5-Subdivision Manual and is considered to be contrary to the proper planning and sustainable development of the area and therefore it is recommended that the proposed development be refused.

RECOMMENDATION:

That Development Application DA11/0230 for an eight (8) lot subdivision at Lot 2 DP 626198 No. 178 Byangum Road, Murwillumbah be refused for the following reasons:

- 1. Pursuant to Section 79C (1) (a)(i) the development proposal has not demonstrated compliance with Clause 4 of Tweed Local Environmental Plan 2000 as insufficient information has been provided to enable determination as to whether the development is likely to have a significant impact on threatened species, populations or ecological communities.**
- 2. Pursuant to Section 79C (1) (a)(i) the development proposal has not demonstrated compliance with Clause 5 of Tweed Local Environmental Plan 2000 as insufficient information has been provided to enable determination that the proposal will avoid serious or irreversible damage to the environment.**
- 3. Pursuant to Section 79C (1) (a)(i) the development proposal has not demonstrated compliance with Clause 8 of Tweed Local Environmental Plan 2000 as adequate information has not been provided to demonstrate that the proposal will not have an unacceptable cumulative impact on the community or locality.**
- 4. Pursuant to Section 79C (1) (a)(i) the development proposal has not demonstrated compliance with Clause 15 of Tweed Local Environmental Plan 2000 as it has not been demonstrated that facilities for the removal or disposal of drainage are available for the subject site or arrangements satisfactory to the consent authority have been made in this regard.**
- 5. Pursuant to Section 79C (1) (a)(i) the development proposal has not demonstrated compliance with Clause 43 of North Coast Regional Environmental Plan 1988 as it is not possible to determine that council are satisfied that the density of the (future) dwellings have been maximised without adversely affecting the environmental features of the land, given that insufficient ecological information has been provided.**
- 6. Pursuant to Section 79C (1) (a)(iii) the proposed development is contrary to the provisions of Tweed Shire Council Development Control Plan A5- Subdivision Manual, with particular regard to A5.4 Urban Subdivision Design Guidelines & Development Standards for Environmental Constraints and Stormwater Runoff, Drainage, Waterways and Flooding.**
- 7. Pursuant to Section 79C (1) (b) the development is likely to have an unacceptable impact on the natural environment having regard to the threatened species, populations or ecological communities on the site.**
- 8. Pursuant to Section 79C (1) (d) and (e) the development proposal does not adequately address issues raised by public submissions and is not considered to be in the public interest having regard to potential impacts on surrounding properties and the natural environment in the area which have not been adequately addressed or resolved in the subject application.**

REPORT:

Applicant: Byangum Holdings Pty Ltd
Owner: Byangum Holdings Pty Ltd
Location: Lot 2 DP 626198; No. 178 Byangum Road, Murwillumbah
Zoning: 2(a) Low Density Residential
Cost: \$320,000

BACKGROUND:

Site History

Council records indicate two previous applications on this site, both related to the existing dwelling:

- 0232/93B- Building Application (Historic) - shade structure. Approved 11 March 1993; and
- 1250/87B- Building Application (Historic) – swimming pool. Approved 10 December 1987.

The Subject Site

The subject site covers a total area of 1.322ha and is irregular in shape with frontage to Byangum Road and Tombonda Road. The topography on the site is undulating, with ground levels varying from 40m AHD to 20m AHD. The site is surrounded by low density residential development, with exception of the road frontage as described above.

At present there is a single storey dwelling house to the north of the site and a shed located adjacent to the southern site boundary, with the remainder of the site comprising of slashed grassland or regenerating rainforest vegetation species. Council's Natural Resource Management Unit has noted that two threatened flora species were recorded on site in the form of two Coolamon and a Fine-leaved Tuckeroo.

The Proposed Development

The applicant seeks Council consent for a subdivision comprising 8 lots, configured as outlined below.

Lot Number	Area	Access Arrangements
Lot 1	2282m ² (contains an existing dwelling house) (2090m ² excluding axe handle)	Battleaxe frontage to Byangum Road – access via reciprocal right of carriageway
Lot 2	1154m ² (776m ² excluding handle)	As above
Lot 3	1197m ² (896m ² excluding handle)	As above
Lot 4	1211m ² (840m ² excluding handle)	As above
Lot 5	1255m ² (864m ² excluding handle)	As above
Lot 6	727m ²	Frontage to and access from Byangum Road
Lot 7	756m ²	Frontage to and access from Tombonda Road
Lot 8	4688m ² (4475m ² excluding handle)	Battleaxe frontage to Byangum Road 6.37m wide

It is proposed to carry out the development in 3 Stages, as follows:

Stage 1 - Lots 6 and 7

- Lot 6 will be independently accessed and serviced from Byangum Road.
- Lot 7 will be independently accessed and serviced from Tombonda Road.
 - The proposed stormwater drainage line through Lot 7 is intended to be constructed as part of Stage 1 (including the appropriate easement) but connection of the stormwater line to the existing system in Tombonda Road would not occur until Stage 3.

Stage 2 - Lot 1

- This lot incorporates the existing dwelling house and it is proposed that the existing access driveway, water supply, sewer connection, power and telephone services would be retained. Any necessary changes to access, servicing, etc. would occur with Stage 3.

Stage 3 – Lots 2, 3, 4, 5, and 8

- This includes the construction of the reciprocal right of carriageway and all necessary permanent services.

Development Constraints

Stormwater Drainage

At present stormwater drainage from the site is conveyed from an existing piped drainage network traversing through the existing allotment and neighbouring Lot 1 DP 626198 and Lot 87 DP 253421. There is no formal easement over the existing piped infrastructure traversing through Lot 87 DP 253421.

The proposed development will result in a change to the stormwater discharged from the site. The Applicant has not provided appropriate assessment to determine if the existing piped drainage network currently traversing through the existing subject parcel and

neighbouring Lot 1 DP 626198, or the existing piped drainage network traversing through Lot 87 DP 253421 has adequate capacity to convey the required piped and overland stormwater adequately. Furthermore it has not been demonstrated that an easement can be obtained through neighbouring Lot 82 DP 253421, to provide a legal right to discharge overland flow from proposed Lot 3 to Tombonda Road.

The applicant requested that Council acquire easements over adjacent land (Lots 82, 86 & 87 DP 253421) as attempts to negotiate between the applicant and subject landowners has been unsuccessful. This request was reviewed and it was determined that the applicant be advised that *'Council's preferred and most equitable course action in relation to stormwater (at subject property) would be for the owner to purchase the adjoining property, create the necessary drainage infrastructure and easements and then resell the property with the encumbrances.'*

Subsequent to this, it was indicated that the applicant intended to contact the Tweed Shire Councillors with respect to the resuming of easements, however following an extension of time provided to resolve this issue, no further progress has been demonstrated to the file. As such, given the time that this development application has been with Council the applicant was requested to withdraw the application. The applicant requested that the Development Application be approved with these outstanding issues dealt with by way of Deferred Commencement conditions. Following consultation with Council's Development Engineer, it is considered to be contrary to the proper planning and sustainable development of the area to approve the development.

Geotechnical Stability

A Broadscale Geotechnical Engineering Assessment was submitted as part of this application. It is noted that this assessment states that the geotechnical investigation did not include an assessment of the stability of the site or individual sites. An extract from this report states *'It is recommended that geotechnical advice be sourced to determine the stability of the embankment (to the southern side of Right of Way) and possible rectification if required'*.

Submissions received through public notification raised concerns with respect to geotechnical stability arising from the proposed development. The applicant's response to these concerns was that the original Geotechnical Report does not identify significant instability issues. This has not been accepted by Council's Development Engineer as a satisfactory response to the public concerns and it is considered that this issue should be appropriately addressed and resolved prior to any grant of consent. Consequently, the application is not supported by Council officers.

Flora and fauna

This application was referred to Council's Natural Resource Management Unit having regard to the vegetation removal associated with the proposal. Comments received raised concern with regard to the potential for the development to impact upon two (2) threatened species as listed under the Threatened Species Conservation Act 1995.

Specifically, two (2) of the three (3) recorded threatened flora species would be significantly impacted upon by the proposed subdivision works, likely resulting in the demise of these trees. A mature Coolamon (*Syzygium moorei*) located within proposed Lot 2 would be

affected by driveway construction works and a mature Fine-leaved Tuckeroo (*Lepiderema pulchella*) is located in an easement adjacent to proposed Lot 4 within which sewer and drainage pipes are proposed.

A request for further information to enable proper assessment of the application from an ecological perspective was requested of the applicant on 16 September 2011. A response was received from the applicant on 13 December 2011, however the information received was deemed insufficient and the applicant was sent a further request for further Information on 22 December 2011. No further response has been received with respect to the proposal. As such, Council's Natural Resource Management Unit has recommended that the application as it stands should be refused as insufficient information has been provided to Council to determine that the proposal will not have a significant impact on threatened species, populations or ecological communities in accordance with Section 5A of the Environmental Planning and Assessment Act 1979.

Public Submissions

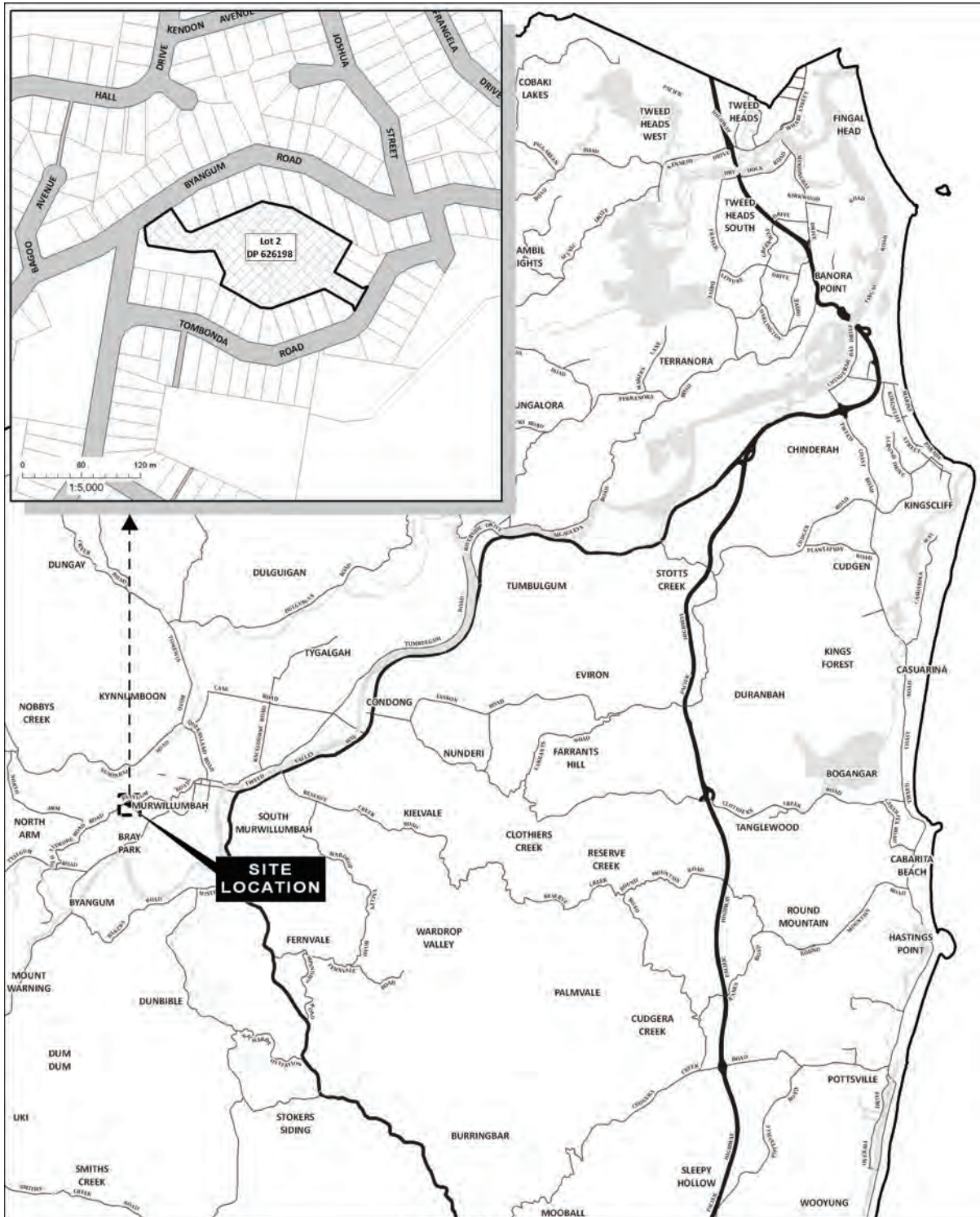
The proposed development attracted three (3) submissions following notification.

Stormwater runoff and/or geotechnical stability was raised by all three submissions, whilst individually, the submissions raised issues with the existing underground storage tank, the existing shed on site, the siting and location of future dwellings and the provision of excess fill associated with the proposal.

Summary

Having regard to relevant statutory controls the proposed eight (8) lot subdivision development would contravene the provisions of the Tweed Local Environmental Plan 2000, the North Coast Regional Environmental Plan 1988, Tweed Shire Council's Development Control Plan A5-Subdivision Manual and is considered to be contrary to the proper planning and sustainable development of the area. The proposed development is therefore recommended for refusal.

SITE DIAGRAM:



Locality Plan

DA11/0230 - Lot 2 DP 626198
 No. 178 Byangum Road MURWILLUMBAH

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

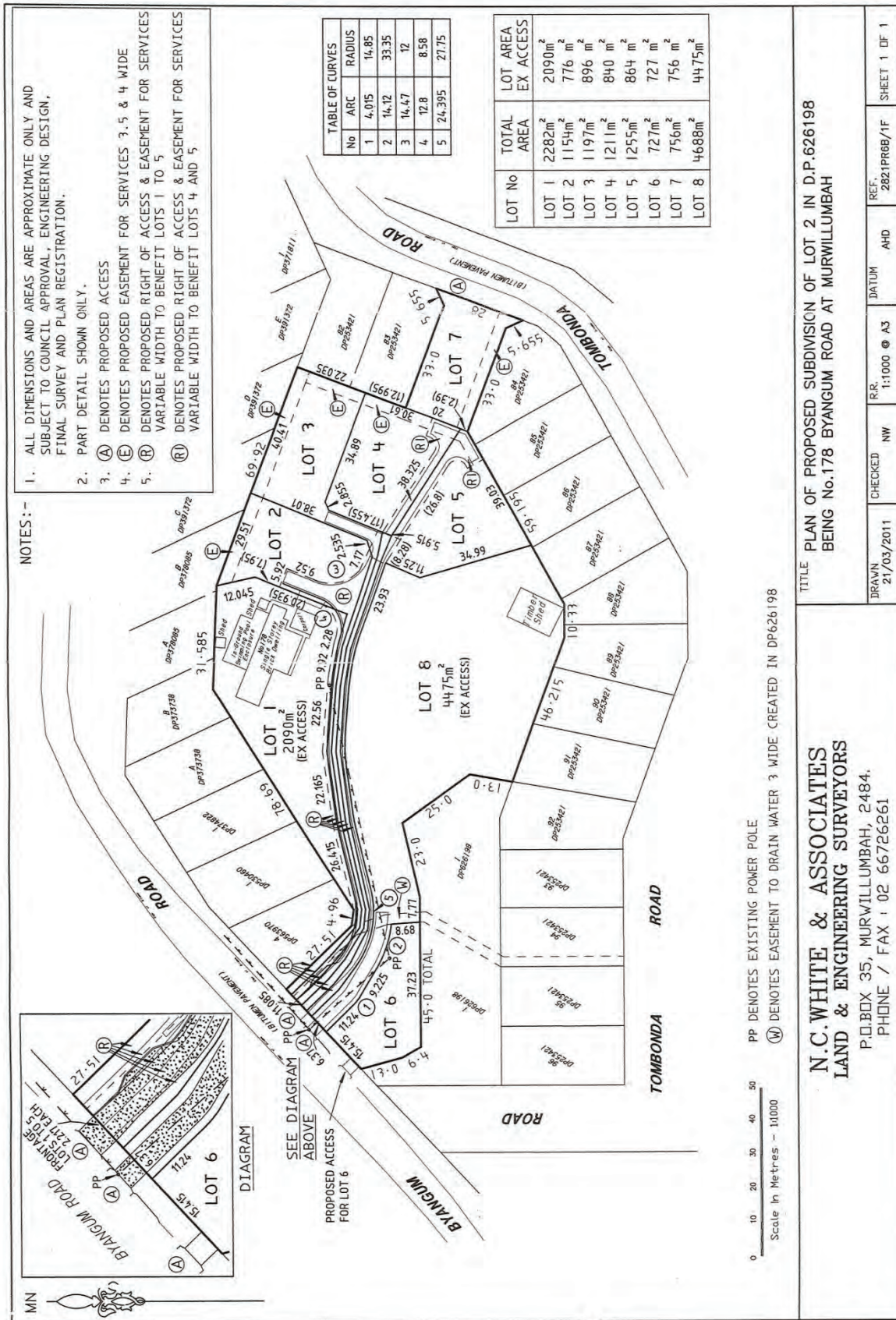
Cadastral: 28 May 2012
 © Land and Property Management Authority (LPMA) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

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 COPY ONLY - NOT CERTIFIED
 Map Projections: Universal Transverse Mercator (Geocentric Datum of Australia 1984) and Map Grid of Australia, Zone 56

Civic and Cultural Centre
 3 Tumbulgum Road
 Murwillumbah NSW 2484
 PO Box 616
 Murwillumbah NSW 2484
 T | (02) 6670 2400 | 1300 292 872
 F | (02) 6670 2429
 W | www.tweedshire.gov.au
 E | planning@tweedshire.gov.au



DEVELOPMENT/ELEVATION PLANS:



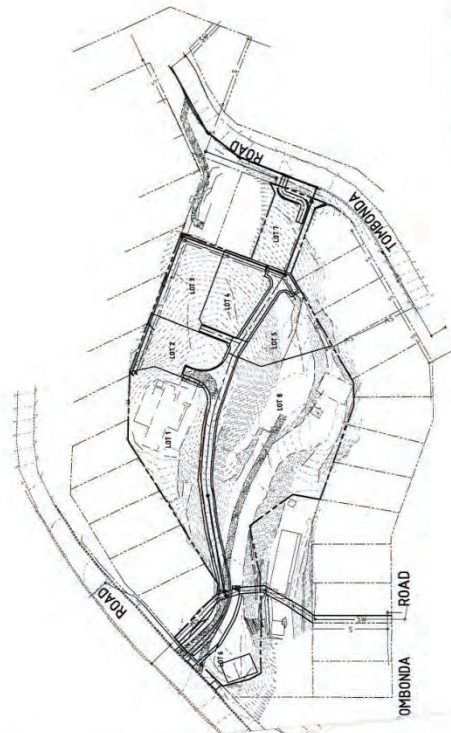
RESIDENTIAL DEVELOPMENT

AT - 178 BYANGUM ROAD, MURWILLUMBAH
 FOR - MAXIMUM HOLDINGS PTY. LTD.

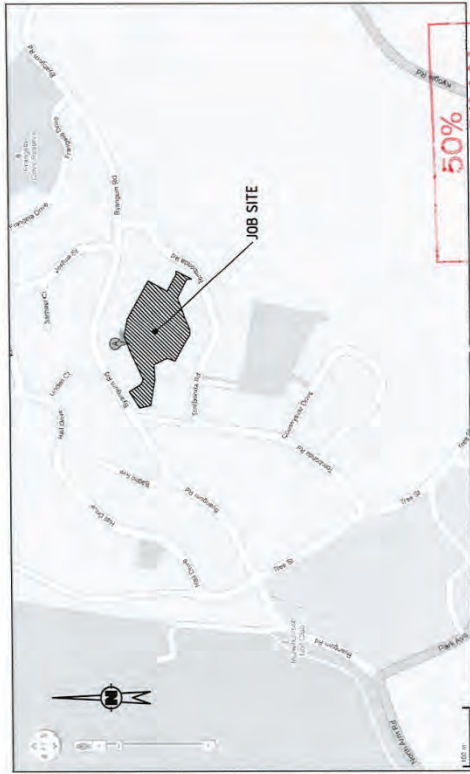
JOB NUMBER Y.03.03

DRAWING SCHEDULE

- Sk.1. COVER SHEET
- Sk.2. ROADWORKS AND DRAINAGE PLAN - SHEET 1 OF 2
- Sk.3. ROADWORKS AND DRAINAGE PLAN - SHEET 2 OF 2
- Sk.4. DRIVEWAY LONGITUDINAL SECTION
- Sk.5. DRIVEWAY CROSS SECTIONS AND DETAILS
- Sk.6. SEWERAGE AND WATER RETICULATION PLAN - SHEET 1 OF 2
- Sk.7. SEWERAGE AND WATER RETICULATION PLAN - SHEET 2 OF 2
- Sk.8. STORMWATER MANAGEMENT PLAN
- Sk.9. EROSION AND SEDIMENT CONTROL PLAN
- Sk.10. SIGHT DISTANCE DIAGRAM



PRELIMINARY
 NOT FOR CONSTRUCTION

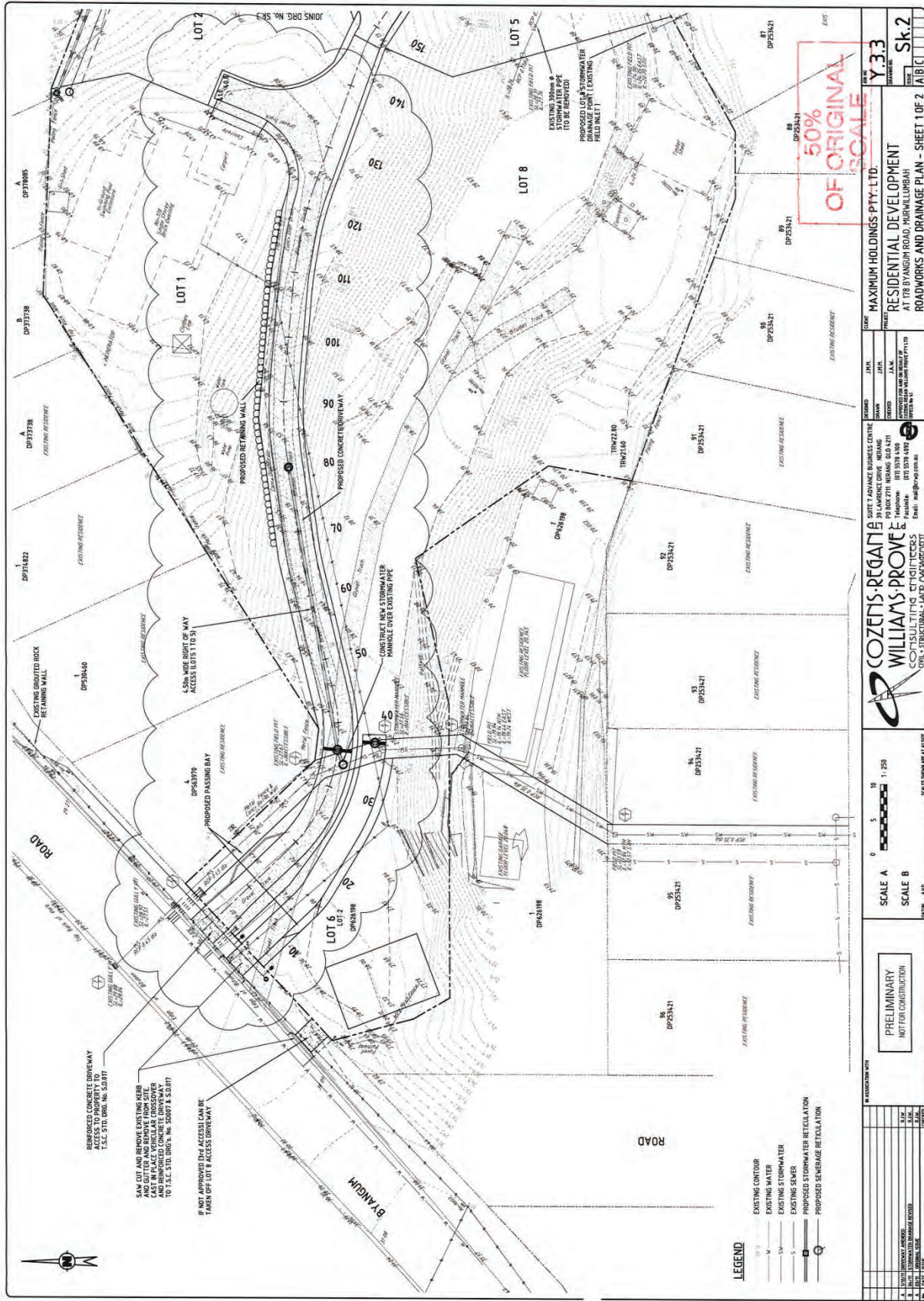


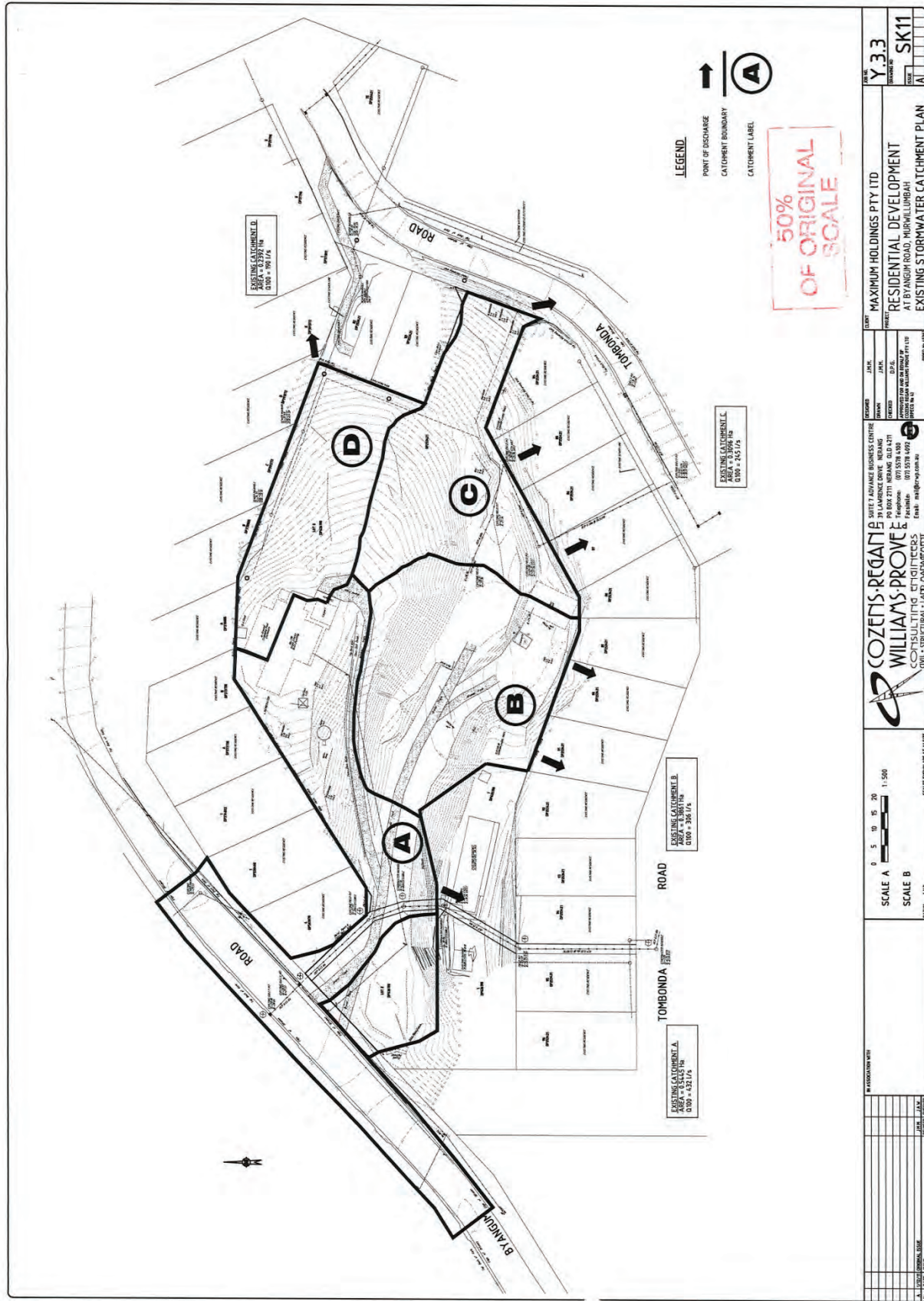
LOCALITY PLAN

COZENS-REGAN SUITE 7 ADVANCE BUSINESS CENTRE
 39 LAWRENCE DRIVE NERANG
 PO BOX 2711 NERANG QLD 4211
 Telephone: (07) 5578 4100
 Facsimile: (07) 5578 4092
 Email: mail@crwp.com.au

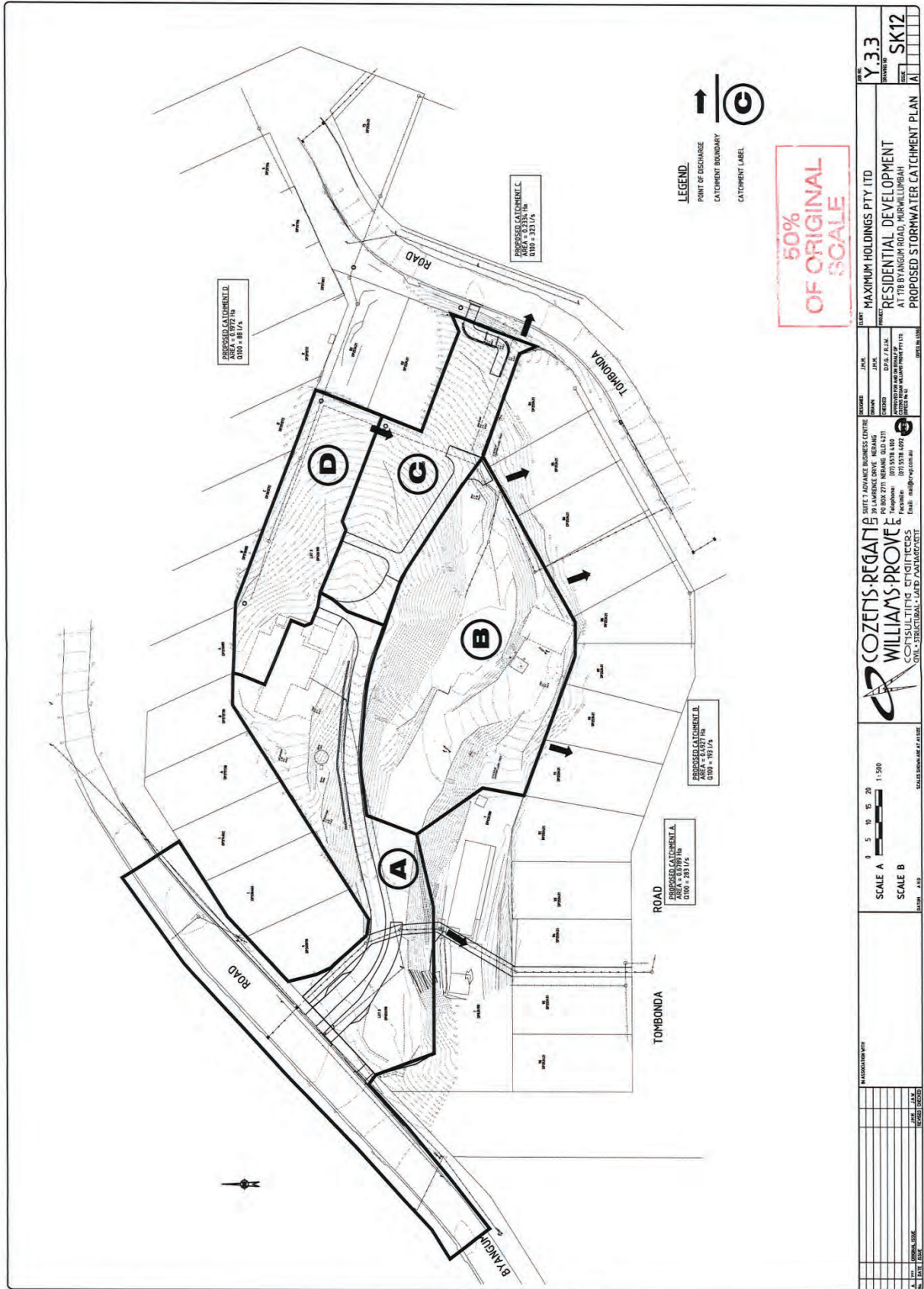
WILLIAMS-PROVE
 CONSULTING ENGINEERS
 CIVIL • STRUCTURAL • LAND MANAGEMENT

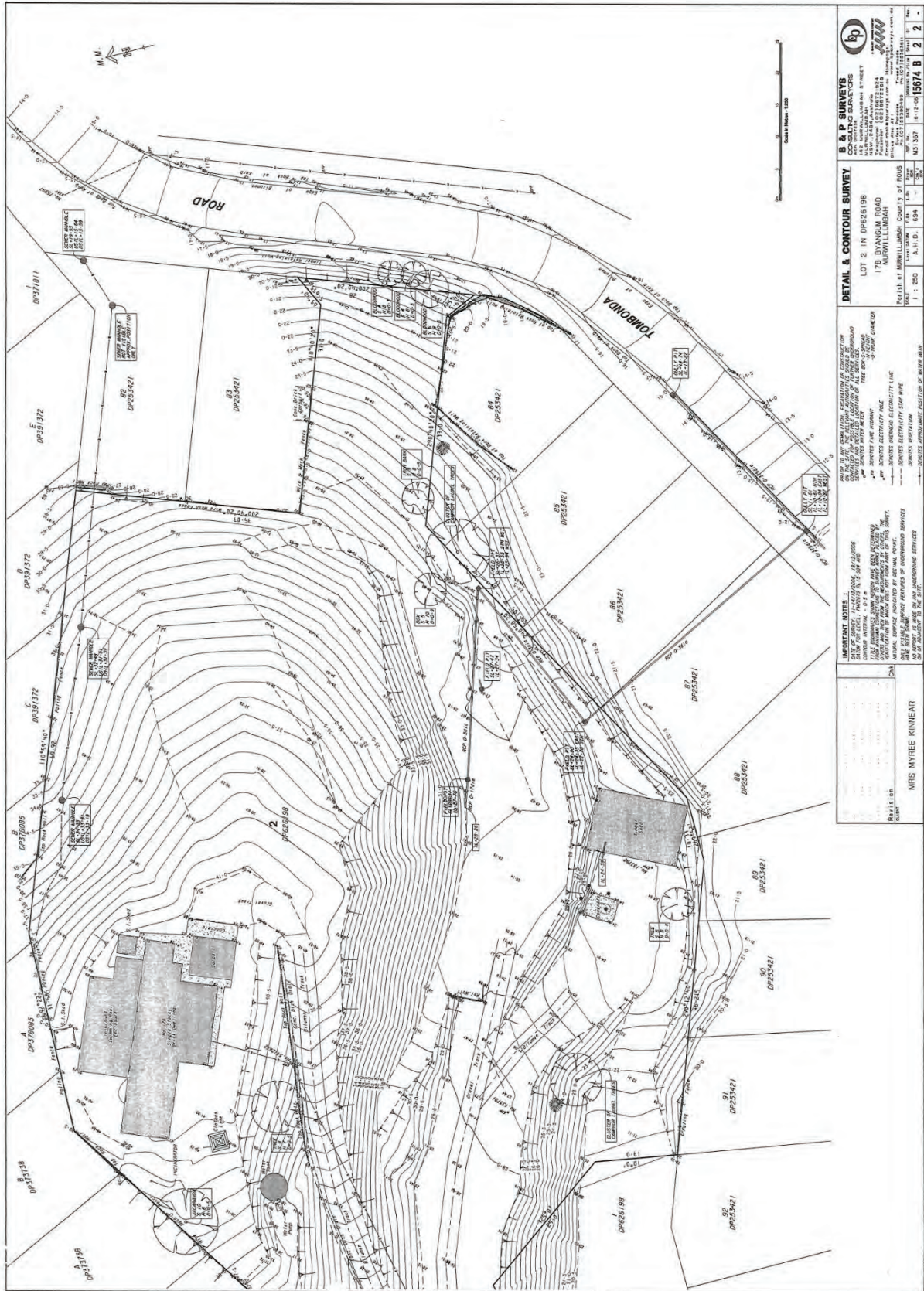
PROJECT	Y.03.03
DRAWING	Sk.1
SHEET	A B C





<p>COZENS REGAN & WILLIAMS PROVE & CONSULTING ENGINEERS 10/11 LAMARINE DRIVE, REDANG, PERAK 01010 Tel: 017 558 1439 Fax: 017 558 1497 Email: info@cozensregan.com.au</p>		<p>MAXIMUM HOLDINGS PTY LTD RESIDENTIAL DEVELOPMENT AT BYANGOM ROAD, MURWILLIMBAH EXISTING STORMWATER CATCHMENT PLAN</p>	
<p>SCALE A 0 5 10 15 20 1:500 SCALE B 1:1000</p>		<p>DATE: 11/06/12 DRAWN BY: [] CHECKED BY: [] APPROVED BY: []</p>	
<p>PROJECT NO: Y3.3 SHEET NO: SK11</p>		<p>DATE: 11/06/12</p>	





B. & B. SURVEYS
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DETAIL & CONTOUR SURVEY
 LOT 2 IN DP24198
 178 BANGAL ROAD
 MURWILLUMBAH
 PART 151 OF MURWILLUMBAH COUNTY DISTRICT

DATE: 15/06/2011
 DRAWN BY: MRS MYREE KINNEAR
 CHECKED BY: MRS MYREE KINNEAR
 SCALE: 1:250
 A. H. I. D. 15874 B 2 2

IMPORTANT NOTES:

1. THIS SURVEY IS A CONTINUATION OF THE SURVEY OF THE LAND SHOWN ON THE PLAN OF SUBDIVISION DP24198 AND IS NOT TO BE USED IN ISOLATION OF THAT PLAN.
2. THE SURVEY IS BASED ON THE DATA PROVIDED BY THE CLIENT AND THE SURVEYOR HAS NOT CONDUCTED ANY FIELD VERIFICATION OF THE DATA.
3. THE SURVEYOR HAS CONDUCTED A VISUAL CHECK OF THE DATA AND HAS FOUND IT TO BE REASONABLY ACCURATE.
4. THE SURVEYOR HAS CONDUCTED A VISUAL CHECK OF THE DATA AND HAS FOUND IT TO BE REASONABLY ACCURATE.
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10. THE SURVEYOR HAS CONDUCTED A VISUAL CHECK OF THE DATA AND HAS FOUND IT TO BE REASONABLY ACCURATE.

--- SHOWN APPROXIMATE POSITION OF WATER MAIN
 --- SHOWN APPROXIMATE POSITION OF SEWER MAIN

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
2	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
3	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
4	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
5	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
6	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
7	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
8	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
9	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR
10	ISSUED FOR TENDERS	15/06/2011	MRS MYREE KINNEAR

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 (TLEP 2000)

Clause 4 - Aims of the Plan

One of the aims of the plan is:

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

The subject application has been reviewed by Council's Natural Resource Management Unit who has indicated that insufficient information has been provided to enable determination that the development is unlikely to have a significant impact on threatened species, populations or ecological communities.

As such, it is considered that the applicant has not demonstrated that the proposed development sustains economic development of the area without compromising the area's environmental qualities.

Clause 5 - Ecologically Sustainable Development

Clause 5 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.

In the application of the precautionary principle, public and private decisions should be guided by careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment. In this instance Council's Natural Resource Management Unit has raised concern with regard to the potential for the development to impact upon two threatened species as listed under the Threatened Species Conservation Act 1995. These concerns have not been addressed adequately by the applicant and as such it is recommended by Council's Natural Resource Management Unit that the application as it stands be refused.

In light of this, the proposed development is not considered to be in accordance with the provisions of this Clause.

Clause 8 – Consent Considerations

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.*

Although consistent with the relevant 2(a) zone objectives (Subdivision is permissible in the 2(a) zone with a minimum allotment size of 450m²), there are concerns regarding the proposed development having regard to (b) and (c) above. The submitted information does not demonstrate that the proposal will not have an unacceptable cumulative impact on the community or locality as outlined elsewhere in this report.

Therefore, in accordance with this clause, it is considered that consent should not be granted for this proposal as submitted.

Clause 11 - Zone objectives

The subject site is located within the 2(a) Low Density Residential zone. The primary objective of this zone is 'to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.'

Secondary objectives of this zone are:

To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.

It is considered that the subdivision proposal, which would facilitate the low density development of the site as per the 450m² minimum site size is in accordance with the zone objectives.

Clause 15 - Essential Services

The objectives of this Clause are to ensure that development does not occur without adequate measures to protect the environment and the community's health and to ensure that development occurs in a coordinated and efficient manner.

This Clause goes on to further state that Consent must not be granted to the carrying out of development on any land unless:

- (a) A water supply and facilities for the removal or disposal of sewage and drainage are available for that land, or

- (b) Arrangements satisfactory to the consent authority have been made for the provision of that supply and those facilities.

The subject application has been reviewed by Council's Development Engineer who has indicated that the proposal does not provide adequate drainage services for the proposed development. As such, this Development Application is not considered to be in accordance with this Clause of the TLEP 2000.

Clause 17 - Social Impact Assessment

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

Clause 19 – Subdivision (General)

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

Clause 35 - Acid Sulfate Soils

The subject site demonstrates Class 5 Acid Sulfate Soils in accordance with this Clause. The application was reviewed by Council's Environmental Health Section who has indicated that the proposal is acceptable in this regard.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan (NCREP) states that Council shall not grant consent to the 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;
- (b) it is satisfied that the proposed road widths are not excessive for the function of the road;
- (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;
- (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
- (e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

The proposed development is considered to be generally in accordance with the above provisions, however it is not possible to determine that council are satisfied that the density of the (future) dwellings have been maximised without adversely affecting the environmental features of the land, given that insufficient ecological information has been provided in this regard.

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

The Draft Tweed Shire Local Environmental Plan applies to this site. The draft zone is R2: Low Density Residential. The proposed subdivision is ancillary development to the established residential use on the site and is permitted with consent as 'Multi dwelling housing'. The proposal is therefore not in contravention of the Draft LEP.

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. R2 land currently zoned 2(a) is identified as Lot Size code G, which requires 450m². The proposal is generally acceptable when assessed against the Draft LEP.

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

Tweed Development Control Plan

A5-Subdivision Manual

Tweed Development Control Plan A5 -Subdivision Manual aims to:

- Present Council's strategic plan objectives for the development of subdivisions.
- Achieve the highest quality and 'best practice' of subdivision development in the Shire
- Implement the policies and provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development.
- Provide guidelines and development standards for the development of subdivisions.

The subject application has been referred to Council's Development Engineer who has reviewed the subject application against the provisions of DCP A5. Whilst many of the criteria under this DCP are considered to be complied with or to a level that could be satisfactorily resolved through provision of appropriate conditions of development consent, there are concerns with the proposed development regarding stormwater management and geotechnical stability.

A5.4.5 Environmental Constraints

Section A5.4.5 Environmental Constraints contains provisions for land with risk of land slip or subsidence. This section states that:

Development sites must be assessed to determine if they are at risk from landslip or subsidence:

- originating either on or off the development site; or
- from an existing risk or a risk that will result from proposed subdivision works; or

- elements at potential risk include proposed lots, roads, open space and public infrastructure.

Councils Engineer has noted that whilst a Broadscale Geotechnical Investigation has been submitted as part of the subject application, this report states that *'the geotechnical investigations did not include an assessment of the stability of the site or individual sites. Based on the site walk over it is recommended that following earthworks plans a stability assessment be carried out by a geotechnical engineer'*.

Through public notification, concerns were raised that subsurface drainage, which was previously been identified as a contributing factor to instability had not been addressed by the Development Application.

The applicant has not addressed the above criteria to the satisfaction of Council's Development Engineer and declined to provide further geotechnical assessment. Therefore this issue is considered to warrant a recommendation of refusal for the Development Application as stability issues should be appropriately addressed prior to development approval.

A5.4.7 Stormwater Runoff, Drainage, Waterways and Flooding

Under this section stormwater runoff and drainage must only be discharged from a subdivision at a "lawful point of discharge". This must be on or immediately adjacent to the development site and may be:

- a natural watercourse or waterway to which the development site naturally drains;
- a "lawful point of discharge" agreed to by Council (i.e. an existing constructed public drain).

At present stormwater drainage from the site is conveyed via a piped drainage network traversing through the existing allotment and neighbouring Lot 1 DP 626198 and Lot 87 DP 253421. There is currently no easement over the piped infrastructure traversing through Lot 87 DP 253421.

The proposed development will result in a change to the stormwater discharged from the site. The Applicant has not provided appropriate assessment to determine if the existing drainage network has adequate capacity to convey the required piped and overland stormwater adequately. Furthermore it has not been demonstrated that an easement can be obtained through neighbouring lots to convey stormwater, secure the integrity of the stormwater infrastructure and establish legal points of discharge for the development.

As such, it is considered that the proposal does not discharge to a natural watercourse or waterway to which the development site naturally drains or a "lawful point of discharge" agreed to by Council.

This DCP goes on to state that where no acceptable point of discharge presently exists, the subdivider must:

- acquire and dedicate to Council connecting reserves or easements that provide legal continuity from the development site to an offsite legal point of discharge in a natural watercourse or waterway or suitable (appropriate location, size/capacity) public drain;
- construct the necessary connecting drainage works.

The applicant has indicated that attempts to negotiate with surrounding landowners in order to acquire easements has been unsuccessful and as such has requested Council to acquire the required easements. This has thus far not been supported by Council. The proposal is considered to be in contravention of A5.4.5 of this DCP and as such is not supported by Council officer.

The proposed development does not satisfy the criteria set out in Section 5.4 of Development Control Plan A5 - Subdivision Manual and as such it is not considered in the appropriate planning or in accordance with sustainable development for the area to approve this application.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

Clause 92(b) Applications for demolition

No demolition is proposed as part of this application.

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

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by the Tweed Shire Coastline Management Plan 2005.

Tweed Coast Estuaries Management Plan 2004

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not applicable to the application.

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

As the subject site is not located within the Cobaki or Terranorra Broadwater (within the Tweed Estuary), this Plan is not considered relevant 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

Flora and Fauna

This application was referred to Council's Natural Resource Management Unit having regard to the vegetation removal associated with the proposal. Numerous regenerating rainforest species were recorded and include Red Kamala (*Mallotus philippensis*), Guioa (*Guioa semiglauca*), Umbrella Cheese Tree (*Clochidion sumatranum*) and Foambark (*Jagera pseudorhus*). Several trees considered suitable habitat or food source for Koalas were also recorded including Tallowwood (*Eucalyptus microcorys*), Brushbox (*Lophostemon confertus*), Pink Bloodwood (*Corymbia intermedia*) and Northern Grey Ironbark (*Eucalyptus siderophloia*).

Furthermore, two (2) threatened flora species were recorded, as listed below.

Species	Scientific Name	No. present on site
Coolamon, Durobby	<i>Syzygium moorei</i>	2
Fine-leaved Tuckeroo	<i>Lepiderema pulchella</i>	1

Comments received have raised concern with regard to the potential for the development to impact upon two (2) threatened species as listed under the Threatened Species Conservation Act 1995. Two (2) of the three (3) recorded threatened flora species would be significantly impacted upon by the proposed subdivision works, likely resulting in the demise of these trees. A mature Coolamon (*Syzygium moorei*) located within proposed Lot 2 would be affected by driveway construction works and a mature Fine-leaved Tuckeroo (*Lepiderema pulchella*) is located in an easement adjacent to proposed Lot 4 within which sewer and drainage pipes are proposed.

A request for further information to enable proper assessment of the application from an ecological perspective was requested of the applicant on 16 September 2011.

A Flora and Fauna Assessment has been submitted by the applicant. The Report advises that a vegetation survey was undertaken on site on 28 January 2011 at which two (2) threatened flora species (i.e S. moorei and L. pulchella) were recorded. The vegetation identified on site was not representative of any listed Endangered Ecological Communities. The Report concluded that the proposed development will have little impact on either the occurrence of quality native vegetation or fauna habitat.

The information on file from the applicant is not considered to adequately address the ecological concerns raised. In absence of any further information from the applicant Council's Natural Resource Management Unit has recommended that the application as it stands should be refused as insufficient information has been provided to enable determination that the proposal is unlikely to have a significant impact on threatened species, populations or ecological communities in accordance with Section 5A of the Environmental Planning and Assessment Act 1979. Consultation between Councils Engineer and Natural Resource Management Unit indicate that the proposed engineering works are likely to impact on the recorded threatened species both directly and indirectly.

(c) Suitability of the site for the development

Topography

The topography on the site is undulating, with ground levels varying from 40m AHD at the highest point to 20m AHD at the lowest. Furthermore, the site is surrounded by low density residential development, with the exception of approximately 30m road frontage to Byangum Road and 25m frontage to Tombonda Road.

As a result, the development potential of the site is restricted as any change to existing geotechnical levels or stormwater drainage will have an impact on the surrounding properties. In this instance, the applicant has not demonstrated to Council officers that the subject development will not have an unacceptable impact on the surrounding areas with respect to the abovementioned issues and as such, this Development Application is not supported.

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

The subject application was notified for a period of fourteen (14) days from Wednesday 22 June 2011 to Wednesday 6 July 2011. During this time three (3) submissions were received with respect to the proposal. Please see a detailed synopsis of the submissions below:

Submission No. 1: Owner of 13 Tombonda Road (Lot 88 DP253421)

This submission states that the above property currently receives stormwater run-off from the subject development site and in this regard requests protective measures from the proposal regarding stormwater.

The submission also states that proposed Lot 8 was subject to land slip previously and raises concerns that the removal of vegetation will result in further geotechnical stability issues.

There is an existing shed is on the submitter's site boundary. It is stated that removal of this shed will pose a geotechnical threat to her property as the site slopes steeply at this location.

Finally the submission queries what is to happen to an underground fuel and storage tank adjacent to the shed, if it is to be removed and if it holds any contaminants.

Applicants Response

The applicant has provided a response stating that water run-off will continue to be discharged via the existing drainage lines through an adjacent lot.

It is further stated that the applicant has provided a geotechnical report which identifies potential impact mitigation measures. It is indicated that these measures would be formalised through the 'Construction Certificate' application.

The existing shed is not to be removed as part of this application. The applicant refers to a site contamination assessment submitted as part of the application in relation to the removal of the underground fuel tank which indicates that remediation is not required. Further details with respect to this are to accompany the 'Construction Certificate' application.

Council Response

Councils Development Engineer has indicated that the applicant has not adequately addressed concerns raised in this objection regarding how the proposed development will manage stormwater drainage in the vicinity of Lot 88 & 87 DP 253412. This is considered to warrant a recommendation of refusal for this Development Application as this issue/concerns should be appropriately addressed prior to development approval.

Submission No. 2: Owner of 9 Tombonda Road (Lot 86 DP253421)

This submission provides some general information relating to the development history in the area and some geotechnical stability issues affecting the above property. Three grounds of objection to the proposed development have been provided. These are:

Stormwater

The objector has concerns that the proposed development works will impact upon the volumes of stormwater which currently flow through his land and has concerns regarding the legal status, capacity and maintenance of this drainage system.

Subsurface drainage

The objector is concerned that subsurface drainage, which has previously been identified as a contributing factor to instability has not been addressed by the Development Application.

Excess fill

The objection states that the surcharge of fill on the slope above the objectors' property exacerbates the problems.

Applicants Response

The applicant has provided a response stating that water run-off will continue to be discharged via the existing drainage lines through an adjacent lot.

It is further stated that the applicant has provided a geotechnical report which does not identify significant instability issues.

Council Response

Councils Development Engineer has indicated that the applicant has not adequately addressed concerns raised in this objection regarding stability. The applicant was requested to provide further information in this regard but has not done so. This issue is considered to warrant a recommendation of refusal for this Development Application as stability issues should be appropriately addressed prior to development approval.

Submission No. 3: Owners of 180 Byangum Road (Lot 1 DP626198)

This submission raises objections to the proposed development, in particular proposed Lot 6 & 8.

Lot 6 - It is stated that a 900mm side setback would impose a restriction to the pedestrian access of the objectors' property.

Lot 8 - It is requested that any building situated on this lot is situated as far from the objectors lot as possible and be limited to a single storey development. It is noted that the objectors are concerned that their solar hot water system be impacted by future development in this area.

It is noted generally that anecdotal evidence suggests that these lots may not be suitable for housing due to large amounts of sawdust and woodchips dumped as fill on these areas.

Applicants Response

The applicant has indicated that a 900mm future dwelling setback is the minimum required under current standards. Furthermore, it is asserted that the objectors enjoy no lawful pedestrian access over the subject development site to their property.

With respect to a future dwelling on proposed Lot 8, it is stated that any dwelling will be required to comply with DCP A1 with respect to siting.

The applicant has indicated that the Geotechnical report does not identify sawdust issues as raised in the submission.

Council Response

The issues raised in this submission are considered to be adequately addressed.

(e) Public interest

The issues considered in the assessment of the proposal are considered valid and contribute to the reasons for refusal. Having regard to potential impacts on surrounding properties and the natural environment in the area which have not been adequately addressed or resolved in the subject application, it is considered that this Development Application does not constitute the proper or sustainable

planning or development of this area. Therefore it is in the public interest for this application to be refused.

OPTIONS:

1. Refuse the application for the reasons provided; or
2. Council initiate proceedings to investigate the feasibility of acquiring the required easements from the relevant surrounding properties on behalf of the applicant in order to facilitate this development application.

CONCLUSION:

The application as submitted does not adequately address a number of issues raised by Councils Engineering and Natural Resource Management officers in addition to concerns raised by members of the public.

Sufficient information has not been submitted to determine that the stormwater drainage, geotechnical or ecological issues can be resolved in a way that is acceptable at this location. This is reflected in the proposal's non compliance with the statutory framework applicable to the development application.

Having undertaken an assessment against the relevant statutory controls the proposed eight (8) lot subdivision development would contravene the provisions of the Tweed Local Environmental Plan 2000, the North Coast Regional Environmental Plan 1988 and Tweed Shire Council's Development Control Plan A5-Subdivision Manual. The proposed development is therefore recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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- 13 [PR-CM] Development Application DA10/0704 for a 35 Lot Subdivision (32 Industrial Lots) at Lot 2 DP1139059 No. 10 Lundberg Drive, Lot 1 DP232745 No. 92 Wardrop Valley Road, Lot 17 DP712954 Quarry Road, Lot 2 DP1156966 and Lot 228 DP1122768 & Lot 10 DP1071301 Wardrop Valley Road, South Murwillumbah

SUBMITTED BY: Development Assessment

FILE NUMBER: DA10/0704 Pt1



Civic Leadership

SUMMARY OF REPORT:

Tweed Shire Council is the property owner and applicant for this development application. Council development consent is sought for a 35 lot subdivision, consisting of 32 industrial lots, one (1) drainage reserve lot (proposed Lot 13) and two (2) residue lots being the existing Garbage Depot (proposed Lot 34) and the 7(l) Environmental Protection (Habitat) zoned land (proposed Lot 35). The application also proposes the opening of new roads including a road connecting Quarry Road and Lundberg Drive and the provision of underground drainage, water supply, sewerage, power and telephone services.

Staging is proposed as follows:

- Stage 1 – Lots 1 to 6, 13 and 18 to 22.
- Stage 2 – Lots 7 to 12 and 14 to 17.
- Stage 3 – Lots 23 to 35.

The land to which all of the proposed industrial lots are located is zoned 4(a) Industrial. Currently existing Lot 2 in DP 1139059, consists of three zones; 7(l) Environmental Protection (Habitat), 5(a) Garbage Depot and 4(a) Industrial. The application seeks to subdivide Lot 2 in DP 1139059 into three lots consistent with the zone boundaries. As such, proposed Lot 35 will consist of land zoned 7(l); proposed Lot 34 will consist of land zoned 5(a); with the remaining 4(a) Industrial land forming part of the proposed industrial subdivision. The development requires improvement to existing surrounding drainage on the following existing lots; Lot 228 in DP 1122768 zoned 1(b2) Agricultural Protection, Lot 17 in DP 712854 zoned 5(a) Special Uses (Aerodrome), Lot 2 in DP 1139059 zoned 5(a) Special Uses Garbage Depot. The proposed drainage works are permissible with consent in the zones.

An objection pursuant to State Environmental Planning Policy No.1 (SEPP 1) is submitted pursuant to clause 20(2)(a) *Subdivision in zones 1(a), 1(b), 7(a), 7(d) and 7(l)* of the Tweed Local Environmental Plan 2000 as the minimum lot size of 40 hectares is not achieved for land zoned 7(l) Environmental Protection (Habitat) (proposed Lot 35). Proposed Lot 35 will contain all of the 7(l) Environmental Protection (Habitat) land with a total land area of 9.042 hectares. The NSW Department of Planning and Infrastructure granted concurrence to vary

the subdivision development standard, on 25 March 2011. Accordingly, the application is to be determined by Council, due to the SEPP 1 Objection.

The proposal is permissible with consent.

RECOMMENDATION:

That Development Application DA10/0704 for a 35 Lot Subdivision (32 Industrial Lots) at Lot 2 DP 1139059 No. 10 Lundberg Drive, Lot 1 DP 232745 No. 92 Wardrop Valley Road, Lot 17 DP 712954 Quarry Road, Lot 2 DP 1156966 and Lot 228 DP 1122768 & Lot 10 DP 1071301 Wardrop Valley Road, South Murwillumbah be approved subject to the following conditions:

GENERAL

1. Staging

The development may be constructed in three separate parts as follows:

Stage 1- Lots 1 to 6, 13 and 18 to 22

All necessary clearing, bulk earthworks and overland flow drainage systems in accordance with the approved drawings.

Construction of the following roads, including underground drainage, water supply, sewerage, power, telephone services and Federal Government's National Broadband Network (NBN) initiatives (pit and conduit network):

- Road One
- Quarry Road (CH 00 to CH 80)

The development shall be completed in accordance with drawing number SK4, Issue D, dated 28/03/12 by Cozens Regan Williams Prove Pty Ltd.

Temporary turnaround areas are to be provided to the ends of all roads to be extended into the next stage. The turnaround areas are to be constructed in accordance with Development Control Plan Section A5 – Subdivision Manual and Councils adopted Development Design and Construction Specifications. The temporary turnaround areas shall be detailed on the Construction Certificate application.

External Works

Improve the hydraulic efficiency of the existing central cane drain, western cane drain and southern cane drain (between the union drain and western drain) as depicted on drawing number SK13 Issue A by Cozens Regan Williams Prove and dated 7/09/10. The works are to be detailed as part of the Construction Certificate application and owners consent is to be provided for the proposed works.

Stage 2 – Lots 7 to 12 and 14 to 17

All necessary clearing, bulk earthworks and overland flow drainage systems in accordance with the approved drawings.

Construction of the following roads, including underground drainage, water supply, sewerage, power, telephone services and Federal Government's National Broadband Network (NBN) initiatives (pit and conduit network):

- Quarry Road (CH 80 to CH 340)
- Road Two (CH 00 to CH 80)

The development shall be completed in accordance with drawing number SK4, Issue D, dated 28/03/12 by Cozens Regan Williams Prove Pty Ltd.

Temporary turnaround areas are to be provided to the ends of all roads to be extended into the next stage. The turnaround areas are to be constructed in accordance with Development Control Plan Section A5 – Subdivision Manual and Councils adopted Development Design and Construction Specifications. The temporary turnaround areas shall be detailed on the Construction Certificate application.

External Works

Improve the hydraulic efficiency of the existing central cane drain, western cane drain and southern cane drain as depicted on drawing number SK13 Issue A by Cozens Regan Williams Prove and dated 7/09/10. The works are to be detailed as part of the Construction Certificate application and owners consent is to be provided for the proposed works.

Stage 3 – Lots 23 to 35

All necessary clearing, bulk earthworks and overland flow drainage systems in accordance with the approved drawings.

Construction of the following roads, including underground drainage, water supply, sewerage, power, telephone services and Federal Government's National Broadband Network (NBN) initiatives (pit and conduit network):

- Quarry Road (CH 340 to END)
- Road Two (CH 80 to END)
- Lundberg Drive Widening (CH 00 to END)

The development shall be completed in accordance with drawing number SK4, Issue D, dated 28/03/12 by Cozens Regan Williams Prove Pty Ltd.

Temporary turnaround areas are to be provided to the ends of all roads to be extended into the next stage. The turnaround areas are to be constructed in accordance with Development Control Plan Section A5 – Subdivision Manual and Councils adopted Development Design and Construction Specifications. The temporary turnaround areas shall be detailed on the Construction Certificate application.

External Works

Improve the hydraulic efficiency of the existing central cane drain, western cane drain and southern cane drain as depicted on drawing number SK13 Issue A by Cozens Regan Williams Prove and dated 7/09/10. The works are to be detailed as part of the Construction Certificate application and owners consent is to be provided for the proposed works.

[GENNS01]

2. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 2587-14 prepared by Chapman Surveys and dated 16/02/12, and plan Nos SK4, SK9, SK10, SK11, prepared by Cozens Regan Williams Prove and dated 28/03/12 and 29/03/12 except where varied by the conditions of this consent.

[GEN0005]

3. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.

[GEN0045]

4. 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]

5. 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]

6. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then this shall be detailed within the Construction Certificate application for approval of such works.

[GEN0155]

7. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Preliminary Geotechnical Assessment, dated 28 September 2010, except where varied by the conditions of this consent.

The above preliminary geotechnical assessment is limited in scope due to extensive earthworks involving cuts of up to 18 metres in areas. Additional geotechnical investigations as specified in the report are required prior to works commencing on site.

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

[GENNS02]

8. Stormwater management shall be in general accordance with the Stormwater Management Plan prepared by Cozens Regan Williams Prove Pty Ltd dated 20 February 2012, except where varied by the conditions of this consent.

[GENNS03]

9. Removal of vegetation from land zoned 7(l) Environmental Protection (Habitat) is prohibited, unless separate approval is granted by Council's General Manager or delegate.

[GENNS04]

10. The Office of Environment & Heritage requires that the proponent needs to ensure that transitional arrangements are in place to ensure compliance with the design and operational standards of *Managing Urban Stormwater: Soils and Construction: Volume 1*, and that the quarries are to be adequately

decommissioned and rehabilitated prior to construction of the subdivision commencing.

[GENNS05]

11. The Mineral and Resources Division, Industry and Investment NSW requires that the development follows, or occurs in parallel with, the later stages of and does not restrict, approved quarrying in any part of the subject land.

[GENNS05]

12. Pursuant to Section 88B of the Conveyancing Act, the existing easement for services on the southern portion of existing Lot 2 DP 1156966 benefiting Tweed Shire Council be preserved in the new subdivision layout.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

13. Proposed Lot 13 shall be suitably embellished at no cost to Council including the detention basin, retaining walls, grassing, landscaping, safety barriers / fencing and access.

[PCC0235]

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

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

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

[PCC0275]

15. 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]

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

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers

which require minimal maintenance. Undergrowth should be weed suppressant.

- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

17. All earthworks shall 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.

Catch drains shall be provided on the top side of all retaining walls in accordance with Council's Development Design Specification D6 – Site Regrading.

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

[PCC0485]

18. Notwithstanding any other condition of this consent separate construction certificates for bulk earthworks and civil works may be issued and the carrying out of bulk earthworks may be commenced prior to the issue of a Construction Certificate for civil works where it can be demonstrated all works are compatible.

[PCC0495]

19. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" 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]

20. 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.

Road Works

- (a) Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 13m sealed pavement width classified as Access Street (Industrial), within a 20m wide road reserve as per Councils road works standard. A minimum of 3.5m wide nature strip shall be provided on each side for all internal roads.
- (b) A concrete footpath of 1.2 metres wide and 100 millimetres thick on compacted road base is to be constructed along the frontage of all lots including the full length of all internal roads in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.
- (c) Road widening of Lundberg Drive to an urban bitumen sealed road formation with upright kerb and gutter. The widening is to match the existing road formation south of the site and continue for the full site

frontage. Tapering to the existing road formation north of the site is to occur beyond the site frontage.

Stormwater

- (a) Additional survey and calculations shall be carried out in the Construction Certificate application phase to determine if any additional detention is required.
- (b) The detailed design of the stormwater detention basin/s shall be submitted with the Construction Certificate application. Specific Requirements to be detailed within the Construction Certificate application for the detention basins include:
 - Size of all detention basins including benching, profiles of batters and extents.
 - Location of all detention basins.
 - All safety measures such as safety barriers/safety fencing.
 - All calculations to be provided, demonstrating appropriately sized detentions basins.
 - Provide a compliant sealed access road to any constructed detention basin, such that a two-wheel drive vehicle is able to drive up to the detention basin for maintenance purposes. A turn around area is to be provided at the end of the access road.

Pressure Sewer

- All common rising mains shall be located in the road reserve. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
- The pump stations are to be designed within a small compound that includes the control box and concrete slab.
- A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.
- The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 Pressure Sewer Code of Australia.

Intersections

Construction of an intersection layout of Lundberg Drive / Quarry Road in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.

Kerb and Gutter including any pavement widening, line marking and signage in Lundberg Drive shall be provided for the full length of the industrial property frontage.

Electricity

All electrical supply works (sub-stations, switching stations, cabling etc) to be included on the Construction Certificate drawings.

[PCC0875]

21. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

22. 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]

23. 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 may incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction certificate application include:

- 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.
- 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 for approval prior to issue of a Construction Certificate.
- Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

24. 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 Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 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 Local Government Act will then NOT be required.

[PCC1145]

25. 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]

26. 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 Local Government Act will then NOT be required.

[PCC1195]

27. Prior to the issue of a construction certificate the applicant is required to engage a suitably qualified consultant to prepare an Acid Sulfate Soil Assessment and Management Plan to the satisfaction of Council's General Manager or delegate.

[PCCNS01]

28. Prior to the issue of a construction certificate the applicant is required to engage a suitably qualified consultant to prepare a Construction Noise Management Plan to the satisfaction of Council's General Manager or delegate. The management plan shall include but not be limited to the following;

- Assessment of potential noise impacts.
- Proposed noise mitigation measures.
- Restriction in construction hours.
- Maintenance of equipment.
- Complaint management.

[PCCNS01]

29. Prior to the issue of a construction certificate the applicant is required to engage a suitably qualified consultant to prepare a Dust Management Plan to the satisfaction of Council's General Manager or delegate.

[PCCNS01]

30. Where private sewage ejection pump stations are proposed, and prior to the issue of a sub-division certificate, the applicant is required to lodge an application to install an onsite sewerage management system, pay the appropriate fee and be issued with an approval to install under Section 68 of the Local Government Act 1993.

[PCCNS01]

31. Prior to the issue of a construction certificate, the construction certificate application shall include engineering calculations and design plans for all stormwater detention systems and upgrade works for downstream open drains. These details must demonstrate that the contributing industrial catchment, at ultimate development, will not cause unacceptable adverse flooding of downstream land.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

32. 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]

33. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

34. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

35. 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]

36. 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 the issue of the Subdivision Certificate.

[PCW0375]

37. Prior to start of works, the Principal Certifying Authority 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, as well as on all endorsed retaining walls and structures designed over Council's sewer main. The certificate must address any loads or possible loads on the wall from structures adjacent to the wall, as well as confirm that any proposed piers or foundations are located outside the zone of influence of the sewer main.

The certificate must be supported by Geotechnical assessment of the founding material and be endorsed by Council's Community and Natural Resources Division.

[PCW0745]

38. 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 Council's 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:
- (c) has appointed a principal certifying authority,
- (d) has appointed a Subdivision Works Accredited Certifier (SWAC) to certify the compliance of the completed works. The SWAC must be accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and

- (i) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (ii) 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
- (e) 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.

Note: For subdivisions creating 5 new allotments or less, OR the value of new public infrastructure is less than \$30,000, then the SWAC may be substituted for an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.

[PCW0815]

39. The proponent shall provide to the Principal Certifying Authority copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

40. 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

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

[DUR0005]

- 42. 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]

- 43. 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]

- 44. 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]

- 45. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.**

[DUR0745]

- 46. During filling operations,**

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**
- All fill and cut batters shall be contained wholly within the subject land.**

- All 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 and to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

47. 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 earthworks comply with AS3798 and that the development is suitable for its intended use shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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. 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]

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

[DUR0995]

51. 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]

52. A concrete footpath of 1.2 metres wide and 100 millimetres thick is to be constructed along the frontage of all lots including the full length of all internal roads 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]

53. 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]

54. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered National Association of Testing Authorities (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]

55. During the relevant stages of road construction, tests shall be undertaken by a Registered National Association of Testing Authorities (NATA) Geotechnical firm. A report including copies of test results shall be submitted to the Principal Certifying Authority 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]

56. Provision of temporary turning areas and associated signage for refuse vehicles at the end of roads which will be extended in subsequent stages. The temporary turning areas shall be constructed with a minimum 150mm pavement (CBR 45) and shall have a right of carriageway registered over the turning area until such time as the road is extended.

[DUR1835]

57. 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]

58. 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]

59. 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) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections - on maintenance
- (i) 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

Sewer Pump Station

- (a) Excavation
- (b) Formwork/reinforcement
- (c) Hydraulics
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) 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 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".

[DUR1895]

60. All retaining walls in excess of 1.2 metres in height or retaining walls and structures that are approved to be constructed over Council's sewer main, must be certified by a Qualified Structural Engineer verifying the structural integrity of the structures after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the Principal Certifying Authority prior to the issue of a Subdivision Certificate.

[DUR1955]

61. 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]

62. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design and 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]

63. 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]

64. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

65. Drainage Reserve

- (a) The proposed drainage reserve is to be dedicated to Council at no cost.
(b) An accurate plan of the proposed drainage reserve shall be submitted to Council 60 days prior to lodgment of Application for Subdivision Certificate (form 13) to allow the land to be classified.

[DUR2295]

66. 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]

67. 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]

68. During construction, a "satisfactory inspection report" is required to be issued by Council for all Section 68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

69. No earthworks or soil removal is to occur inside the 'edge of rubbish' line on Council's location of landfill map (ref: Tweed Shire Council Design unit: location of landfill drawing WK11011) except with prior written approval of Council.

[DURNS01]

70. Prior to the commencement of any road construction, pavement design details, including reports from a Registered National Association of Testing Authorities (NATA) Consultant shall be submitted to Council for approval. The pavement shall comply with Councils Development Design and Construction Specifications.

[DURNS02]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

71. 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]

72. 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:

Stage 1

Water DSP2: 10 ET @ \$11571 per ET \$115,710

Sewer Murwillumbah: 10 ET @ \$5560 per ET \$55,600

Stage 2

Water DSP2: 10 ET @ \$11571 per ET \$115,710

Sewer Murwillumbah: 10 ET @ \$5560 per ET \$55,600

Stage 3

Water DSP2: 10 ET @ \$11571 per ET \$115,710

Sewer Murwillumbah: 10 ET @ \$5560 per ET \$55,600

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

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

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

[PCC0265/PSC0165]

73. 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.

Stage 1

(a) Tweed Road Contribution Plan:

65 Trips @ \$1807 per Trips \$117,455

(\$1807 base rate + \$0 indexation)

S94 Plan No. 4

Sector10_4

**(b) Extensions to Council Administration Offices
& Technical Support Facilities**

2.166884 ET @ \$1772.82 per ET \$3,841.50

(\$1759.9 base rate + \$12.92 indexation)

S94 Plan No. 18

Stage 2

- (a) Tweed Road Contribution Plan:
65 Trips @ \$1807 per Trips \$117,455
(\$1807 base rate + \$0 indexation)
S94 Plan No. 4
Sector10_4
- (b) Extensions to Council Administration Offices
& Technical Support Facilities
2.166884 ET @ \$1772.82 per ET \$3,841.50
(\$1759.9 base rate + \$12.92 indexation)
S94 Plan No. 18

Stage 3

- (a) Tweed Road Contribution Plan:
65 Trips @ \$1807 per Trips \$117,455
(\$1807 base rate + \$0 indexation)
S94 Plan No. 4
Sector10_4
- (b) Extensions to Council Administration Offices
& Technical Support Facilities
2.166884 ET @ \$1772.82 per ET \$3,841.50
(\$1759.9 base rate + \$12.92 indexation)
S94 Plan No. 18

[PCC0215/PSC0175]

74. 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 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.

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 the subdivision 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

[PSC0185]

75. 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 public infrastructure 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.

[PSC0215]

76. Prior to the issue of a Subdivision Certificate, a performance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

77. A bond to ensure acceptable plant establishment and landscaping performance at time of handover to Council shall be lodged by the Developer prior to the issue of the Subdivision Certificate. The bond shall be held by Council for a period of 12 months from the date of issue of the Subdivision Certificate and may be utilised by Council during this period to undertake essential plant establishment or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

78. Pursuant to the provisions of S94 Plan proposed lot 13 shall be dedicated as passive open space at no cost to Council including any embellishment specified.

[PSC0245]

79. Prior to the issue of a subdivision certificate, a certificate of compliance shall be submitted to Council by the Developers Subdivision Works Accredited Certifier (SWAC) or equivalent, verifying that the placed fill has been compacted in accordance with the requirements of AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments" and is suitable for residential purposes.

The submission shall include copies of all undertaken test results.

[PSC0395]

80. 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]

81. 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]

82. 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) An easement for support is to be created over the footprint of the above retaining wall(s) or batters, benefiting the higher lot. The terms of this easement shall include:

- The owner of the lot burdened shall not interfere with the retaining wall or, batter or the support it offers or use it in a way which may detract from the stability or support provided and
 - The owner of the lot benefited, may at any time the stability of the retaining wall is threatened, enter upon the easement and any carry out repairs required to restore the stability and support provided. And
- (b) A restriction on use is to be created on the lower lot title adjacent to the retaining wall footprint, restricting excavation (greater than 0.3m in vertical height) within the area burdened by the restriction. The width of the area and excavation restrictions within the area shall be determined by the retaining wall designer and shall be no less than the height of the wall, and
- (c) A restriction on use is to be created on the higher lot adjacent to the retaining wall footprint, restricting placement of structures or filling (greater than 0.3m in vertical height) within the area burdened. The restrictions shall be determined by the wall designer, with a width no less than the height of the wall.
- (d) 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.

83. 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]

84. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) A Restriction As to User for a 10m wide buffer and vegetation corridor on all lots adjacent to the cane fields (Lot 228 on DP 1122768) as depicted on reference drawing number 2587-10 by Chapman Surveys Ptd Ltd dated 15/12/10.
- (c) A Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006" Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.
The Positive Covenant (as applicable) to be created over all new dwelling allotments.
- (d) A Restriction As To User requiring that all roofwater from buildings or structures shall be discharged to an approved infiltration pit or permanent drainage located on the subject property. The infiltration pit or permanent drainage shall be approved by the Principal Certifying Authority.

- (e) Extinguishment of superfluous Right of Carriageways that were previously created to provide temporary turning areas for refuse vehicles and the general public, but are now no longer required.
- (f) Prior to the issue of a Subdivision Certificate, a 6m wide easement is to be provided for access and stormwater drainage over Lot 22 from Road No. 1 to Lot 13.
- (g) Lot 13 to be dedicated as a Drainage Reserve.
- (h) The land located within Lundberg Drive/Wardrop Valley, adjacent (east) to Lot 1 DP1139059 is to be dedicated as Road Reserve.

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.

85. 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]

86. 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]

87. 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 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".**

[PSC0915]

- 88. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.**

[PSC0925]

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

[PSC0945]

- 90. 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 gravity sewerage systems 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]

- 91. Prior to the release of the subdivision certificate the proponent shall:**
- Dedicate the proposed drainage reserve at no cost to Council.**
 - Submit an accurate plan of the proposed drainage reserve to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.**

[PSC1075]

- 92. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation (including household connections) 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.**

Fire Hydrants spacing, sizing and pressures shall comply with Council's DCP – Section A5 – Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005.

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]

- 93. 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]

94. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity 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]

- 95. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all Section 68h2 permanent stormwater quality control devices.**

[PSCNS01]

- 96. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.**

[PSCNS02]

- 97. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the subdivision is required to provide a pit and conduit network to allow for the installation of fibre to the home (FTTH) broadband services.**

[PSCNS03]

- 98. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the Principal Certifying Authority, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.**

[PSCNS04]

REPORT:

Applicant: Tweed Shire Council

Owner: Tweed Shire Council

Location: Lot 2 DP 1139059 No. 10 Lundberg Drive, Lot 1 DP 232745 No. 92 Wardrop Valley Road, Lot 17 DP 712954 Quarry Road, Lot 228 DP 1122768 & Lot 10 DP 1071301 Wardrop Valley Road, South Murwillumbah

Zoning: 4(a) Industrial, 5(a) Garbage Depot, 7(l) Environmental Protection (Habitat), 5(a) Aerodrome, 6(a) Open Space, 1(a) Rural, 1(b2) Agricultural Protection

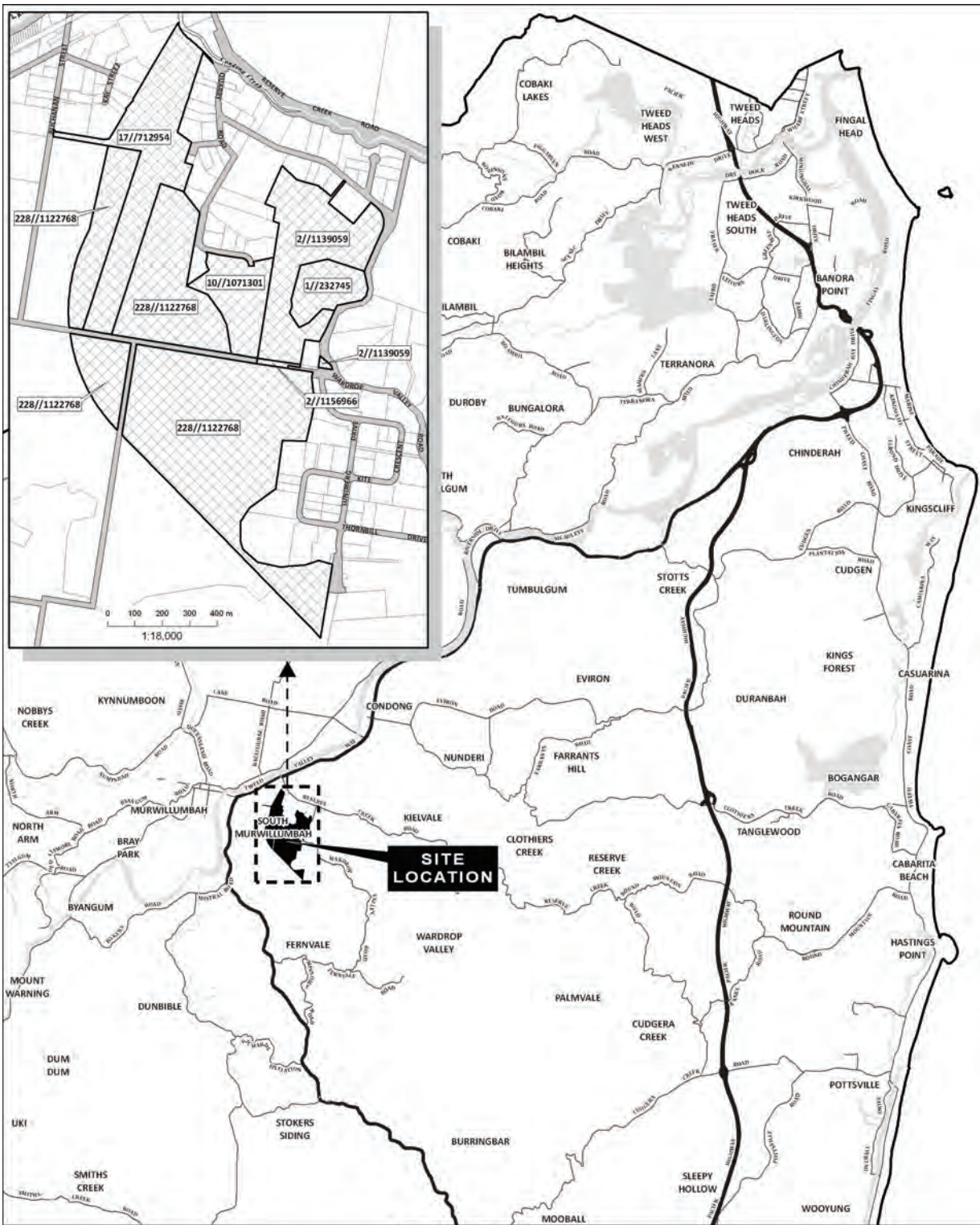
Cost: Nil

BACKGROUND:

The original subdivision application proposed 38 lots, consisting of 35 industrial lots, one (1) drainage reserve lot (proposed Lot 13) and two (2) residue lots being the existing Garbage Depot (proposed Lot 37) and the land zoned 7(l) Environmental Protection (Habitat) (proposed Lot 38). The applicant proposed a modification to the site plan to reduce the number of lots from 38 to 35 lots. The purpose of the reduction was to eliminate the need for removal of contaminated soil from the previously proposed lots 25 and 26, which infringed on Council's landfill site. The amended application also consolidated proposed Lots 27, 28 and 29 into two (2) lots.

The current plan of subdivision seeks Council consent for a 35 lot subdivision, consisting of 32 industrial lots, one (1) drainage reserve lot (proposed Lot 13) and two (2) residue lots being the existing Garbage Depot (proposed Lot 34) and the land zoned 7(l) Environmental Protection (Habitat) (proposed Lot 35). The application also proposes the opening of new roads including a road connecting Quarry Road and Lundberg Drive and the provision of underground drainage, water supply, sewerage, power and telephone services.

SITE DIAGRAM:

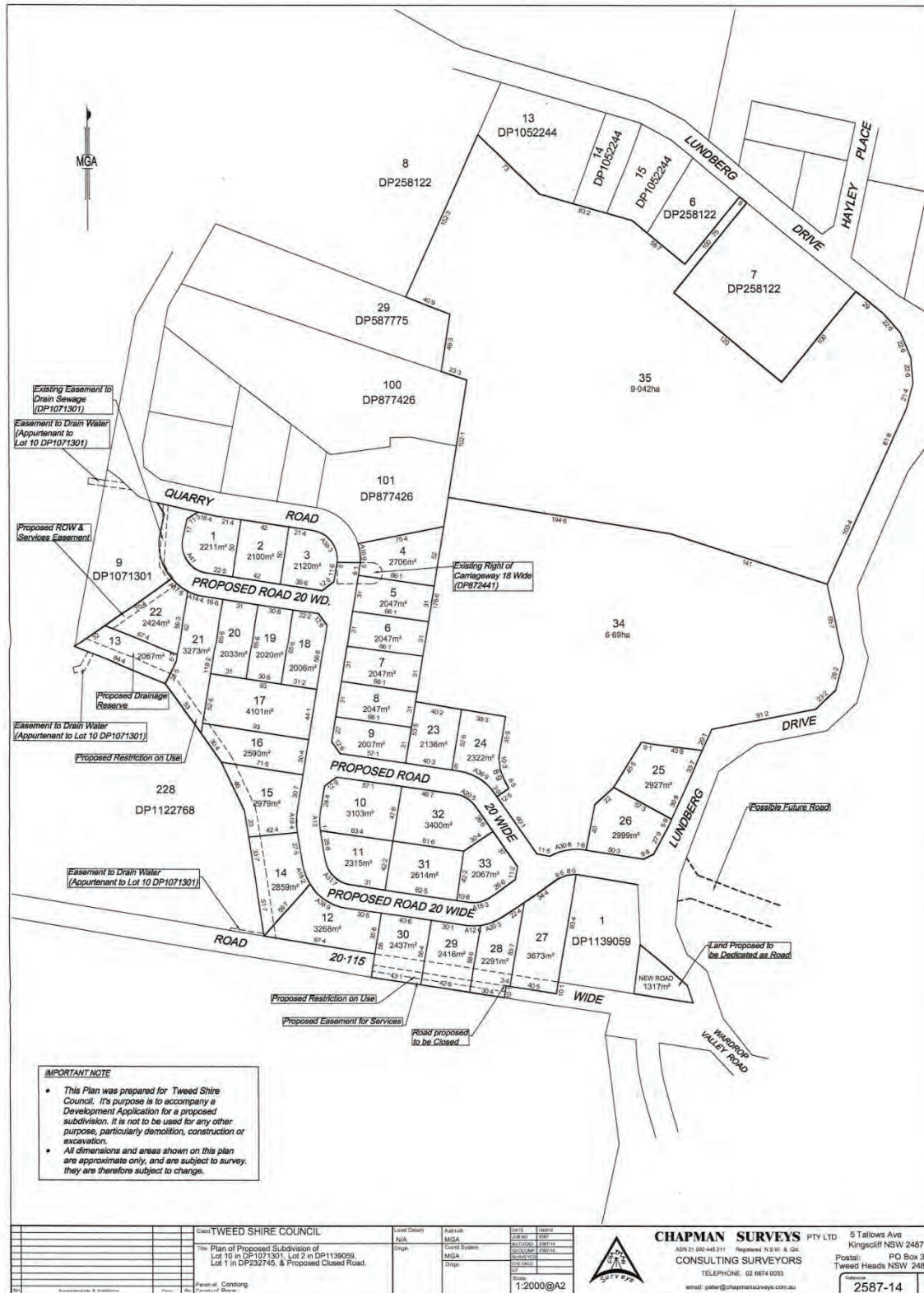


Locality Plan

DA10/0704 - Lot 2 DP1139059, Lot 1 DP232745, Lot 17 DP712954, Lot 228 DP1122768, Lot 10 DP1071301 & Lot 2 DP1156966
 No. 10 Lundberg Dr, No. 92 Wardrop Valley Rd, Quarry Rd & Wardrop Valley Rd, South Murwillumbah

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability to employees) for all expenses, losses, damages (including indirect or consequential damage), and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and does not constitute any offer or contract. It should not be used for any purpose and prior to any transactions a 'Call before you Dig' enquiry must be made by calling 1310. The information contained in this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 14 June, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 1 2 3 Km 1:120,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Horizontal Datum: Geoidic Datum of Australia 1984 Vertical Datum: Mean Sea Level, East 56</p> <p>GDA</p>	<p>Civic and Cultural Centre 3 Tambulung Road Murwillumbah NSW 2484</p> <p>PO Box 816 Murwillumbah NSW 2484</p> <p>T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	 <p>TWEED SHIRE COUNCIL</p>
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DEVELOPMENT/ELEVATION PLANS:



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

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

The proposed industrial subdivision is consistent with the aims of the plan, with the development retaining Tweed Shire's unique natural and built environments and economic and social fabric.

Clause 5 - Ecologically Sustainable Development

The proposed development is consistent with the four principles of ecological sustainable development by:

- 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.

Clause 8 - Zone objectives

The objectives of the 4(a) Industrial zone are as follows:

"Primary Objectives

*To provide land primarily for industrial purposes.
To facilitate economic activity and employment generation."*

The proposed development, being a subdivision for industrial purposes, is permissible with consent, in the 4(a) Industrial zone.

The proposed development is consistent with the primary objectives of this zone as it will provide land/lots for an industrial purpose.

The objectives of the 5(a) Special Use zone are as follows:

"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."

Proposed Lot 34 is zoned 5(a) Garbage Depot, with the existing landuse (Garbage Depot) remaining unchanged. As such, the proposal is consistent with the zone objectives.

The objectives of the 7(l) zone are as follows:

“Primary objectives

- *to protect areas or features which have been identified as being of particular habitat significance.*
- *to preserve the diversity of habitats for flora and fauna.*
- *to protect and enhance land that acts as a wildlife corridor.”*

Proposed Lot 35 is zoned 7(l) Environmental Protection (Habitat), with the existing habitat area remaining unchanged. As such, the proposal is consistent with the zone objectives.

Clause 15 - Essential Services

Clause 15 of the TLEP 2000 requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. Council's Development Engineer assessed the application and recommended appropriate conditions which have been placed on the development consent. Appropriate conditions are recommended to ensure compliance with Council's standards.

Clause 16 - Height of Building

N/A, as the development is for subdivision only.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP 2000 relates to social impact assessment, with the objective *“to ensure proper consideration of development that may have a significant social or economic impact”*.

Clause A13.5.1 *Proposals which Require a Statement to be Prepared*, Section A13 *Social and Economic Assessment* of Council's Development Control Plan 2008, does not require a Socio-Economic Impact Assessment for an industrial subdivision. The proposal is considered not to create a significant social or economic impact.

Clause 35 - Acid Sulfate Soils

Council's Environmental Health Officer assessed the proposal and recommended suitable conditions, which are to be placed on the consent.

Other Specific Clauses

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

Clause 20(2)(a) requires that the minimum lot size in the 7(l) zone is to be 40 hectares. Proposed Lot 35 has an area of 9.042 hectares and therefore does not comply with the 40 hectare development standard. The existing Lot 2 in DP

1139059 has an area of 14.84ha and due to the split zoning with the area of 7(l) zoned land being 9.042 hectares, well below 40 hectares, the standard cannot be complied with. An objection under State Environmental Planning Policy No. 1 to clause 20(2)(a) of the Tweed Local Environmental Plan 2000 and the 40 hectare development standard is addressed within this report. The application was referred to the NSW Department of Planning and Infrastructure for concurrence. The NSW Department of Planning and Infrastructure granted concurrence in this instance as *“all the land zoned 7(l) on the property will remain in a single lot...as is presently the case”*.

Clause 28 – Development in Zones 7(l) Environmental Protection (Habitat) and On Adjacent Land

No clearing or development is proposed within the 7(l) zoned land. Piping of the existing gully within land zoned 5(a) is proposed in a location adjacent to land zoned 7(l). The pipeline is within a gully which has been highly disturbed by garbage depot operations and accordingly no impacts on flora and fauna in the locality are anticipated.

The application was referred to the Department of Environment, Climate Change and Water and the Department of Industries and Investment NSW, with both departments not objecting to the proposal.

Clause 39 – Remediation of Contaminated Land

Council's Environmental Health Officer, advised that the current modified proposal (deletion of two lots previously within Council's Garbage/landfill site) does not incorporate contaminated land.

Council's Environmental Health Officer provided the following comments:

“The applicant has proposed a modification to the site plan to reduce the number of lots from 38 to 35 lots. The purpose of the reduction is to eliminate the need for removal of contaminated soil from the previously proposed lots 25 and 26 which infringed the 'edge of rubbish' at Council's landfill site.

The amended site plans appear to satisfy the need for site remediation but should be conditioned to ensure that the boundaries of the new allotments 24, 25 and 26 do not infringe the 'edge of rubbish' line on Council's location of landfill map.”

Clause 39A – Bushfire Protection

This clause requires the consent authority to take into account a number of matters when considering a Development Application in respect of bushfire prone land. The major hazards are located to the north of the site comprising the vegetated area owned by Tweed Shire Council (proposed Lot 35 zoned 7(l) Environmental Protection (Habitat)) and a small patch of vegetation on and adjacent to the southern boundary of the site, the majority of which will be removed as part of the proposed development (proposed Lots 27 – 30).

The proposed northerly lots are generally buffered from the actual hazard by the existing garbage depot site which is largely cleared of vegetation. The size of the allotments is such that proposed buildings can be set back from the rear boundaries (with the rear area used for parking, maneuvering, etc.) and in addition reticulated water supply will be provided within the proposed streets. The streets will comply with the requirements of Planning for Bushfire Protection in terms of width and gradient to accommodate fire fighting vehicles.

The proposal is considered consistent with the clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The proposal is located adjacent to agricultural land zoned 1(a) Rural and 1(b2) Agricultural Protection. The development proposes industrial allotments on industrial zoned land only, with improvements to existing drainage areas required. The proposal is considered not to cause a loss of prime crop or pasture land and is not likely to significantly impact on the use of adjoining or adjacent agricultural land.

Clause 15 – Impacts on Rivers, Streams and Wetlands

The proposed lots are well buffered from existing significant water courses and wetlands (minimum 535 metres). Appropriate conditions relating to construction phase and operational phase water quality control measures will be incorporated into the development consent which will ensure that water quality and habitat values in downstream water bodies are not degraded.

Clause 47 Principles for Commercial and Industrial Development

The site has been zoned for industrial purposes for many years (since 1988) and is an extension of the existing Murwillumbah industrial area. The proposal is considered consistent with the provisions of this clause.

Clause 81: Development adjacent to the ocean or a waterway

This clause requires Council to consider development that is located on land within 100 metres of the ocean or any substantial waterway. The development site is located at least 535 metres from Condong Creek.

SEPP No. 1 - Development Standards

Clause 20 of the Tweed Local Environmental Plan 2000 states:

“Subdivision in Zones 1 (a), 1 (b), 7 (a), 7 (d) and 7 (l)

(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), 1 (b2), 7 (a), 7 (d) or 7 (l) if the area of each allotment created is at least 40 hectares, or*
 - (b) *within zone 1 (b1) if the area of each allotment created is at least 10 hectares.*
- (3) *Despite subclause (2), consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, or 10 hectares in the case of zone 1 (b1), 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) *For the purposes of subclauses (2) and (3):*
- (a) *land is taken to be within zone 1 (b1) if it is shown on the zone map by the marking "1(b1)", and*
 - (b) *land is taken to be in zone 1 (b2) if it is shown on the zone map by the marking "1(b2)".*

Clause 20(2)(a) provides that the minimum lot size in the 7(l) zone is 40 hectares. Proposed Lot 35 has an area of 9.042 hectares and therefore does not comply with the 40 hectare development standard. The size of the existing lot (Lot 2 DP 1139059) is 14.84 hectares and due to the split zoning of Lot 2 (the approximate area of the 7(l) zoned land being 9.042 hectares) proposed Lot 35 (which contains all of the 7(l) zoned land) is well below 40 hectares, the standard cannot be complied with. The application was referred to the NSW Department of Planning and Infrastructure for concurrence. Concurrence is required because the development standard is proposed to be varied by more than 10%. The NSW Department of Planning and Infrastructure granted concurrence in this instance as *"all the land zoned 7(l) on the property will remain in a single lot...as is presently the case"*.

The proposal is considered consistent with the underlying purpose of the standard and the broader planning objectives of the locality by protecting the ecological values of the land and containing the land zoned 7(l) Environmental Protection (Habitat) within a single allotment.

SEPP No. 44 - Koala Habitat Protection

The site is not identified under Tree Preservation Order 2011 – Koala Habitat Study Area. In addition, an Ecological Assessment submitted by the applicant contains a Koala Habitat Assessment and concludes that the site does not comprise core Koala habitat and therefore a Koala Management Plan is not required.

The Ecological Assessment also concludes that a Species Impact Assessment is not required and a Commonwealth assessment of the proposal is not required.

SEPP No. 55 - Remediation of Land

Council's Environmental Health Unit assessed the application and advised that due to the amended plan (*ref: Chapman Surveys plans 2587-13 and 2587-14 dated 16 February 2012*) deleting the two lots located within the 5(a) Garbage Depot site (Lots 25 and 26), eliminates the need for removal of contaminated soil from the previously proposed Lots 25 and 26, which infringed the 'edge of rubbish' at Council's landfill site. Appropriate conditions are recommended to ensure that no earth works or soil removal are to occur on contaminated lands.

Council's Environmental Health Officer stated:

"The amended site plans (ref: Chapman Surveys plans 2587-13 and 2587-14 dated 16 February 2012) appear to satisfy the need for site remediation but should be conditioned to ensure that the boundaries of the new allotments 24, 25 and 26 do not infringe the 'edge of rubbish' line on Council's location of landfill map."

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

Draft Tweed Local Environmental Plan 2010

Under the provisions of the Draft Plan, the part of the site currently zoned 4(a) Industrial is proposed to be zoned IN1 General Industrial. The minimum lot size in the IN1 zone is 2000m² and all proposed lots comply with this requirement. The proposed industrial lots are consistent with the Draft Plan.

The part of the site currently zoned 5(a) Garbage Depot is proposed to be zoned IN1 General Industrial. The development does not propose any industrial allotments within this area.

The part of the site north of the garbage depot, which is currently zoned 7(l), is proposed to be zoned part RU2 Rural Landscape and part E2 Environmental Conservation. The development does not propose any industrial allotments within this area.

The adjoining sugar cane land to the south and west is generally proposed to be zoned RU2 Rural Landscape and RU1 Primary Production. The development does not propose any industrial allotments within this area.

The proposed development is consistent with the provisions of the exhibited Draft Plan.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The development complies with Council's site access and parking code.

Council's Development Engineer stated "*Existing constraints already exist at the intersection of Quarry Road and Tweed Valley Way in terms of intersection capacity. As this intersection is not included as an item in the Works Program under the Tweed Road Contribution Plan. It was agreed by the Director of Engineering and Operations at a meeting on 24 August 2010, to amend the Tweed Road Contribution Plan to include an appropriate item to facilitate equitable upgrading of the intersection to meet the demands generated by this development proposal and other future developments proposed within the catchment.*

The internal roads are proposed to be 13m wide and have a 20m wide road reserve which is typical to Tweed Shire Councils Standard for industrial access streets. The grades proposed for the subdivision are flat as indicated on the long sections.

All sites, when completed, will have access from the proposed internal roads. A separate Development Application will be required for the building construction, access driveways and parking, which will be assessed in relation to the proposed specific building type/use."

A3-Development of Flood Liable Land

The development complies with Council's flooding policy.

The Design Flood Level for this area ranges from RL 4.1m AHD adjacent to Lundberg Drive to RL 5.5m AHD towards the Quarry Road part of the site.

The finished surface levels of the proposed allotments range between (approximately) RL 8m AHD to RL 20m AHD. Accordingly, the subject site is not flood affected.

A5-Subdivision Manual

The proposal is generally consistent with the Council's policies and standards.

The proposal was assessed by Council's Development/Subdivision Engineers, with Council's Engineers recommending approval subject to recommended conditions.

Bulk Earthworks and Landforming

The bulk earthworks proposed/required for this development will be undertaken in accordance with the existing quarrying approvals over the sites. Excess material gained from the quarrying operation is currently being taken off site. Following completion of quarrying operations on the site, it is anticipated that only relatively minor earthworks will be required to establish road and lot gradients and final landforms. The Environmental Impact Statement (Jigger Pty Ltd Quarry Consent 96/123) identifies "finished landform ranging from RL 12m AHD (at Quarry Road) to RL 15m AHD at the common boundary of the Council quarry". The earthworks and landforming required post completion of extractive operations to achieve the finished landform required by this application, will be minimal and will not exceed 20% over 8m as per Council's DCP A5 limitations.

A11-Public Notification of Development Proposals

The application was not notified or advertised.

A13-Socio-Economic Impact Assessment

Clause A13.5.1 *Proposals which Require a Statement to be Prepared*, Section A13 *Social and Economic Assessment* of Council's Development Control Plan 2008, does not require a Socio-Economic Impact Assessment for an industrial subdivision. The proposal is considered not to create a significant socio-economic impact.

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

Clause 92(a) Government Coastal Policy

The site is not covered by the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*.

This clause is not applicable to the proposal.

Clause 92(b) Applications for demolition

The application does not propose demolition of a building.

This clause is not applicable to the proposal.

Clause 93 Fire Safety Considerations

This clause applies to a development application for a change of building use for an existing building where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.

This clause is not applicable to the proposal.

Clause 94 Buildings to be upgraded

This clause applies to a development application for development involving the rebuilding, alteration, enlargement or extension of an existing building.

This clause is not applicable to the proposal.

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

N/A.

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**

The development is compatible with the existing surrounding landuses, comprising; industrial land, Council Garbage Depot and agricultural land. The portion of the subject sites land that is zoned 4(a) Industrial, is the only part of the site to be development for industrial purposes.

The development is considered to create acceptable environmental impacts on the natural and built environments and acceptable social and economic impacts in the locality.

Flora and Fauna

No clearing or development is proposed within the 7(l) Environmental Protection (Habitat) zone. Piping of the existing gully within land zoned 5(a) is proposed in a location adjacent to land zoned 7(l). The pipeline is within a gully which has been highly disturbed by garbage depot operations and accordingly no impacts on flora and fauna in the locality are anticipated.

Noise

The subject sites are located adjacent to land zoned 4(a) Industrial, 5(a) Garbage Depot, 1(a) Rural and 7(l) Environmental Protection. Rural residential dwellings are located approximately 150m to the east of the site on land zoned 1(a) Rural and approximately 350m to the west on land zoned 4(a) Industrial. Noise impacts upon existing residential dwellings are anticipated to have some impacts from

proposed construction works. The applicant is required to prepare a Construction Noise Management Plan prior to issue of a construction certificate to minimise potential noise impacts on adjacent residential dwellings.

Note: Operational noise from individual industrial lots will be addressed with any future development applications for first use. Traffic noise is not anticipated to generated noise significantly above what is currently experienced in the area.

Dust

The proposal has the potential to generate dust during construction works. The applicant is required to prepare a dust management plan prior to issue of a construction certificate.

Lawful Point of Discharge

The site is currently divided into a number of catchments, each draining to open channels and watercourses. Those draining westward discharge to the Blacks Swamp Drainage Union cane drains, which in turn discharge to Condong Creek. Those draining eastward discharge to "natural" watercourses through bushland, which flow through a 900mm culvert under Lundberg Drive to an open drain and Condong Creek.

The applicant has provided the written concurrence of the Drainage Union for the "discharge of stormwater from the proposed industrial subdivision into existing cane drains".

The application therefore satisfies the requirements for lawful points of stormwater discharge, in accordance with DCP-A5.

Stormwater Quantity

The downstream receiving drains to the west have limited capacity, and excessive flows will inundate agricultural land and sugar cane crops. While this already occurs and is generally acceptable in major storm events, measures are required to ensure that the development and the associated increased runoff rates will not result in more frequent inundation and increased duration of flooding to the detriment of downstream landholders.

The application proposes to upgrade adjoining cane drains as part of the subdivision civil works to provide additional flow capacity. The Blacks Swamp Drainage Union has provided written concurrence to undertake "desilting, reshaping and minor widening of existing cane drains together with upgrading of culverts and flood control structures".

The application also proposes to provide a stormwater detention basin on proposed catchment "CC" (Drawing No. SK2) to mitigate peak flows into these cane drains. No calculations have been provided supporting these proposed measures, but in principle such measures would seem necessary. The development should be conditioned to provide engineering detail with the construction certificate application.

No mitigation measures are proposed on the larger proposed catchment "DD" (Drawing No. SK2) discharging to the east. The engineering report assumes that there is adequate storage in downstream watercourses and bushland, with the 900mm culvert under Lundberg Drive providing a discharge control. There is no justification for this approach however there is little engineering risk in this assumption.

Stormwater Quality

Being a "small subdivision" under Development Design Specification D7 - Stormwater Quality (less than 50 lots), constructed wetlands are not required, and the applicant relies on the installation of proprietary treatment devices in the road drainage systems to meet "deemed to comply" standards.

Two Humeceptors (or similar) are proposed on the two major catchments (CC and DD), sized according to the contributing road areas. Subsequent industrial development will be required to provide treatment of hardstand runoff prior to discharging to the public system.

The stormwater quality system appears adequate, subject to detailed design with the Section 68/Construction Certificate application.

Sediment & Erosion Control/Stormwater

The site is already largely disturbed and exposed, being previously used for quarry and landfill activities. It is expected that there are already measures in place to control runoff from these areas, and these will be expanded and embellished for the subject subdivision works. Standard consent conditions are recommended to address Erosion and Sediment Control with the construction certificate application.

OSSM - Private Pump stations

The proposed development may require sewage ejection pumps to be installed on some or all of the allotments (discussed with Council's OSSM officer Grant Malcolmson). Therefore the installation and operation of these devices (private sewage ejection pump stations) will require Council approval under section 68 of the Local Government Act. An appropriate condition is recommended.

Note: An approval to operate an onsite sewage management system will be required for owners or tenants of individual lots at the time that the lots are developed for commercial use.

(c) Suitability of the site for the development

The site which contains the proposed industrial allotments is zoned 4(a) Industrial, with compatible landuses and zoned land surrounding the site. The site is considered suitable for the proposal.

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

NSW Department of Planning and Infrastructure

The application was referred to the NSW Department of Planning and Infrastructure for concurrence, to vary the subdivision development standard within clause 20(2)(a) of the Tweed Local Environmental Plan 2000. The NSW Department of Planning and Infrastructure granted concurrence in this instance as *“all the land zoned 7(l) on the property will remain in a single lot...as is presently the case”*.

Department of Environment, Climate Change and Water

The application was referred to the Department of Environment, Climate Change and Water. The department did not object to the proposal.

Department of Industries and Investment NSW

The application was referred to the Department of Industries and Investment NSW. The department did not object to the proposal.

(e) Public interest

The proposal is considered not to negate the public interest.

OPTIONS:

1. Approves the application subject to the recommended conditions; or
2. Refuses the application and provide reasons for refusal.

CONCLUSION:

The proposal is permissible with consent and considered to create acceptable impacts on the natural and built environments and acceptable social and economic impacts in the locality, with the site considered suitable for the proposal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

14 [PR-CM] Development Application DA11/0356 for a Wakeboarding Coaching Clinic between Fingal and Chinderah along the Tweed River (operating from Fingal Boat Ramp) at Lot 403 DP 755740 Main Road, Fingal Head

SUBMITTED BY: Development Assessment

FILE NUMBER: DA11/0356 Pt2



Civic Leadership

SUMMARY OF REPORT:

This matter has most recently been called up for Council determination by Councillor Holdom.

The main Council actions prior to this request were:

- Council Meeting - 21 February 2012: A report was submitted on DA11/0356, with an officers' recommendation for refusal. Council resolved at this meeting to refuse the application in accordance with the officer's recommendation. A Notice of Rescission was subsequently lodged in respect of the above resolution, and accepted by Council;
- Council Meeting - 20 March 2012: A rescission motion in respect of Council's previous determination was subsequently endorsed by Council. A new motion was also endorsed by Council:

"That this item be deferred until a meeting takes place with the applicant and relevant Tweed Shire Council Officers to ascertain a designated area within the Tweed that does not significantly impact on the environment and that any consent would require a possible trial period of operation".

- 26 March 2012: Senior Council officers met with representatives of the Tweed Byron Local Aboriginal Land Council (TBLALC) and the Tweed Aboriginal Advisory Committee to discuss concerns raised in respect of DA11/0356. Based on information presented at this meeting, the Council officers provided a view to the Councillors that the applicant should be required to undertake more detailed Aboriginal cultural heritage and environmental investigations in order to justify the possible impacts on the environs of this part of the Tweed River. Council has since received correspondence from the TBLALC reinforcing their objection to the proposal; and
- 12 April 2012: A meeting was held between Tweed Councillors, Council staff and the applicant of DA11/0356. Following this meeting, the application was requested to be reported to the May Council meeting by Councillor Polglase.

This request was withdrawn to enable a second meeting to be held between Tweed Councillors, Council staff and the applicant on 8 May 2012.

Given that there were no agreed outcomes arising from the two meetings with the applicant, and no further assessment of the proposal undertaken by the applicant, the Council officers therefore reiterate the previous recommendation for refusal of the current development application.

RECOMMENDATION:

That Development Application DA11/0356 for a wakeboarding coaching clinic between Fingal and Chinderah along the Tweed River (operating from Fingal boat ramp) at Lot 403 DP 755740 Main Road, Fingal Head be refused for the following reasons:

- 1. Pursuant to Section 5 Objects of the Environmental Planning and Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(i), the orderly and economic use and development of the land.**

It is Council's view that the proposal has the ability to impact negatively upon adjacent land; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning and Assessment Act 1979.

- 2. Pursuant to Section 5 Objects of the Environmental Planning and Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(vi), the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.**

It is Council's view that the proposal has the ability to impact upon the protection and conservation of native animals and plants; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning and Assessment Act 1979.

- 3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.**

It is Council's view that the proposed development is inconsistent with the aims of:

State Environmental Planning Policies (SEPP):

- SEPP 14: Coastal Wetlands;**
- SEPP 26: Littoral Rainforests;**
- SEPP 64: Advertising and Signage (Clauses 10 and 27);**
- SEPP 71: Coastal Protection (Clause 8(a), (d), (g), (h), (i) and (p)(i)); and**
- North Coast Regional Environmental Plan (NCREP): Clauses 15, 32B, 75, 76 and 81.**

It is Council's view that the proposed development does not satisfy the provisions contained within:

The Tweed Local Environmental Plan (LEP) 2000:

- **Clause 4: Aims of this plan;**
 - **Clause 5: Ecologically sustainable development;**
 - **Clause 8(1): Consent Considerations;**
 - **Clause 11: Zoning;**
 - **Clause 13: Development of uncoloured land on the zone map;**
 - **Clause 25: Development in zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land;**
 - **Clause 29: Development adjacent to zone 8(a) National Parks and Nature Reserves; and**
 - **Clause 31: Development adjoining waterbodies.**
4. **The proposal is inconsistent with management plans produced by Council and the Roads and Maritime Services that highlight the need to protect ecology and reduce erosion within the vicinity of the Tweed River.**
 5. **Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

It is Council's view that use of unzoned land adjacent to environmental conservation areas of State significance for the purposes of a wakeboarding coaching clinic is considered unacceptable due to its impact upon the habitat of estuarine fauna, in particular that of migratory shorebirds.

6. **In accordance with Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.**

It is Council's view that it is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of unzoned land and the 6(a) Open Space, 6(b) Recreation, 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(d) Environmental Protection (Scenic/Escarpment), 8(a) National Parks and Nature Reserves and 2(a) Low Density Residential zones.

REPORT

Summary of Key Council Actions

This matter has most recently been called up for Council determination by Councillor Holdom.

The main Council actions prior to this request were:

- Council Meeting - 21 February 2012: A report was submitted on DA11/0356, with an officers' recommendation for refusal. Council resolved at this meeting to refuse the application in accordance with the officer's recommendation. A Notice of Rescission was subsequently lodged in respect of the above resolution, and accepted by Council;
- Council Meeting - 20 March 2012: A rescission motion in respect of Council's previous determination was subsequently endorsed by Council. A new motion was also endorsed by Council:

"That this item be deferred until a meeting takes place with the applicant and relevant Tweed Shire Council Officers to ascertain a designated area within the Tweed that does not significantly impact on the environment and that any consent would require a possible trial period of operation".

- 26 March 2012: Senior Council officers met with representatives of the Tweed Byron Local Aboriginal Land Council (TBLALC) and the Tweed Aboriginal Advisory Committee to discuss concerns raised in respect of DA11/0356. Based on information presented at this meeting, the Council officers provided a view to the Councillors that the applicant should be required to undertake more detailed Aboriginal cultural heritage and environmental investigations in order to justify the possible impacts on the environs of this part of the Tweed River. Council has since received correspondence from the TBLALC reinforcing their objection to the proposal;
- 12 April 2012: A meeting was held between Tweed Councillors, Council staff and the applicant of DA11/0356. Following this meeting, the application was requested to be reported to the May Council meeting by Councillor Polglase. This request was withdrawn to enable a second meeting to be held between Tweed Councillors, Council staff and the applicant on 8 May 2012.

Other Concurrent Actions

- A study examining the contribution of boat wake on Tweed River bank erosion was put on display for public comment from 20 March 2012 for a period of 28 days. The study will inform the draft Tweed River Bank Erosion Management Plan (referenced in the previous Council report) which is scheduled for exhibition in late 2012; and
- Council has received a number of submissions regarding the rescinded refusal of the proposal from the Tweed Byron Local Aboriginal Land Council (TBLALC), outlining an objection to DA11/0356 based on 'serious environmental and cultural

concerns'. A copy of the most recent correspondence received from the TBLALC (dated 8 June 2012) is provided as an attachment to this report.

Summary of Meetings with the Applicant

A meeting was held between Councillors, Council staff and the applicant of DA11/0356 on 12 April 2012, in response to Council's resolution of 20 March 2012. The primary purpose of the meeting was for Councillors to seek clarification of some of the proposal's key aspects.

The applicant submitted two main alternative route options at the meeting for the location of wakeboarding coaching activities on the Tweed River (below). The options referenced the (SMEC) study examining the contribution of boat wake on Tweed River bank erosion that was on exhibition:

Option A: Barney's Point Bridge - Cane Road (Condong Bridge); and

Option B: Cane Road (Condong Bridge) - 200m Upstream of Stotts Island

Council staff were requested to review the options and provide preliminary feedback to the applicant with regard to environmental impact of the alternative training routes.

Preliminary feedback from Council's officers was supplied to the applicant via email on 27 April 2012. Further advice provided on 1 May 2012 confirmed that should the applicant wish to proceed with an alternative section of the Tweed River for the coaching clinic proposal, a fresh development application would be required with preference for the withdrawal of the current development application.

A second meeting was held on 8 May 2012 at the applicant's request with the aim of discussing alternative river locations for the proposal but it did not result in a specific outcome.

CONCLUSION

Given that there were no agreed outcomes arising from the two meetings with the applicant, and no further assessment of the proposal undertaken by the applicant, the Council officers therefore reiterate the previous recommendation for refusal of the current development application.

OPTIONS:

1. That Council refuse the application in accordance with the recommendation; or
2. That Council grant in-principle support for the proposal, and that officers bring back a further report to Council with possible conditions of development consent.

Council officers recommend Option 1.

COUNCIL IMPLICATIONS:

a. Policy

Not Applicable.

b. Budget/Long Term Financial Plan

Not Applicable.

c. Legal

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

Council will incur costs as a result of legal action.

d. Communication/Engagement

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

- 1. Council report from meeting held 21 February 2012 (ECM 51360615)
 - 2. Copy of correspondence from the Tweed Byron Local Aboriginal Land Council to Council dated 8 June 2012 (ECM 51841020)
-

- 15 [PR-CM] Development Application DA11/0476.01 for an Amendment to Development Consent DA11/0476 for Demolition of Existing Structures, Construction of a McDonalds Restaurant and Drive-Thru, IGA Supermarket, 2 x Speciality Stores, Carparking and Associated Signage at Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658, Lot 18 DP 962878 No. 230 Tweed Valley Way, South Murwillumbah

SUBMITTED BY: Development Assessment

FILE NUMBER: DA11/0476 Pt4



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of a Section 96 application for proposed modifications to an approval for a McDonald's restaurant and drive-through, IGA Supermarket, two specialty stores, associated car parking and signage at South Murwillumbah.

There is no proposed change to the approved footprint of the development. Final design of the proposed buildings has been addressed under a separate deferred commencement assessment.

The applicant is seeking to modify the proposed development by way of amending or deleting various conditions of consent, particularly in relation to lighting, noise, landscaping and staging matters.

The application was advertised for a period of 14 days, during which time eight (8) submissions were received against the proposed modifications.

Having undertaken a thorough assessment against all relevant statutory requirements, the proposed development is recommended for conditional approval, noting that not all of the proposed modifications have been supported.

Those amendments not being supported by Council officers are:

- The modification of Condition 11 and Condition 112 in relation to lighting;
- The deletion of Condition 109 with regard to amenity of the locality; and
- The modification of Condition 110 and deletion of Condition 117 and Condition 118 with regard to noise.

Those amendments not being supported, but alternative modifications being proposed by Council are:

- The modification of Condition 13 in relation to reduced Section 94 developer contributions; and
- The modification of Condition 103 in relation to the consolidation of the site into one lot under one title.

Those amendments that are being supported (subject to minor changes) are:

- The deletion of Condition 3 (lighting);
- The deletion of Condition 12 (car parking design detail), or modification to improve clarity;
- The modification of Condition 15 in relation to reduced Section 64 water/sewer contributions; and
- The modification of Condition 23 with regard to the location of the proposed bus shelter from within the subject site within the road reserve/footpath.

RECOMMENDATION:

That Development Application DA11/0476.01 for an amendment to Development Consent DA11/0476 for demolition of existing structures, construction of a McDonalds restaurant and drive-thru, IGA supermarket, 2 x speciality stores, carparking and associated signage at Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658, Lot 18 DP 962878 No. 230 Tweed Valley Way, South Murwillumbah be approved and the consent be amended as follows:

1. Delete Condition No. 3.
2. Delete Condition No. 12 and replace it with Condition No. 12A which reads as follows:

12A. The developer shall provide a total of 82 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 – Site Access and Parking Code.

The required parking spaces relevant to each Stage of the development site are:

Stage 1 (McDonalds): 29 parking spaces, plus 9 shared parking spaces from Stage 2.

Stage 2 (IGA / specialty shops): 53 parking spaces plus 7 shared spaces from Stage 1.

Full design detail of the proposed parking and manoeuvring area 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 Certification.

3. Delete Condition No. 13 and replace it with Condition No. 13A which reads as follows:

13A. 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 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.

Stage 1 (McDonald's)

(a) Tweed Road Contribution Plan:

82.2 Trips @ \$1807 per Trips \$148,535

(\$1807 base rate + \$0 indexation)

S94 Plan No. 4

Sector10_4

Stage 2 (IGA/Specialty Shops)

(a) Tweed Road Contribution Plan:

172.6 Trips @ \$1807 per Trips \$311,888

(\$1807 base rate + \$0 indexation)

S94 Plan No. 4

Sector10_4

4. Delete Condition No. 14 and replace it with Condition No. 14A which reads as follows:

14A. 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

This is also applicable prior to the issue of any Section 68 sewer infrastructure construction approval.

5. Delete Condition No. 15 and replace it with Condition No. 15A which reads as follows:

15A. 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:

Stage 1 (McDonald's)

Water DSP2: 3.9651 ET @ \$11571 per ET \$45,880.20

Sewer Murwillumbah: 10.8248 ET @ \$5560 per ET \$60,185.90

Stage 2 (IGA/Specialty Shops)

Water DSP2: 0.7879 ET @ \$11571 per ET \$9,116.80

Sewer Murwillumbah: 1.9576 ET @ \$5560 per ET \$10,884.30

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

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

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

6. Delete Condition No. 17 and replace it with Condition No. 17A which reads as follows:

17A. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate that includes site filling OR Section 68 approval for construction of sewer main infrastructure, 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.

7. Delete Condition No. 19 and replace it with Condition No. 19A which reads as follows:

19A. 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 site filling to be undertaken in conjunction with the first stage of the development being constructed, unless required earlier in conjunction with sewer main construction.

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 Section 68 stormwater application for Council approval.

8. Delete Condition No. 23 and replace it with Condition No. 23A which reads as follows:

23A. 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. The matters covered by this condition are required to be completed in conjunction with the first stage of the development under construction. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

- (a) Construction of two (2) new vehicular footpath crossings. The eastern (ingress) driveway shall be shall be 7.0m wide at the property boundary, and the western (egress) driveway shall be 7.5m wide at the property boundary.
- (b) Removal of all redundant existing vehicle entries and replacement with kerb and gutter to match existing, as well as appropriate footpath restoration.
- (c) Construction of full width concrete path paving for the full extent of the proposed bus set-down area. The applicant is advised that separate signage for the designation of a bus zone will require separate application to Council's Local Traffic Committee, and that this should be submitted in conjunction with the Section 138 application. At this time Council may consider the installation of 'No

Parking' signage for the remainder of the site frontage is warranted, in conjunction with the bus zone signage.

(d) Construction of a bus shelter to Council's standards midway along the site's frontage.

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

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

9. Delete Condition No. 35 and replace it with Condition No. 35A which reads as follows:

35A. The applicant is required to submit an application for two (2) water connections for the site, to accord with the future subdivision proposal over the site.

10. Delete Condition No. 37 and replace it with Condition No. 37A which reads as follows:

37A. Prior to a Construction Certificate being issued for either stage of the development, a Site Management Plan for the ongoing use and management of that stage, including measures for compatibility with the Site Management Plan for the other stage, shall be prepared and submitted to the satisfaction of Council's General Manager or delegate. The Plan shall include but is not limited to the management of mechanical plant and associated equipment, management of the Playland area, proposed site security including management of patrons and antisocial behaviour, monitoring and management of litter, trolley management, coordination of refuse collection vehicles and delivery vehicles to avoid potential traffic conflict and general site management.

The approved Site Management Plan shall be kept onsite and implemented upon commencement of operations.

11. Delete Condition No. 38 and replace it with Condition No. 38A which reads as follows:

38A. Prior to the issue of a Construction Certificate a Demolition Work Plan is to be submitted and approved by Council's General Manager or his delegate, in relation to the existing building along the eastern boundary of the site.

12. The following new Prior to Issue of Construction Certificate (PCC) condition is to be ADDED as Condition 40.1:

40.1. Development consent for the 2 lot subdivision/amalgamation of the site is to be issued prior to the issue of any construction certificate for building works on the site. Specific requirements to facilitate the subdivision proposal are:

-
- a) ***Construction of an extension of Council's sewer main infrastructure is a requirement of the subdivision proposal. This work can only commence once bulk earthworks for the road frontage area of the site has been completed.***
- b) ***The sewer main extension is to be laid prior to commencement of any building work on the site.***
- c) ***Final testing and Closed Circuit Television (CCTV) inspection of the new infrastructure is ideally undertaken after all site and building works are completed, but if this is not achievable, then at the earliest - after completion of driveway ingress works.***
- d) ***All bulk earthworks associated with the internal shared access arrangements (Right of Carriageway and Parking Easements) must be completed and the relevant shared access areas fully constructed prior to the issue of a Subdivision Certificate.***
13. The following new Prior to Issue of Construction Certificate (PCC) condition is to be ADDED as Condition 40.2:
- 40.2.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.***
- The detailed plan must indicate the proposed location of each species within the proposed landscaped areas of the site.***
14. Delete Condition No. 46 and replace it with Condition No. 46A which reads as follows:
- 46A. 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 the issue of a construction certificate or Section 68 sewer infrastructure construction application.**
15. Delete Condition No. 62 and replace it with Condition No. 62A which reads as follows:
- 62A. Proposed earthworks shall be carried out in accordance with AS3798, "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 AS3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to:**
- a) Tweed Shire Council in conjunction with sewer infrastructure construction works (that require site filling) as per separate Section 68 approval.**
- b) The Principal Certifying Authority upon completion.**
-

16. Delete Condition No. 77 and replace it with Condition No. 77A which reads as follows:

77A. During construction of the initial stage of the development, 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.

17. Delete Condition No. 103 and replace it with Condition No. 103A which reads as follows:

103A. The lots are to be consolidated and subdivided into two (2) lots.

The Subdivision Certificate is to be issued and proof of registration of the plan of subdivision provided to Council prior to the issue of any Occupation Certificate for the site.

REPORT:

Applicant: McDonalds Australia Limited
Owner: Tronridge Pty Ltd
Location: Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658, Lot 18 DP 962878 No. 230 Tweed Valley Way, South Murwillumbah
Zoning: 3(c) Commerce and Trade

BACKGROUND:

The subject site (involving 9 allotments) is described as Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658, Lot 18 DP 962878 No. 230 Tweed Valley Way, South Murwillumbah. The site is irregular in shape with a 32m frontage to Tweed Valley Way to the north.

Council granted deferred commencement consent on 21 February 2012 for a combined application involving a McDonald's restaurant, an IGA Supermarket and two (2) specialty stores.

The McDonald's component has a site area of 2787m², with the restaurant having a Gross Floor Area (GFA) of 431.2m². The restaurant incorporates the following:

- McCafe, Children's Playland and Party Room;
- Seating capacity for 88;
- 29 car spaces;
- Drive through facility;
- Loading dock; and
- Associated signage.

The IGA Supermarket/specialty stores component has a site area of 3464m², with the supermarket having a GFA of 1173.7m². The supermarket component includes the following:

- 915m² of retail floor area for the IGA Supermarket;
- Two (2) specialty stores, having a GFA of 128m²;
- Loading dock;
- 53 car spaces; and
- Associated signage.

The approved trading hours for the McDonald's operation and drive through are 24 hours, 7 days a week. The proposed trading hours for the IGA Supermarket are 5am – 10pm, 7 days a week.

Deferred commencement conditions were applied to the development with regard to amended plans in terms of: building design; signage; landscaping etc as well as a Contaminated Land Investigation Report. Assessment of the deferred commencement conditions is being undertaken concurrently (under delegation) with the assessment of this S96 application.

PROPOSED DEVELOPMENT:

There is no proposed change to the approved footprint of the development. Final design of the proposed buildings has been addressed under a separate deferred commencement assessment.

The proposed modifications to Development Consent submitted by the applicant DA11/0476 include:

- The deletion of **Condition 3** in relation to all signage being fitted with necessary devices capable of permitting the change in intensity of illumination of the sign;
- The modification of **Condition 11** (car parking floodlighting) to make reference to a submitted Lighting Plan;
- The deletion of **Condition 12** (car parking design detail), or modification to improve clarity;
- The modification of **Condition 13** in relation to reduced Section 94 developer contributions;
- The modification of **Condition 15** in relation to reduced Section 64 water/sewer contributions;
- The modification of **Condition 23** with regard to the location of the proposed bus shelter from within the subject site within the road reserve/footpath;
- The modification of **Condition 103** in relation to the consolidation of the site into one lot under one title;
- The deletion of **Condition 109** which relates to the use not causing disruption to the amenity of the locality;
- The modification of **Condition 110** (externally mounted air conditioning units and other mechanical plant) to make reference to a submitted Noise Impact Assessment;
- The modification of **Condition 112** (externally mounted artificial lighting) to make reference to a submitted Lighting Plan;
- The deletion of **Condition 117** which relates to air conditioning, refrigeration and exhaust fan units for the McDonald's restaurant;
- The deletion of **Condition 118** which relates to a 2.4m high acoustic barrier being constructed on the northern portion of the eastern boundary of the site; and
- An assessment of possible amendment to various other conditions in relation to the proposed staging of the development.

The applicant also proposes to stage the development in terms of the two main building components of the development (i.e. the McDonald's restaurant and the IGA component).

During the separate assessment of the landscaping deferred commencement conditions, Council staff raised the issue of plant species location. Whilst the submitted Landscaping Intent plans were satisfactory in demonstrating the increased area of landscaping along the site's frontage, there were no details of where each particular species will be located. Rather than holding up the deferred commencement process, Council staff suggested that the landscaping details be included as part of this Section 96 application. In summary, the applicant has now requested that detailed landscaping plans be lodged prior to the issue of a construction certificate.

Along with this application and deferred commencement conditions, the applicant submitted a Heritage Impact Statement for assessment (as required by Condition 38) in relation to the existing building on the subject site. The applicant has now included a proposed modification of Condition 38 as part of this application.

Additional modifications to the approval have been applied by Council officers as a direct result of the proposed staging of the development and the eventual subdivision of the site. These modifications incorporate amendment to the wording of some existing conditions and the inclusion of several new conditions in relation to: timing of works; staging; and the extension of Council's sewer main infrastructure.

With regard to the separate deferred commencement conditions, the following is a brief summary of the design changes proposed by the applicant, noting that it was Council's intent to achieve a more contemporary design, with improved passive efficiency design features with regard to the IGA design changes:

McDonald's Restaurant Building

- Significant amendments to the roof form from a flat parapet roof format to a pitching skillion roof which now incorporates deeper eave overhangs;
- Amended materials including eco tech horizontal cladding, hardwood timber detailing to screens, CFC sheeting and colourbond wall cladding and roof sheeting. The proposed colours combine a mix of greys, grey green and 'dune' offset by the timber detailing;
- A marginally larger outdoor terrace area has been provided to take advantage of a north facing outdoor dining area and a view north out and over the Tweed River; and
- Reduced height of the blade wall sign on the northern elevation to be no higher than the roof line and include timber horizontal battens on the face of the blade wall.
- In terms of Energy Efficiency, the applicant has noted that an Energy Efficiency Report is a mandatory requirement for Building Certification. The energy efficiency of the building is dependent upon such things as: building orientation; building materials; eaves overhang; type of glazing; air-conditioning; and lighting. These items will be addressed prior to the issue of a Construction Certificate.
- With regard to Water Efficiency, roof water will be collected into rainwater tanks (20,000 litres) and used for non-potable uses such as irrigation of landscaping, toilets etc. Run off from some of the car park will be directed to a small swale between the buildings, partially filtered by plants and infiltrate into groundwater. High flow stormwater will be taken to the stormwater detention basin via an inlet drain.

IGA/Specialty Shops Building

- Roof pitch reduced to 15 degrees, reducing the roof height by 1.55m;
- Fascia depth reduced / soffit height raised over shopfront area;
- Softened colour scheme;
- Encased the freestanding front columns in timber cladding;
- Extended the shopfront glazing to the northern elevation; and
- Incorporate 300mm high garden beds along the kerb line to raise planting along the northern elevation.

- The energy and water conservation measures proposed for the McDonald's operation also apply to the IGA and specialty shops, however the exact size of underground water tanks will be confirmed at the building documentation stage. Specific measures relating to the IGA building include: all refrigeration is to be enclosed with refrigeration lighting controlled through motion sensor activation; and energy efficient LED strip lighting is to be used where possible.

Signage

- Both of the 10m pylon signs have been replaced with 5m blade signs, which are 1.524m wide;
- The number of signs per premises have been reduced to comply with DCP A4; and
- The majority of the lifestyle images have been removed from the IGA building.

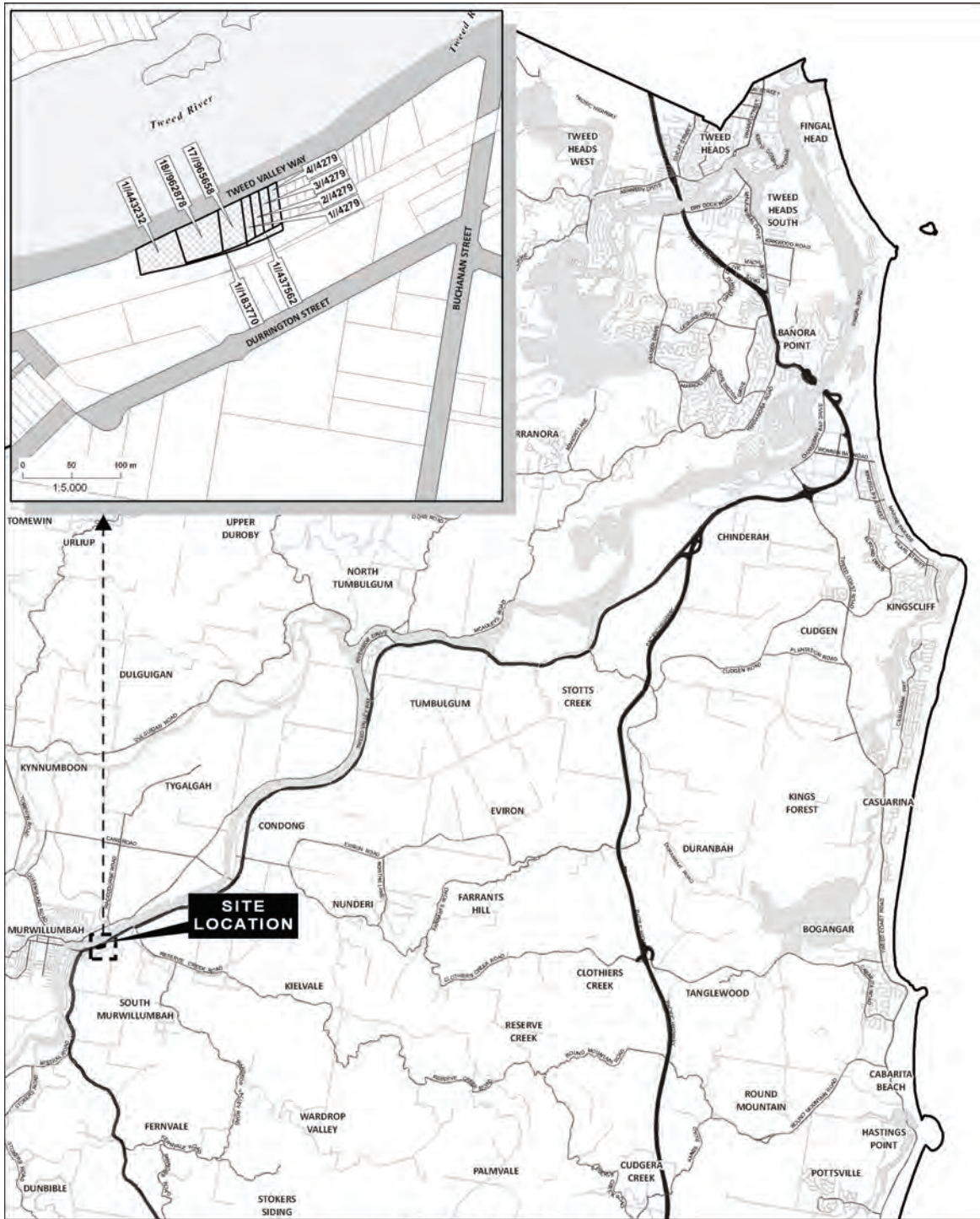
Landscaping

- Landscaping has been increased where possible along the frontage of the site (see comments above).

Contaminated Land

- The applicant has submitted a Contaminated Land Investigation Report, which has been accepted by Council's Environmental Health Unit.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658 & Lot 18 DP 962878
 No. 230 Tweed Valley Way, South Murwillumbah

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential 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 public and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastre: 01 February, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km 1:100,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p>	<p>City and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 819 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 972 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	

DEVELOPMENT/ELEVATION PLANS:

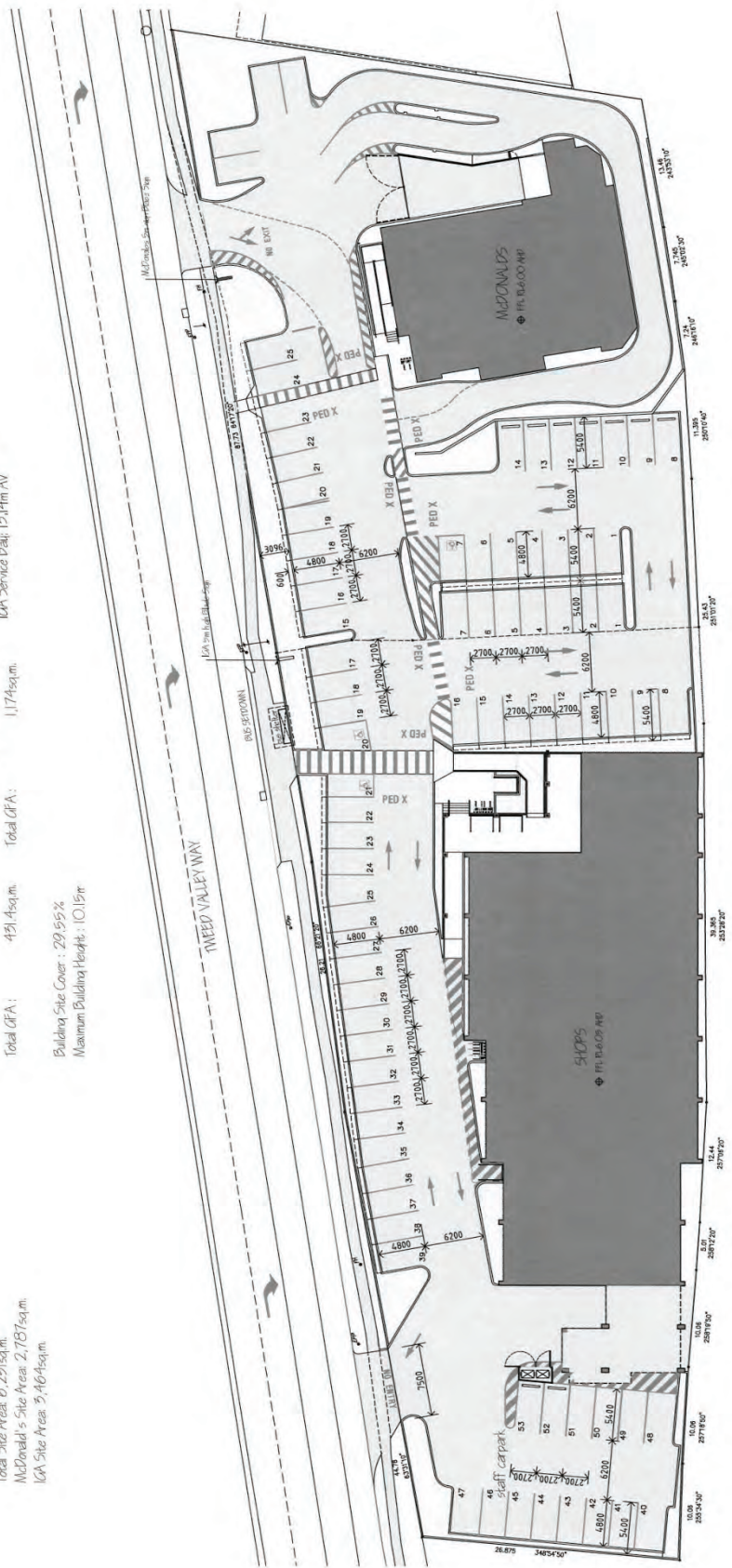
DEVELOPMENT SUMMARY


Site Details
 Lot and Plan Description: Lots 1-4 DP 4279; Lot 1 DP 185170;
 Lot 1 DP 457562; Lot 1 DP 449292;
 Lot 17 DP 969698 and Lot 18 DP 962878
 Parish: Murrumbidgee
 County: Ross
 Total Site Area: 6,251sq.m.
 McDonald's Site Area: 2,787sq.m.
 IGA Site Area: 3,464sq.m.

Building Details
 McDonald's GFA: 341.5sq.m.
 Terrace GFA: 42.8sq.m.
 Playland GFA: 18.9sq.m.
 Carrol GFA: 28.2sq.m.
 Total GFA: 411.4sq.m.
 Building Site Cover: 29.55%
 Maximum Building Height: 10.15m

IGA Retail Area GFA: 796sq.m.
IGA Book of House GFA: 188sq.m.
IGA Receiving Area GFA: 62sq.m.
Speciality Shops GFA: 119sq.m.
Speciality Shops BOH GFA: 9sq.m.
Total GFA: 1,174sq.m.

Parking and Servicing
 Car Parking Bays: 79
 Disabled Parking Bays: 3
 Total Parking Bays: 82
 McDonald's Service Bay: 13.4m AV
 IGA Service Bay: 13.4m AV



		SITE ADDRESS 250 TWEED VALLEY WAY, MURRUMBLIGHAH	
Design: Integrated Issues Check: Design Issues Verify all dimensions on site		JOB REFERENCE 95464	
SCALE 1:100 @ A3		DRAWING No. 95464	
DATE 10/06/12		ISSUE R	
CLIENT PRONORDE PTY LTD.		DRAWING SITE DEVELOPMENT PLAN	
PROJECT IGA STORE & McDONALD'S RESTAURANT		PROJECT IGA STORE & McDONALD'S RESTAURANT	
19-5-12	R	McDONALD'S LAYOUT & CARPARK ADJUSTMENTS	CLIENT
2-9-12	O	COUNCIL REQUESTED REVISIONS	PROJECT
10-9-11	J	REVISED IGA FOOT	PROJECT
28-8-11	N	CORRECTED LOT DESCRIPTION	PROJECT
9-8-11	M	DA SUBMISSION	PROJECT
7-8-11	H	REVISED ENTRY LOCATION	PROJECT
	ISSUE	ISSUE DESCRIPTION	ISSUE DESCRIPTION
27-7-11	L	REVISED McDONALD'S CARPARK	DATE
23-6-11	K	REVISED CARPARK & LANDSCAPING	DATE
16-6-11	J	PRELIM SUBMISSION	DATE
9-6-11	I	TWO-WAY PUMP TO IGA STORE	DATE
7-6-11	H	REVISED ENTRY LOCATION	DATE

RIG Architecture Pty. Ltd.
 17th Floor, 170 Pitt Street, Sydney NSW 2000
 Phone (07) 5286 3288
 www.rigarchitect.com
 P.O. Box 609, 103
 170 Pitt Street, Sydney NSW 2000

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 8 – Consent Considerations

Clause 8 matters were taken into consideration during the original assessment of the proposed development. The proposed modifications are not considered to trigger any reassessment of the Clause 8 consent considerations.

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

Tweed Development Control Plan

A2 - Site Access and Parking Code

The original assessment determined that the proposed 82 spaces for the mixed use development were acceptable. No changes are proposed to the overall number of spaces for the development.

A4 – Advertising Signs Code

Although not part of this application, it is noted that the applicant has revised the proposed signage in an effort to comply with the signage code. The number of signs per business is compliant and the pylon signs have been reduced in size. These issues are associated with the deferred commencement conditions and are therefore being assessed separately to this application.

B22 – Murwillumbah Town Centre

Issues raised with the development (in terms of DCP B22) were addressed in the original assessment by way of deferred commencement conditions. Again, these issues are being assessed separately to this application.

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

Lighting Impact

During the assessment of the original application the applicant provided a report by DMA Professional Engineers, in response to Council's concerns regarding potential lighting impacts.

It was determined that the approved development be subject to a condition which allows the intensity of illumination of the lighting to be changed if necessary. A standard condition of consent (Condition 3) was applied in this regard.

Condition 3 currently reads as follows:

3. *All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.*

The applicant has requested that Condition 3 be deleted, noting the following:

"We submit that the installation of automatic dimmer switches on all illuminated signage is not required. As part of the Response to Further Issues Letter dated 17 January 2012, we sought advice from DMA

Professional Engineers which addressed and demonstrated the proposed illuminated signs comply with Australian Standards as follows:

- The nearest house (226 Tweed Valley Way) is approximately 30 metres away from the subject site. When standing 25 metres away from, and directly in front of, any illuminated sign, the luminous emittance is just under 2 lux. Based on the same test results, the maximum intensity from the signs is only 200 candelas. These results are in compliance with AS4282 ('Control of the obtrusive effects of outdoor lighting'), which prescribes a maximum of 4 lux at a window of a habitable room and 2500 candela to parts of a residential property that may experience extended viewing of the light source;*
- Due to the proposed construction of an acoustic barrier along the eastern boundary of the subject site, the actual light spill into 226 Tweed Valley Way will be shielded by the fence and the existing commercial buildings situated between the two properties; and*
- It follows that given the properties along Tumbulgum Road are at least 180 metres away from the subject site, the luminous emittance and intensity of all illuminated signs are therefore well within the compliance limits of AS4282.*

More specific information demonstrating that automatic dimmer switches are not required on the pylon signs is provided below.

McDonald's Pylon Sign

The McDonald's pylon sign produces just under 2 lux at 25 metres away, directly in front of the sign. Accordingly, the illuminance provided by the sign at the nearest residential property, which is approximately 30 metres to the north-east, is minimal. The illuminance is reduced even further as a result of the house being partially shielded by an existing commercial building and the acoustic barrier to be provided as part of the development.

We note that AS4282 allows a maximum of 4 lux at a window of a habitable room and the illuminance calculated in lux needs to allow for all lighting and signs emitting light at the window. However, the contribution from the McDonald's sign will be very low and well within the maximum permitted.

There are existing pylon signs located on the commercial property situated between the subject site and the nearest residential property identified above. One of these pylon signs is within a few metres of the house and there is also a flood light angled well above the horizontal plane very close to the boundary of this house, which emits light in the direction of this house.

Given that one candela produces 1 lux at a distance of 1 metre and given that the highest reading taken from other McDonald's signs is approximately 200 lux at 1 metre, the maximum intensity of the sign is therefore approximately 200 candela. This is well under the requirements of AS4282 which allows 2500 candela to parts of a residential property that may experience extended viewing of a light source.

It is also noted that a McDonald's pylon sign was approved by the Sydney Airport for the site located adjacent the Sydney Airport at General Homes Drive, Mascot, NSW, which is a very light sensitive location, thus

demonstrating that McDonald's signage is appropriate in locations that may be sensitive to lighting effects, such as residential uses.

IGA Pylon Sign

The IGA pylon sign is located approximately 100 metres away from the nearest house and therefore, it is expected that the obtrusive light reaching this house to be very low in relation to the candela and lux requirements of AS4282. Although we do not have test results from the IGA pylon sign, the basic principles of the sign construction will be similar to that of the McDonald's sign and even if it is 2-3 times brighter, the effect on the nearest residential house will be minimal in relation to AS4282 requirements.

Visual Impact of Illuminated Lighting

In response to the information supplied to Council dated 17 January 2012, Council's Urban Planner provided the following comments with regard to lighting considerations:

'The issue of potential impacts experienced by residents and visitors north of the Tweed River looking back across the river particularly at night time have not been appropriately addressed or understood. The lighting analysis largely focussed on localised lighting levels rather than a wide contextual and visual character assessment. This is particularly pertinent considering the proposed 24hr operation of the McDonald's Restaurant.'

The Applicant provides the following further information in response to these comments, which are also relevant to the requested removal of Condition 3:

- AS4282 provides a common and measurable basis to assess of the likely effects of developments that involve the provision of outdoor lighting. An appropriate company, DMA Professional Engineers, with competence in the fields of illuminating engineering and environmental design has been consulted to remove any doubt on the potential effects on the surrounding area, as demonstrated above. The measurable nature of AS4282, which this development complies with, ensures the avoidance of neighbourhood disputes involving residents who experience discomfort or annoyance as a result of perceived lighting impacts; and*
- Schedule A of the Deferred Commencement Consent requires reductions to the scale and nature of signage on the site. Specifically, Schedule A, Condition 1(b) requires the two pylon signs to be reduced to a height of 5.0 metres and Schedule A, Condition 1(c) requires an overall reduction in the number of signs on the site in accordance with DCP A4. A request for compliance assessment against the Deferred Commencement Conditions has been submitted to Tweed Shire Council on 02 April 2012 under a separate cover to demonstrate achievement of these conditions. As a result of the proposed reduction in signage, it follows that the visual impact upon the surrounding area at night will be lessened whilst providing adequate visibility and safety for passing motorists and patrons at the 24 hour McDonald's operation.*

Summary

In accordance with the information previously supplied to Council and the further information outlined above, we hereby reiterate the Applicant's view that automatic dimmer switches on the illuminated signs are not required and accordingly, we respectfully request that Condition 3 be deleted. Compliance with AS4282 as well as DCP A4 will be achieved without the use of dimmer switches."

Council's Environmental Health Unit has provided the following comment:

"Potential impacts on amenity associated with lighting were considered during the development assessment process. Condition No. 3 is a standard condition that was included to protect the amenity of the local area. Following further review of the standard condition it is considered that installation of lighting shielding is more likely to be used as an ameliorative measure to address lighting conflicts, rather than changing lighting intensity. Any complaints relating to lighting conflicts would be assessed against an appropriate standard, such as AS 4282 Control of the obtrusive effects of outdoor lighting. If non-compliance with the appropriate standard is identified, the onus would be on the applicant/occupant to address the matter. It is considered that the recommended condition is not essential to the consent, therefore the requested amendment, deletion of the condition, is supported."

As such, the applicant's request to delete Condition 3 is supported.

An additional condition of consent (Condition 11) was applied to the original approval in relation to car parking floodlighting.

Condition 11 currently reads as follows:

11. *Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.*

The applicant has requested that Condition 11 be modified, noting the following:

"A lighting plan was prepared by DMA Professional Engineers and submitted as part of the Response to Further Issues letter dated 17 January 2012. Therefore, it is proposed to amend Condition 11 to acknowledge the completion of the lighting plan".

The applicant proposes to amend Condition 11 to read (changes shown in bold):

- 11A. *Any car parking floodlighting shall **be designed in accordance with the Lighting Plan by DMA Professional Engineers.** ~~not spill beyond the boundaries of the site. Lighting shall comply with AS4282 and other relevant Australian Standards.~~ A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.*

Council's Environmental Health Unit has provided the following comment:

"Condition No. 11 is a standard condition that has been included to protect the amenity of the local area. Ensuring that car parking flood lighting does not spill beyond the boundaries of the site, and complying with AS 4282 are

considered to be important requirements in relation to protecting amenity. The Lighting Plan prepared by DMA Professional Engineers does not confirm that there will be no light spill from car parking floodlighting. Therefore it is considered that the condition proposed by the applicant does not meet the minimum standard previously nominated by Council ie the standard condition. The requested amendment is not supported and it is recommended that the condition remain unchanged."

As such, the applicant's request to delete Condition 11 is not supported and is recommended to remain unchanged.

Car Parking

A comprehensive car parking assessment was undertaken during the original assessment of the development. 82 car spaces were considered to be acceptable for the mixed use development. A standard condition of consent (Condition 12) was applied requiring full detail design of the 82 space car park prior to the issue of a construction certificate.

Condition 12 currently reads as follows:

12. *The developer shall provide 82 parking spaces 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 area 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 Certification.

The applicant has requested that Condition 12 be deleted or modified to improve clarity, noting the following:

"Given the development application provided a site plan clearly shows the provision of 82 car parking spaces, a Traffic Impact Assessment showing all manoeuvring, and a Landscape Concept Plan showing all integrated landscaping, it is unclear what this condition seeks to achieve and therefore further clarification, or otherwise removal, of this condition is respectfully requested."

Council's Development Engineer has provided the following comment:

"This condition should remain. While it is acknowledged that the requirements of this condition have been met by other (existing) plans and reports, it must be noted that the 'Deferred Commencement' requirements of the consent require modification of some of those plans – primarily to increasing the landscaping areas on the site.

This condition ensures that the car parking requirements are not overlooked, and that the final car parking layout remains compliant and compatible with the landscaping plans, irrelevant to whatever other plan amendments are made.

This condition could however be clarified to differentiate the number of car spaces required for each lot/stage – including 16 parking spaces that will be shared between the two developments (7 in Lot 11 and 9 in Lot 12). In this regard the allocation of 29 parking spaces for Lot 11 (McDonalds' site) and 53 parking spaces for Lot 12 (IGA + others) (as per the original Statement of Environmental Effects) is recommended for nomination."

Accordingly, the following amendment to Condition 12 is proposed for the purposes of clarity (amendments shown in bold):

12A. The developer shall provide **a total of 82 parking spaces** including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 – Site Access and Parking Code.

The required parking spaces relevant to each Stage of the development site are:

Stage 1 (McDonalds): 29 parking spaces, plus 9 shared parking spaces from Stage 2.

Stage 2 (IGA / specialty shops): 53 parking spaces plus 7 shared spaces from Stage 1.

Full design detail of the proposed parking and manoeuvring area 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 Certification.

Developer Contributions

Applicable developer contributions were applied to the proposed development, based on proposed uses and floor area less an applicable site credit. Section 94 contributions Tweed Road Contribution Plan (TRCP) only were applied under **Condition 13**, which currently reads as:

13. 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 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:

440.598 Trips @ \$1807 per Trips \$796,161

(\$1807 base rate + \$0 indexation)

S94 Plan No. 4

Sector10_4

credit has been undertaken by Council's Traffic Engineer and a significant reduction is recommended. The following calculations were provided by Council's Traffic Engineer, which includes a breakdown of the contribution to reflect the individual stages:

"To be consistent and equitable I have determined previous land use and applied the existing TRCP Trip generation rates to determine credits available as follows:

Former Norco Site uses and GFA

Source: - Martin Findlater and Associates, DA 4030/4382Pt 1 Pg 2 14/1/2002

Component	Size
Factory	1,500m ²
Store showroom	260m ²
Warehouse	245m ²
Fuel Pumps	3

TRCP calculations based on above table (previous use)

Component	Size	Line Item	Rate	Trips
Factory	1,500m ²	28	5/100 GLA	5 x 15 = 75
Store showroom	260m ²	14	40/100 GLA	40 x 2.6 = 104
Warehouse	245m ²	29	4/100 GLA	4 x 2.45 = 9.8
Fuel Pumps	3	6	200/pump	3 x 200 = 600
Total				(a) 788.8

Trips generated by current proposal

	Size	Line Item	Rate	Trips
McDonalds	384.3	23.1	200/100	768.6
IGA	1112	9	200+(.8 x 1112)	1089.6
Total				(b)1858.2

Therefore, **(b)1858.2 – (a)788.8 = 1069.4 net trips**

Apply employment generation factor to both uses:

$$1069.4 \times 0.6 = \mathbf{641.64}$$

Proportion trips for each activity to determine Modification factor

$$\text{McDonalds} - 768.6/1858.2 \times 100/1 = 41.4\%$$

$$\text{IGA} - 1089.6/1858.2 \times 100/1 = 58.6\%$$

Therefore, trip allocation per development type

$$\text{McDonalds} - 641.64 \times 0.414 = \mathbf{265.6}$$

$$\text{IGA} - 641.64 \times 0.586 = \mathbf{376.0}$$

Modification factor under Table 3.6.1B

$$\text{McDonalds} - \text{Fast food outlet with drive thru} = \mathbf{0.65}$$

$$= 265.6 \times 0.65 = \mathbf{172.6}$$

IGA – Shop rate > than 100m2 but < 6000m2

$$376.0 \times 0.2186 = 82.2$$

Total Trips for development

$$172.6 + 82.2 = 254.8$$

As a result of the above calculations, Council's Development Engineer noted the following:

"The applicant's request for reconsideration of the TRCP contribution has been pursued and re-assessed, but their 'Independent Developer Contributions Charges Review' submission is NOT accepted with regard to the TRCP assessment. Nevertheless a significant reduction (42%) of the original contribution amount has resulted.

Since the applicant has requested further clarification of the consent conditions with regard to staging, it is prudent to use the individual modified trip calculation to determine the applicable TRCP contribution applicable to each stage, and include this in the condition:

Stage 1 (McDonalds): 82.2 Trips @ \$1,807 = \$148,535.40

Stage 2 (IGA / shops): 172.6 Trips @ \$1,807 = \$311,888.20"

Accordingly, it is recommended that Condition 13 be amended as follows (modifications shown in bold):

13A. 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 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.

Stage 1 (McDonald's)

(a) Tweed Road Contribution Plan:

82.2 Trips @ \$1807 per Trips **\$148,535**

(\$1807 base rate + \$0 indexation)

S94 Plan No. 4

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Stage 2 (IGA / Specialty Shops)

(a) Tweed Road Contribution Plan:

172.6 Trips @ \$1807 per Trips **\$311,888**

(\$1807 base rate + \$0 indexation)

S94 Plan No. 4

Sector10_4

With regard to the applicant's submission and request for re-assessment of the site credit to be applied to Condition 15 (water and sewer contributions), Council's Water Unit has accepted the proposed modification. However, to be consistent with Condition 13, the contributions need to be split into the two stages. In order to be equitable, the 9 ET credits have been applied to the total amount and the total figure split proportionally between the two stages. As such, the following modification to Condition 15 is recommended (amendments shown in bold):

15A. 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:

Stage 1 (McDonald's)

Water DSP2: **3.9651 ET @ \$11571 per ET** **\$45,880.20**

Sewer Murwillumbah: **10.8248 ET @ \$5560 per ET** **\$60,185.90**

Stage 2 (IGA / Specialty Shops)

Water DSP2: **0.7879 ET @ \$11571 per ET** **\$9,116.80**

Sewer Murwillumbah: **1.9576 ET @ \$5560 per ET** **\$10,884.30**

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

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

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

It is unclear as to whether the applicant has included Condition 14 (TRCP Heavy Haulage component) in their Section 96 application. Council's Development Engineer has noted that no alterations to Condition 14 are warranted with regard to staging of the development. However, as site filling is likely to be undertaken

in stages, with part of this in conjunction with Section 68 sewer approval, a minor modification is recommended.

Heavy Haulage contributions were applied under **Condition 14**, which currently reads as follows:

14. *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:-

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

where:

$\text{\$Con}_{TRCP - Heavy}$ *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

It is recommended that Condition 14 be amended as follows (modifications shown in bold):

14A. *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:-

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

where:

$\text{\$Con}_{TRCP - Heavy}$ *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

This is also applicable prior to the issue of any Section 68 sewer infrastructure construction approval.

Bus Shelter

The original application incorporated a bus shelter within the boundary of the subject site (see Figure 1 below). The original assessment of the shelter determined that not enough information had been provided to ensure that it would comply with Council's standards. As such, a condition of consent (Condition 23) was applied.

Condition 23 currently reads as follows (relevant section shown in bold):

23. *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) *Construction of two (2) new vehicular footpath crossings. The eastern (ingress) driveway shall be shall be 7.0m wide at the property*

boundary, and the western (egress) driveway shall be 7.5m wide at the property boundary.

- (b) Removal of all redundant existing vehicle entries and replacement with kerb and gutter to match existing, as well as appropriate footpath restoration.
- (c) Construction of full width concrete path paving for the full extent of the proposed bus set-down area. The applicant is advised that separate signage for the designation of a bus zone will require separate application to Council's Local Traffic Committee, and that this should be submitted in conjunction with the Section 138 application. At this time Council may consider the installation of 'No Parking' signage for the remainder of the site frontage is warranted, in conjunction with the bus zone signage.

The above-mentioned Section 138 application is required to also include details of the proposed bus shelter that will be erected within the site, to ensure it is compliant with Council's standards. The bus shelter will not however gain approval for construction via the Section 138 application.

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

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

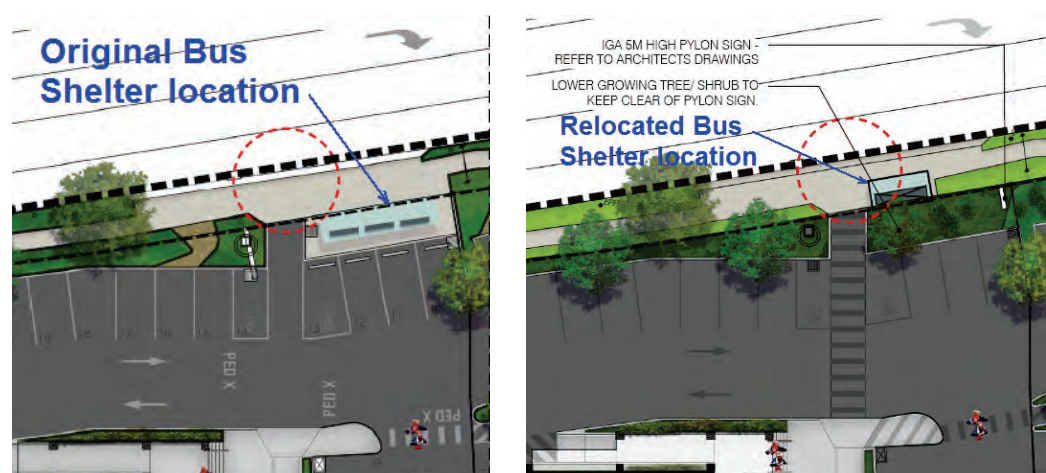


Figure 1 – Comparison of original and revised location of bus shelter

The applicant has requested that Condition 23 be modified, noting the following:

"In order to increase the amount of landscape on the site, it is proposed to relocate the bus shelter onto Council land. The Overall Site Plan

demonstrates how the relocated bus shelter can be positioned within the road reserve without adequately impacting the ongoing use of the footpath."

The applicant proposes to amend Condition 23 to read as follows (changes shown in bold):

23A. *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) Construction of two (2) new vehicular footpath crossings. The eastern (ingress) driveway shall be shall be 7.0m wide at the property boundary, and the western (egress) driveway shall be 7.5m wide at the property boundary.*
- (b) Removal of all redundant existing vehicle entries and replacement with kerb and gutter to match existing, as well as appropriate footpath restoration.*
- (c) Construction of full width concrete path paving for the full extent of the proposed bus set-down area. The applicant is advised that separate signage for the designation of a bus zone will require separate application to Council's Local Traffic Committee, and that this should be submitted in conjunction with the Section138 application. At this time Council may consider the installation of 'No Parking' signage for the remainder of the site frontage is warranted, in conjunction with the bus zone signage.*

*The above-mentioned Section 138 application is required to also include details of the proposed bus shelter that will be erected **on the road reserve/footpath**, to ensure it is compliant with Council's standards. The bus shelter will not however gain approval for construction via the Section 138 application.*

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

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

Although no formal comments were received from Council's Traffic Engineer with regard to the revised bus shelter location, discussion between Council's Traffic Engineer and Development Engineer confirmed that the proposed bus shelter relocation is satisfactory, subject to it being built to Council's standards, a full width concrete footpath is provided, and all works are subject to separate S138 approval. Council's Development Engineer has also provided the following comment:

"No objections to relocation of the bus shelter from within the site to the footpath area. Amendment of this condition is required, but not as per applicant's submission."

The following modification to Condition 23 is proposed by Council's Development Engineer (amendments shown in bold):

23A. *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. **The matters covered by this condition are required to be completed in conjunction with the first stage of the development under construction.** Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:*

- (a) Construction of two (2) new vehicular footpath crossings. The eastern (ingress) driveway shall be shall be 7.0m wide at the property boundary, and the western (egress) driveway shall be 7.5m wide at the property boundary.*
- (b) Removal of all redundant existing vehicle entries and replacement with kerb and gutter to match existing, as well as appropriate footpath restoration.*
- (c) Construction of full width concrete path paving for the full extent of the proposed bus set-down area. The applicant is advised that separate signage for the designation of a bus zone will require separate application to Council's Local Traffic Committee, and that this should be submitted in conjunction with the Section 138 application. At this time Council may consider the installation of 'No Parking' signage for the remainder of the site frontage is warranted, in conjunction with the bus zone signage.*
- (d) Construction of a bus shelter to Council's standards midway along the site's frontage.***

~~***The above mentioned Sec.138 application is required to also include details of the proposed bus shelter that will be erected within the site, to ensure it is compliant with Council's standards. The bus shelter will not however gain approval for construction via the Sec.138 application.***~~

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

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

Heritage Impact Statement

The Statement of Environmental Effects lodged with the original application for this development noted that the existing building on the site would be demolished. Subsequent to issues raised by submissions, the applicant provided documentation noting that the existing building would be donated to a suitable local beneficiary for future use. Given that the *Tweed Shire Community Based Heritage Study* identified the site as a potential heritage item, the approval was conditioned such that a Heritage Impact Statement was required, which incorporated details on the building's heritage value and details of its proposed relocation, rehabilitation, funding and ongoing management.

The applicant has subsequently lodged an Impact Statement for the existing building, which demonstrated that the heritage value for the Norco Rural Store was low (i.e. the Impact Statement concluded that the building is not considered to reach the threshold for local heritage listing). As a result, the applicant proposed to demolish the building. Council staff have accepted the applicant's Impact Statement, but highlighted that demolition was not approved and as such the current S96 application would need to be amended to include any proposed modification of Condition 38. The applicant was advised that a demolition work plan would also be required.

Condition 38 currently reads as follows:

38. *Prior to the issue of a Construction Certificate a Heritage Impact Statement is to be submitted and approved by Council's General Manager or his delegate, in relation to the existing building along the eastern boundary of the site. The Statement is to be prepared by a suitably qualified heritage consultant documenting the building's heritage value and providing details of its proposed relocation, rehabilitation, funding and ongoing management.*

The applicant has requested that Condition 38 be modified, noting the following:

"Further to Council correspondence dated 04 June 2012, we wish to delete Condition 38 of the Schedule B conditions, and replace this with a new condition that enables the demolition of the building. It is respectfully requested that this new condition include the preparation of a Demolition Work Plan, which is to be submitted to Council prior to the issue of a Construction Certificate. We trust that Council will have a standard condition for these matters."

As noted above, Council does not oppose the proposed demolition of the existing building on site. As such, the following amendment of Condition 38 is recommended (changes shown in bold):

- 38A. *Prior to the issue of a Construction Certificate a **Demolition Work Plan** ~~Heritage Impact Statement~~ is to be submitted and approved by Council's General Manager or his delegate, in relation to the existing building along the eastern boundary of the site. ~~The Statement is to be prepared by a suitably qualified heritage consultant documenting the building's heritage value and providing details of its proposed relocation, rehabilitation, funding and ongoing management.~~*

Lot Consolidation

The subject site incorporates a total of nine (9) separate parcels of land. Although the applicant acknowledged that the site would eventually be subdivided into two separate parcels, subdivision was not proposed as part of the original application (although it is noted that a subdivision application has now been

lodged with Council and is under separate assessment). As such, a standard condition of consent (Condition 103) was applied in this regard.

Condition 103 currently reads as:

103. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to the issue of an Occupation Certificate.

The applicant has requested that Condition 103 be modified, noting the following:

"The Overall Site Plan that was originally submitted to Council showed a dashed line indicating the future subdivision plan to separate the McDonald's Restaurant from the building containing the IGA and specialty shops, as well as a series of reciprocal car parking easements to ensure both buildings are supplied with the approved car parking thresholds.

This arrangement has been recognised in Condition 9 which states "The proposed development is to be staged in two stages, being the McDonalds stage and the IGA / Shops stage. The access and shared car parking easements must be completed together with the first stage of the development under construction".

If the lots were to be consolidated into one (1) lot, then this would conflict with Condition 9 as there would be no burdening or benefiting lot that are necessary in order for reciprocal access easements to function. Further, given that the development can operate, in accordance with the Notice of Decision, across two lots, there is no reason to consolidate these parcels into a single parcel. It is therefore requested that Condition 103 be amended to require the lodgement of a subsequent subdivision application that rationalises the existing lot boundaries into two, well-defined lots with appropriate easements for car parking and access."

The applicant proposes to amend Condition 103 to read as follows (changes shown in bold):

*103A. The lots are to be consolidated into **two (2) lots under two (2) separate titles. The lots are to be arranged in a manner that separates the McDonald's Operation from the building containing the IGA and specialty shops. The subdivision will require separate development consent for submission to Council. The subdivision plan must show any access easements required over driveways and car parking areas (as required) so as to ensure the development remains lawful.***

Council's Development Engineer has provided the following comment:

"Amendment of this condition is necessary, as the applicant now appears to have a sense of urgency regarding the future subdivision / consolidation of the site, in lieu of this occurring at some vague time in the future. Extensive amendment is required to address (avoid) conflicts that could be created as a consequence of necessary sewer main construction."

The following modification to Condition 103 is proposed by Council's Development Engineer (amendments shown in bold):

103A. The lots are to be consolidated ~~into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office~~

~~prior to issue of an occupation certificate and subdivided into two (2) lots.~~

The Subdivision Certificate is to be issued and proof of registration of the plan of subdivision provided to Council prior to the issue of any Occupation Certificate for the site.

Council's Development Engineer has requested that a new Prior to the issue of a Construction Certificate (PCC) condition be applied, to help facilitate the future subdivision of the site. The proposed new condition (**Condition 40.1**) is:

40.1. Development consent for the 2 lot subdivision / amalgamation of the site is to be issued prior to the issue of any construction certificate for building works on the site. Specific requirements to facilitate the subdivision proposal are:

- a) *Construction of an extension of Council's sewer main infrastructure is a requirement of the subdivision proposal. This work can only commence once bulk earthworks for the road frontage area of the site has been completed.*
- b) *The sewer main extension is to be laid prior to commencement of any building work on the site.*
- c) *Final testing and CCTV inspection of the new infrastructure is ideally undertaken after all site and building works are completed, but if this is not achievable, then at the earliest - after completion of driveway ingress works.*
- d) *All bulk earthworks associated with the internal shared access arrangements (Right of Carriageway and Parking Easements) must be completed and the relevant shared access areas fully constructed prior to the issue of a Subdivision Certificate.*

Amenity

Council consistently applies a standard condition of consent for commercial development to ensure that the proposed use does not impact upon the amenity of the locality. The same condition (Condition 109) was applied to the original approval.

Condition 109 currently reads as:

109. 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.

The applicant has requested that Condition 109 be deleted, noting the following:

"Condition 109 is very broad and is not measurable or quantifiable. If the development is undertaken in compliance with the other conditions, this implies the use will not have an unreasonable impact on noise, dust, odour and the like. The broad and unquantifiable and immeasurable nature of this condition may lead to it being subjectively applied which is uncertain and not appropriate for a condition against which compliance is required. It is therefore respectfully requested that this condition be removed."

Council's Environmental Health Unit has provided the following comment:

"Condition No. 109 is a standard condition that has been included to protect the amenity of the local area. It is likely that it has been included in many other development consents. Such conditions are often used by regulatory officers when investigating complaints related to matters that may have not been considered during the development assessment process. As an example, if Council were to receive complaints relating to late-night noise associated with patron behaviour, Council would be able to investigate the matter under the *Environmental Planning and Assessment Act*. The requested amendment is not supported and it is recommended that the condition remain unchanged."

As such, the applicant's request to delete Condition 109 is not supported and is recommended to remain unchanged.

Similarly, a standard condition (Condition 110) in relation to externally mounted air conditioning units and other mechanical plant or equipment was applied to the original approval.

Condition 110 currently reads as follows:

110. 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 or equipment does not result in the emission of offensive or intrusive noise.

The applicant has requested that Condition 110 be modified, noting the following:

"It is respectfully requested that Condition 110 be amended to acknowledge the acoustic modelling that has previously been supplied to Council."

The applicant proposes to amend Condition 110 to read as follows (changes shown in bold):

*110A. All externally mounted air conditioning units and other mechanical plant or equipment **is** to be located **in accordance with the Noise Impact Assessment completed by MWA Environmental, dated 13 January 2012**. 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 or equipment does not result in the emission of offensive or intrusive noise.*

Council's Environmental Health Unit has provided the following comment:

"Potential impacts on amenity associated with noise were considered during the development assessment process. Condition No. 110 is a standard condition that has been included to protect the amenity of the local area. The condition is nominated as a 'use' condition, therefore it is intended that it will be complied with at all times following occupation. It is not considered that the standard condition is more onerous than the requested amended condition, however it is considered to be more appropriate to manage use of

the development following occupation. Retaining the standard condition is considered to be particularly important should the occupant proposed to alter plant and equipment at some point after occupation. The requested amendment is not supported and it is recommended that the condition remain unchanged."

As such, the applicant's request to modify Condition 110 is not supported and is recommended to remain unchanged.

In terms of external lighting, a standard condition of consent was applied as Condition 112, which reads as follows:

112. 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.

The applicant has requested that Condition 112 be modified, noting the following:

"A lighting plan has been prepared by DMA Professional Engineers and was submitted as part of the Response to Further Issues letter dated 17 January 2012. The conditions should reasonably reference this plan. Furthermore, it has been demonstrated that all other illuminated advertising signage complies with the Australian Standards and will have minimal impact on visual amenity. Therefore, it is proposed to amend Condition 112 to acknowledge the submitted lighting plan, whilst also recognising that other types of lighting (i.e. security lighting) must also be designed to the satisfaction of Council."

The applicant proposes to amend Condition 112 to read as follows:

*112A. All externally mounted artificial lighting, including security lighting, is to be shielded **in accordance with the Lighting Plan completed by DMA Professional Engineers and** 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.*

Council's Environmental Health Unit has provided the following comment:

"Condition No. 112 is a standard condition that has been included to protect the amenity of the local area. As stated previously, the Lighting Plan prepared by DMA Professional Engineers does not confirm that there will be no light spill from car parking floodlighting. Therefore it is considered that the condition proposed by the applicant may not meet the minimum standard previously nominated by Council ie the standard condition. The requested amendment is not supported and it is recommended that the condition remain unchanged."

As such, the applicant's request to modify Condition 112 is not supported and is recommended to remain unchanged.

A condition was applied (Condition 91) to ensure that the air conditioning, refrigeration and exhaust units for the McDonald's Restaurant component of the development to be constructed so that they are screened. An additional condition (Condition 117) was applied to ensure that the operational phase of the development continued to screen the units from surrounding residential land to the east of the site.

Condition 117 currently reads as follows:

117. Individual air conditioning, refrigeration and exhaust fan units for the McDonalds restaurant are to be located behind appropriately constructed roof parapets and / or acoustic screens on the roof level to provide shielding to residential land uses to the east of the property.

The applicant has requested that Condition 117 be deleted, noting the following:

"Condition 117 has been duplicated from Condition 91. It is therefore respectfully that Condition 117 be deleted."

Council's Environmental Health Unit has provided the following comment:

"To protect amenity of the local area it is important that the development be constructed in accordance with the development consent, and maintained appropriately during use. Two identical conditions are included in the consent, No. 91 within the 'during construction' section, and No. 117 within the 'use' section. For the abovementioned reason it is considered important that both conditions be retained. The requested amendment is not supported and it is recommended that the condition remain unchanged."

As such, the applicant's request to delete Condition 117 is not supported and is recommended to remain unchanged.

Similarly, the proposed development was required under Condition 92 to construct an acoustic barrier and then an additional condition (Condition 118) was applied to ensure that the operational phase maintained the barrier for the life of the development.

Condition 118 currently reads as follows:

118. A 2.4 metre high acoustic barrier is to be constructed on the northern portion of the eastern boundary of the site. The acoustic barrier is to be 15m in length, from the northern extent of the eastern boundary. The acoustic barrier is to be gap-free and constructed of materials achieving a minimum surface density of 12.5 kg/m². The acoustic barrier is to be constructed from overlapped timber palings, ply, fibre cement, concrete, steel, glass or any other suitable material achieving the required standards. The barrier shall be maintained to a suitable standard at all times.

The applicant has requested that Condition 118 be deleted, noting the following:

"Condition 118 has been duplicated from Condition 92. It is therefore respectfully requested that Condition 118 be deleted."

Council's Environmental Health Unit has provided the following comment:

"To protect amenity of the local area it is important that the development be constructed in accordance with the development consent, and maintained appropriately during use. Two identical conditions are included in the consent, No. 92 within the 'during construction' section, and No. 118 within the 'use' section. For the abovementioned reason it is considered important that both conditions be retained. The requested amendment is not supported and it is recommended that the condition remain unchanged."

As such, the applicant's request to delete Condition 118 is not supported and is recommended to remain unchanged.

Landscaping Plans

As noted above, deferred commencement conditions have been applied requiring detailed landscaping plans. Plans provided to date by the applicant (for the separate deferred commencement assessment) are conceptual plans (Landscape Intent plans), rather than detailed plans. Whilst the submitted Landscaping Intent plans were satisfactory in demonstrating the increased area of landscaping along the site's frontage, there were no details of where each particular species will be located. Council staff suggested that the landscaping details be included as part of this Section 96 application, to allow the applicant sufficient time to provide the necessary details. As a result, the applicant has now requested that detailed landscaping plans be lodged prior to the issue of a construction certificate.

It should be noted that the applicant proposed to no longer have the pad mounted transformer in the north east portion of the site. Rather, they proposed to have a pole mounted transformer which left the subject area available for landscaping. As a result of discussions with Essential Energy, the applicant has since advised that they now need to revert back to the original design of having a pad mounted transformer on the subject site. Landscaping Intent plans have been submitted to indicate this (see Figure 2).

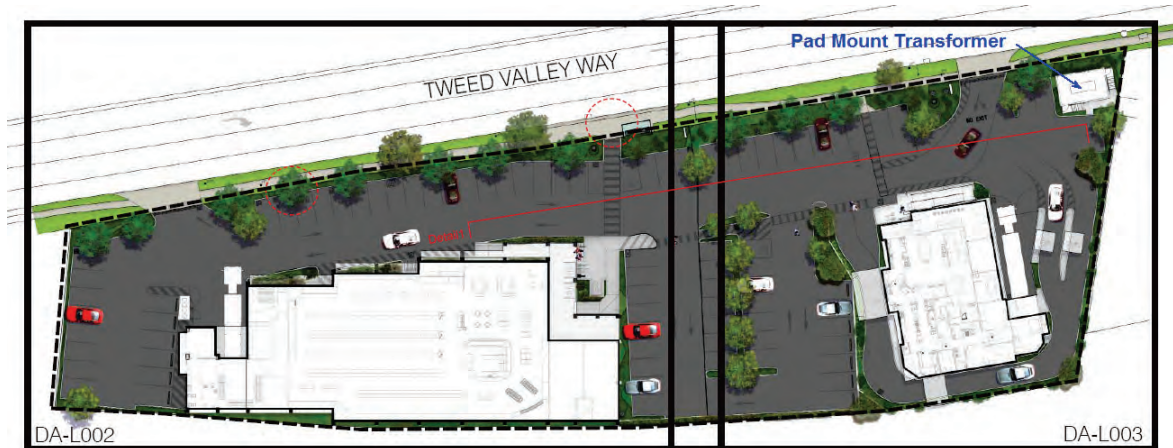


Figure 2 – Revised Landscaping Intent Design

In response to visual amenity issues raised by residents along Tumbulgum Road (to the north of the Tweed River), Council staff approached the applicant to determine if they would be amenable to providing additional landscaping along the river side of Tweed Valley Way. The applicant's response was positive in this regard.

The applicant has requested that Condition 121 be modified, noting the following:

"As previously discussed, please find enclosed an amended Landscape Intent Plan (prepared by Urbis) which shows the re-positioning of the pad mount transformer in the north-eastern corner of the site. By way of background, the Applicant had previously sought to remove the pad mount transformer in favour of a pole mount design (which in turn increased the quantum of landscaping along the site frontage), unfortunately due to design requirements by Essential Energy, we have been advised that a pad mount transformer is the preferred electricity supply method for the entire site.

The pad mount size is approximately the same as what was shown on the last set of drawings before it was removed from the plans (refer to the email 03 February 2012) to provide additional landscaping. The latest Landscape

Intent Plan, as attached, continues to provide visual screening and landscaping in order to ensure the pad mount transformer is not directly visible from Tweed Valley Way.

Amended architectural plans have been supplied separately to Council via email correspondence on 30 May 2012. Furthermore, and as a result of the provision of Landscape Intent Plans for assessment, we wish to amend Condition 121 of the Schedule B conditions (in accordance with Council correspondence dated 04 June 2012) to require the completion of detailed on-site landscaping plans to be approved by Council prior to the issue of a Construction Certificate.

The condition should also acknowledge the Applicant's support of providing equally-spaced, 'boulevard' plants along the river side of Tweed Valley Way that will help to screen the development from Tweed River. Species and spacing of plants shall be confirmed at the time of preparing detailed landscaping plans, as described above. Plant selection will primarily be at the discretion of a qualified landscape architect; however the Applicant shall seek to liaise with Council's Recreational Services Unit during the preparation of the plans. Long-term maintenance of the trees is to be undertaken by Council."

As noted above, Council does not oppose the proposed landscaping details to be provided at a later stage (i.e. PCC). However, Condition 121 is a USE condition and is not considered to be the appropriate condition to modify. Instead, a new PCC condition is proposed as **Condition 40.2**:

40.2. 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.

The detailed plan must indicate the proposed location of each species within the proposed landscaped areas of the site.

In terms of the planting along the river side of Tweed Valley Way, Council officers investigated the possibility of this happening and what would be required in terms of maintenance etc. The following issues were raised:

- The embankment is quite narrow, is very steep and may require some geotechnical assessment prior to any works commencing, to ensure the stability of the embankment (given its close proximity to the roadway);
- The slope of the embankment would rule out normal boulevard trees being planted. Appropriate riparian plant species would be required, which would possibly limit the ability to reach sufficient height to provide screening for residences across the river;
- Council would require an approved Management Plan for the area, which would need to be prepared by a suitably qualified and experienced riparian restoration person, in accordance with Council's Habitat Restoration Plan guidelines; and
- Council would require the area to be maintained by the developer for a standard period of five (5) years. The slope of the embankment would require specialised people to maintain the area (using abseiling type equipment to access the area).

In order to ensure that the applicant was fully aware of the requirements and responsibilities involved with such a constrained area, the applicant was advised of the above issues and requested to confirm if they were still agreeable to providing additional landscaping along the river side of Tweed Valley Way.

The applicant provided the following response:

"Unfortunately due to the costs associated with geotechnical reporting, the 5 year maintenance period, and most importantly the uncertainty of riparian vegetation screening the development from the residences across the River (the very purpose of providing additional plants), our Client has decided to not proceed with the proposed landscaping along the river side of Tweed Valley Way.

We however appreciate Council advising us of these requirements in advance of the Council meeting.

Despite the absence of the river side plantings, it is noted the development nonetheless is making all attempts to reduce light spill within acceptable design standards and reduce the quantum of illuminated signage."

As a result, the applicant's previous request to include an additional condition with regard to 'boulevard' plants along the river side of Tweed Valley Way (to screen the development from Tweed River) is no longer applicable. Given that the appropriate plant species for the embankment may not even grow to sufficient height to provide any beneficial screening, the applicant's reluctance to proceed with the additional landscaping is understandable.

Despite this, the fact remains that the majority of the applicant's requests to modify various lighting conditions have not been supported, which will benefit the surrounding locality in terms of amenity.

Staging of the development

Although no specific plan has been provided in terms of the proposed staging of the development, the applicant advised Council during the assessment of the original application that the two components (McDonald's restaurant and IGA / specialty stores) of the development would be constructed separately.

The applicant has requested that Council undertake an assessment of various conditions to determine whether amendments are required to clarify the proposed staging, stating the following:

"Given the proposed staging of this development and the need for the conditions to reflect the staged nature of the development it is respectfully requested that Council consider providing further written clarification or statements relating to Conditions 6, 11, 12, 16, 17, 23, 26, 27, 34, 37, 62, 84 and 95 which outline how these conditions function when the development is staged."

Council's Development Engineer has provided the following comment:

"The applicant now appears to require subdivision of the site as an integral part of the site's current development strategy, instead of at some vague time in the future. Previously Council's only (land titling) requirement was for consolidation of the site – which does not require development consent – whereas subdivision DOES require development consent. Extra consent conditions are required in the "Pre CC" section to ensure necessary

subdivision works (particularly sewer servicing) are undertaken at the appropriate time.

From an 'engineering' perspective, not all the nominated conditions (above) have engineering significance. The assessing Planner has requested specific 'engineering' comments relevant to Conditions 12, 13, 15, 23 and 103 nevertheless a brief comment (at least) is provided for all conditions.

While the approved development includes consent for staging – with the McDonalds venture being separate to the IGA / speciality shop development – the applicant has not nominated which 'stage' will be undertaken first. It is highly likely that the McDonalds 'stage' will be first, and for ease of providing comments will be deemed 'Stage 1'.

The proposed internal subdivision / amalgamation boundary matches the stage boundary, and will provide for a clear separation of the two different uses (restaurant and shops) on the site.

Note: since the applicant has raised issues and requested clarification regarding staging and future subdivision of the development site, reconsideration of this aspect of the development is appropriate. Modification and/or creation of new conditions will be recommended that will require:

- All site filling to be undertaken in conjunction with the first stage of the development being constructed, unless required earlier in conjunction with sewer main construction. Condition 19 is to be amended to address this.
- The 2 lot subdivision would normally need to be completed PRIOR to issue of any construction certificate, to ensure that all services for the individual lots are provided – with no need for retro-fitting such connections once the site (or part of it) is fully constructed. This approach is particularly relevant if work on later Stages is delayed for any significant period of time. This is consistent with the approach taken on prior similar developments where staging is proposed and different owners are involved, and would necessitate the immediate extension of the sewer main and provision of individual water connections.

However due to the nature of this subdivision, where the boundary location will be partly dependant on the as-constructed car parking locations, it is considered that a modified approach is warranted. It will be recommended that:

- The DA for the subdivision will need to be approved prior to the issue of any CC (DA 12/0113 submitted and currently under assessment) for building works on the site. Building works cannot commence however, until the sewer main is constructed.
- Construction of an extension of Council's sewer main infrastructure is a requirement of the subdivision proposal. This work can only commence once bulk earthworks for the front portion of the site, including all areas associated with the internal shared access arrangements (Right of Carriageway and Parking Easements), has been completed. (Rear of site and building

footprints are also to be filled, but this has no consequence on sewer main infrastructure works.)

The sewer main extension must be laid prior to commencement of any building works on the development site.

Final testing and CCTV inspection of the new infrastructure is ideally undertaken after all site and building works are completed, but if this is not achievable, then at the earliest - after completion of driveway ingress works.

- *All bulk earthworks associated with the internal shared access arrangements (Right of Carriageway and Parking Easements) must be completed and the relevant shared access areas fully constructed prior to the issue of a Subdivision Certificate.*
- *The Subdivision Certificate will need to be issued and proof of registration of the plan subdivision provided, prior to the issue of any Occupation Certificate for the development.*

Note that all servicing connections (sewer, water, electricity & telecommunication) for the individual lots will be undertaken as part of the subdivision process, so both lots – whether developed or not – will be fully serviced prior to or in conjunction with the Stage 1 works (or whichever Stage is commenced first)."

The following is an assessment of the applicable conditions of consent that may need amendment as a result of the staging of the development.

Condition 6 – Trade waste licence

Council's Development Engineer has noted that this condition is not directed at individual lots but "any business or premises" and therefore no amendment is considered warranted.

Condition 11 – Car parking lighting

Council's Development Engineer notes that this condition is not directed at individual lots and therefore no amendment is considered warranted.

Condition 12 – Car parking numbers and standards

Condition 12 has been addressed in the assessment report above, with regard to staging and the condition has been recommended for modification appropriately.

Condition 16 – Long service levy payment

This condition is not directed at individual lots and therefore no amendment is considered necessary.

Condition 17 – Imported fill

Condition 17 currently reads as follows:

17. *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.*

Council's Development Engineer has recommended a modification to Condition 17, to address the use of imported fill for sewer infrastructure construction works under separate Section 68 approval.

The following modification to Condition 17 is proposed (amendments shown in bold):

*17A. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate **that includes site filling OR Section 68 approval for construction of sewer main infrastructure**, 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.*

Condition 19 – Site filling

Condition 19 currently reads as follows:

19. 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 Section 68 stormwater application for Council approval.

Council's Development Engineer has recommended a modification to Condition 19, in relation to staging and sewer main construction.

The following modification to Condition 19 is proposed (amendments shown in bold):

19A. 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 site filling to be undertaken in conjunction with the first stage of the development being constructed, unless required earlier in conjunction with sewer main construction.

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.

Condition 23 – Section 138 application requirements

Council's Development Engineer has recommended that an extra sentence to be inserted to ensure this work is done in conjunction with Stage 1 works. The extra sentence has been incorporated into the revised Condition 23 noted in the assessment report above.

Condition 26 – Erosion and sedimentation control

This condition is not directed at individual lots and therefore no amendment is considered necessary.

Condition 27 – Section 68 for water, sewer or drainage connections

Council's Development Engineer has noted that Condition 27 is considered satisfactory in its current form. No modification is considered necessary.

Condition 34 – Section 68 for public sewer infrastructure

Council's Development Engineer has noted that Condition 34 is considered satisfactory in its current form. No modification is considered necessary.

Condition 35 – two (2) water connections

Condition 35 currently reads as follows:

35. *The applicant is invited to submit an application for two (2) water connections for the site, to accord with the future subdivision proposal over the site.*

Council's Development Engineer has recommended a modification to Condition 35, noting that although not requested for review, this condition warrants minor modification. The word "invited" is to be changed to "required".

The following modification to Condition 35 is proposed (amendments shown in bold):

- 35A. *The applicant is **invited required** to submit an application for two (2) water connections for the site, to accord with the future subdivision proposal over the site.*

Condition 37 – Site management plan

Council's Development Engineer has recommended a modification to Condition 37, with regard to staging.

Condition 37 currently reads as follows:

37. *Prior to the Construction Certificate being issued, a Site Management Plan for the ongoing use and management of the entire site shall be prepared and submitted to the satisfaction of Council's General Manager or delegate. The Plan shall include but is not limited to the management of mechanical plant and associated equipment, management of the Playland area, proposed site security including management of patrons and antisocial behaviour, monitoring and management of litter, trolley management, coordination of refuse collection vehicles and delivery vehicles to avoid potential traffic conflict and general site management.*

The approved Site Management Plan shall be kept onsite and implemented upon commencement of operations.

The following modification to Condition 37 is proposed (amendments shown in bold):

- 37A. *Prior to ~~the a~~ **a** Construction Certificate being issued **for either stage of the development**, a Site Management Plan for the ongoing use and management of **that stage, including measures for compatibility with the Site Management Plan for the other stage, ~~the entire site~~** shall be prepared and submitted to the satisfaction of Council's General Manager or delegate. The Plan shall include but is not limited to the management of mechanical plant and associated equipment, management of the Playland area, proposed site security including management of patrons and antisocial behaviour, monitoring and management of litter, trolley management,*

coordination of refuse collection vehicles and delivery vehicles to avoid potential traffic conflict and general site management.

The approved Site Management Plan shall be kept onsite and implemented upon commencement of operations.

Condition 46 - Fill / TRCP / haul route

Although not requested for review, Council's Development Engineer has recommended that this condition be modified to better address the timing of payment.

Condition 46 currently reads as:

46. *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 the issue of the Subdivision Certificate.

The following modification to Condition 46 is proposed (amendments shown in bold):

46A. *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 the issue of ~~the Subdivision Certificate~~ a **construction certificate** or **Section 68 sewer infrastructure construction application**.*

Condition 62 – Earthworks as per AS3798

Council's Development Engineer has recommended that this condition be modified.

Condition 62 currently reads as follows:

62. *Proposed earthworks shall be carried out in accordance with AS3798, "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 AS3798. 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.

The following modification to Condition 62 is proposed (amendments shown in bold):

62A. *Proposed earthworks shall be carried out in accordance with AS3798, "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 AS3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to:

- a) Tweed Shire Council in conjunction with sewer infrastructure construction works (that require site filling) as per separate Section 68 approval.**
- b) The Principal Certifying Authority upon completion.**

Condition 77 - S138 'satisfactory inspection report'

Although not requested for review, Council's Development Engineer has recommended this condition be modified in terms of a minor clarification regarding "timing".

Condition 77 currently reads as follows:

77. 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.

The following modification to Condition 77 is proposed (amendments shown in bold):

*77A. During construction **of the initial stage of the development**, 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.*

Condition 84 – Water quality for any site discharges

Council's Development Engineer has noted that Condition 84 does not require modification.

Condition 95 – Defect liability bond

Council's Development Engineer has noted the following:

"Although this security bond is more relevant to be associated with the Subdivision Certificate, this condition is still considered satisfactory as is. The separate DA submission for the subdivision (DA12/0113) will include a similar requirement."

(c) Suitability of the site for the development

The applicant has addressed Council's original concerns by way of providing a revised design, which is currently being assessed under a separate deferred commencement assessment. The proposed modifications are generally compliant with all relevant policies applicable to such a development. As such, the proposed development is considered suitable for the subject site, subject to conditions of consent.

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

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

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

Likely Environmental Impact

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

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

Substantially the Same Development

The proposed modifications result in essentially the same development as originally approved, with the proposed amendments considered unlikely to result in any significant changes to the external appearance of the originally approved development. There are no new uses proposed and no additional parcels of land. As such, the proposed modifications are considered to be substantially the same development as that originally approved.

Consideration of Submissions

The application was placed an exhibition for 14 days. During this time, eight (8) written submission were received.

The following table lists the issues raised by the submissions and provides comment to each issue.

ISSUE	RESPONSE
<p>Concern is raised about both the visual and noise impacts of the development on the northern side of the river, including Tumbulgum Road and surrounding hills.</p>	<p>The applicant has noted the following:</p> <p><i>"Since the Deferred Commencement Consent was issued, the extent of lighting has decreased in order to address concerns raised by Council. This includes the reduction of both pylon signs to 5 metres, as well as reducing the number of illuminated wall signs, which will result in simultaneously lessen lighting impacts whilst maintaining compliance with AS4282.</i></p> <p><i>Importantly, the only McDonald's signage lighting that directly faces Tweed River is a small 'McCafe' and 'M' sign. The larger 'McDonald's' and pylon sign face east/west away from the River. Whilst the number of IGA signs will remain the same, these nonetheless comply with AS4282 and meet all relevant Council standards.</i></p> <p><i>Furthermore, all signs will be partially shielded over time due to the establishment of trees along the site frontage (as per the Landscape Intent Plans) and along the river side of Tweed Valley</i></p>

ISSUE	RESPONSE
	<p><i>Way (as requested by resident submissions, and by Council on 06 June 2012)."</i></p> <p>It should be noted that Council staff do not support the majority of the proposed modifications to the conditions relating to potential lighting and noise impact. The only proposed modification being supported is the deletion of Condition 3. Council's Environmental Health Unit considers that installation of lighting shielding is more likely to be used as an ameliorative measure to address lighting conflicts, rather than changing lighting intensity. Any complaints relating to lighting conflicts would be assessed against an appropriate standard, such as AS 4282 <i>Control of the obtrusive effects of outdoor lighting</i>. If non-compliance with the appropriate standard is identified, the onus would be on the applicant/occupant to address the matter.</p>
<p>Seek the inclusion of a condition requiring extensive planting of advanced large natives trees along the riverbank (prior to the commencement of works), sufficient to mask the development from the river and surrounding areas and provide some degree of noise attenuation.</p>	<p>As noted within the body of this report, the applicant was happy to provide additional landscaping along the river side of Tweed Valley Way. Unfortunately, constraints of the site, plant species, and management issues have resulted in the applicant advising that they will not be proceeding with the additional landscaping. In any case, it should be noted that the noise attenuation would not have been achievable by landscaping the river side of the roadway, given the limited width of the embankment (room for single line of trees only). It should be noted that the applicant's request to modify conditions in relation to noise have not been supported.</p>
<p>Residents on Tumbulgum Road have to tolerate: traffic noise from Tweed Valley Way; noise from customers at the three service stations morning and night; and noise from the Riverside Tavern (music on Friday and Sunday nights reverberates through windows and doors and wakes residents). Residents will not tolerate the lighting and additional noise that will be generated by this development. Lighting spills across into our kitchen and bedrooms now with the industrial lighting. The DA must uphold the lighting restrictions and hooded bulbs to prevent lighting from spilling beyond its desired purpose. The McDonald's sign must remain below 5m and be dimmed before 7pm for the convenience of residents.</p>	<p>As noted above, the applicant has reduced the size of the pylon signs and reduced the number of signs overall. Additional landscaping is also proposed. Nevertheless, Council staff do not support the majority of the proposed modifications to the conditions relating to potential lighting and noise impact.</p>
<p>The noise travels tremendously across water. We strongly object to any changes to air conditioning positioning to benefit the owners. The original DA used a noise study that suggested residents 250m from the source of noise would not be affected. I challenge this as we are well within 250m of McDonalds and IGA and the sound will travel into our homes due to the body of water between us.</p>	<p>Council staff do not support the proposed modifications to the conditions relating to noise impact.</p>

ISSUE	RESPONSE
We object to constant smells and odours coming from McDonald's 24 hours.	Council staff do not support the proposed modifications to the conditions relating to amenity impact.
We insist that Council planners consider adding to the response to the DA amendments that McDonald's / IGA fund the sound / lighting barrier to be erected on the opposite roadside to the establishment for the protection from the residents of Tumbulgum Road.	A sound / lighting barrier on the river side of Tweed Valley Way is not considered to be appropriate in this instance. As noted within the body of this report, the applicant was happy to provide additional landscaping along the river side of Tweed Valley Way. Unfortunately, constraints of the site, plant species, and management issues have resulted in the applicant advising that they will not be proceeding with the additional landscaping. It should be noted that the majority of the applicant's request to modify conditions in relation to lighting and noise have not been supported.
We are owners of property immediately across the river from the proposed redevelopment. Whilst we are not opposed to the redevelopment in principle we are extremely concerned about both the visual and noise impacts this development will have on the northern side of the river.	As noted above, Council staff has opposed the majority of the proposed deletion / modification of conditions relating to noise / lighting.
The issue of potential impacts experienced by residents north of the Tweed River looking back across the river particularly at night has not been appropriately addressed or understood in this request for amendments.	This issue has been adequately addressed above.
The most effective and aesthetically pleasing means of mitigating the impact of the proposed development upon the northern side is to provide a screen of trees planted on the riverside of the road. Without a dense landscape screen, the proposed development will be constantly in the night time outlook from the properties on the northern side of the river.	As noted above, the applicant was happy to provide additional landscaping along the river side of Tweed Valley Way. Unfortunately, constraints of the site, plant species, and management issues have resulted in the applicant advising that they will not be proceeding with the additional landscaping. It should be noted that the majority of the applicant's request to modify conditions in relation to lighting and noise have not been supported.
If the proposed development goes ahead, the riverbank side of Tweed Valley Way should be planted completely out with native rainforest trees to provide a to help stabilise the riverbank and provide some much needed acoustic and visual barrier.	See comments above.
I have attached photos – note that the photos of the lights coming across the river in no way show how bright they are – they were taken without a flash. The lights from the service stations and Victory Ford are on constantly – all night. They light our house enough that we do not need lighting to get ready for bed. This lighting is on an angle from our home. McDonald's is going to be directly across from our home (and more importantly directly across from our bedroom).	This issue has been adequately addressed above.

ISSUE	RESPONSE
Noise travels across water. We can honestly hear people talking from across the river. We hear the beeping of the tyre air guage at the Caltex and the man on the microphone taking to the customers at the petrol bowzers. Can you imagine what the noise will be like for us to hear every drive through hamburger order? Please ensure the developer complies with all of the conditions.	Council staff do not support the proposed modifications to the conditions relating to noise impact.
I request urgently that quick growing trees be planted along the roadway, on the river side of Tweed Valley Way. This will help with noise and lighting issues.	This issue has been adequately addressed above.
Condition 3 Signage Lighting – I believe Council was acting in the interests of the residents and rate-payers when making this condition. The requirement for the development to have devices which reduce glare of the lighting of signage should remain.	Council staff do not support the majority of the proposed modifications to the conditions relating to lighting impact.
Condition 12 Car Parking - I believe this amendment does not provide sufficient information for effective decision making to occur. In particular I am concerned that appropriate disabled parking and safety issues are not addressed in detail.	Council's Development Engineer has opposed the deletion of Condition 12. An appropriate amendment has been proposed, requiring the provision of adequate details for each stage, which will ensure parking and safety issues are addressed.
Condition 23 Bus Shelter – My understanding of this condition being put in place was to ensure the safe access / alighting for bus passengers and efficient thoroughfare for traffic along Tweed Valley Way. I am concerned the move to put the bus shelter on the road reserve will compromise these important safety issues.	Council's Engineers have assessed the proposed relocation of the bus shelter within the road reserve and have determined that adequate width is available to ensure the safety of the bus passengers. Applicable conditions of consent have been applied.

Public interest

Despite the number of submissions, the proposed modifications to Development Consent DA11/0476 which are being supported are considered to be acceptable in terms of public interest. The proposed modifications are not considered to result in a significant negative impact upon the surrounding area, subject to the recommended conditions of consent.

OPTIONS:

1. Approve the proposed modifications, subject to the recommended conditions of consent; or
2. Refuse the proposed modifications; or
3. Approve the proposed modifications as proposed by the applicant.

CONCLUSION:

This assessment has had regard for all of the issues raised by the submissions, and has taken into consideration what conditions of consent Council has applied to other commercial activities. As a result, the proposed modifications which are being supported are considered to be acceptable and it is considered that the proposal warrants approval, subject to the recommended amendments to Development Consent DA11/0476.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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16 [PR-CM] Response to Notice of Motion from 20 March 2012 - Historic Commercial Uses of the Tweed River

SUBMITTED BY: Development Assessment



Civic Leadership

SUMMARY OF REPORT:

In response to a Notice of Motion from the Council meeting of 20 March 2012 it was resolved:

".. that the General Manager investigates and reports back to Council on what business vessels are still operating on the Tweed River, as supplied in attachment form to Item 10 of the Ordinary Meeting held 21 February 2012, given the overview statement made to the attachment as follows:

"Other development applications previously assessed for commercial operations on the Tweed River that may have relevance to the current proposal include the following. Most of the applications were lodged for continuation of businesses following compliance action and as a result of the Council resolution of 6 December 2000 that sought development applications within 40 days from all commercial boating operators that did not have a current consent."

Following a recent review of previous Council development approvals, half of the original applications for commercial ventures on the Tweed River are still operational.

RECOMMENDATION:

That the report on the response to Notice of Motion from the Council meeting held 20 March 2012 relating to Historic Commercial Uses of the Tweed River be received and noted.

REPORT:

Attachment A identifies the 26 development applications previously assessed for commercial boating operations on the Tweed River. These applications have now been reviewed to determine their current status and can be summarised as follows:

- **'One off' events – x2**
There were two temporary race meetings held in 1999.
(K98/0496 & K99/0301).
- **Withdrawn or refused– x3**
There were two operations which were withdrawn.
(0065/2001PTV and 0071/2002DA) and one amendment refused
(1039/2001DA.01).
- **Ceased – x8**
There were eight operations which have since terminated for a variety of reasons.
(1030/2001DA, 1039/2001DA.02, 0332/2002DA, DA02/0383, DA02/0405,
DA03/1142, DA07/0974 & DA08/0931).
- **Still operational – x13**
Of the 26 development applications originally lodged (and mostly approved), 13 of the ventures remain operational today. Some of these involve a single weekly trip e.g. a fishing charter which simply passes through the entrance for an ocean voyage, through to daily trips along the Tweed River e.g. BBQ pontoons or river cruises. Investigations reveal there has been no real growth in the level of activity over the last decade possibly due to flat trends in tourism or restricted wharfing facilities. Feedback from operators suggests that bookings are down and their operations only just commercially viable. There does not appear to be any demonstrable increase in activity on the Tweed River but rather a reasonably static level of commercial boating.
(1039/2001DA, 0130/2002DA, 0193/2002DA, 0194/2002DA, 0196/2002DA,
0348/2002DA, DA02/0404, DA02/0407, DA02/1065, DA02/1238, DA02/2011,
DA02/1615, DA08/0296).

OPTIONS:

Not applicable.

CONCLUSION:

Half of the original applications for commercial ventures on the Tweed River are still operational.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
- 1.2.1.2 Provide information to Councillors to enable them to carry out their civic office functions

UNDER SEPARATE COVER/FURTHER INFORMATION:

- 1. Attachment A - Historic Commercial Uses of the Tweed River (ECM 50244934)
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17 [PR-CM] Area E, Terranora - Interpretation of Clause 53D of the Tweed Local Environmental Plan 2000 & Altitude Aspire - Status Update

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA09/0701, GT1/DCP/B24, GT1/LEP/2000/10



Civic Leadership

SUMMARY OF REPORT:

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

To enable future development of the site, Council has progressed:

- A Local Environmental Study (LES) and a subsequent amendment to the Tweed LEP 2000 (Amendment No. 10 approved 26 October 2007). This resulted in the site being rezoned and an enabling Clause inserted into the Tweed LEP 2000 (Clause 53D);
- A site specific Draft Tweed Development Control Plan (DCP) – Draft Tweed DCP Section B24 – Area E Urban Release Development Code; and
- A Draft Section 94 Contribution Plan (CP) No. 31 Terranora Area E to provide funding for infrastructure required to facilitate the development of Area E Terranora as described in draft Development Control Plan Section B24 – Area E Urban Release Development Code (DCP-B24).

In parallel to Council's process, DP&I is currently considering, as the consent authority, a 272 lot community title (Torrens) subdivision (amended Altitude Aspire) within the eastern portion of Area E, under the savings provisions of Part 3A of the Environmental Planning and Assessment Act 1979.

The Draft Tweed DCP Section B24 – Area E Urban Release Development Code was endorsed by Council on 13 December 2011 however public notice of the plan being made is not to occur until an appropriate framework of Developer Contributions is achieved and in place.

In this regard the Draft Section 94 CP No. 31 was abandoned on 13 December 2011 as there was little prospect of it being approved in a timeframe that could facilitate funding of infrastructure for the Part 3A application of "Altitude Aspire". Also given the level of objections by landowners, there was little prospect of obtaining support from the landowners

in an application to the Minister to approve exceeding the Section 94 cap of \$30,000 per dwelling or subdivision allotment.

Discussions were therefore held with the proponents of "Altitude Aspire" and it was concluded that the most likely method of enabling their project to proceed would be by way of a Voluntary Planning Agreement (VPA) with Draft Section 94 CP No. 31 being used as the basis of negotiations.

This report will provide a brief summary of the status of the VPA discussions between Council and the applicant for "Altitude Aspire".

Council is also in receipt of two (2) additional requests for works within the mapped boundary of Area E (as shown on the below map).

The first indicates that an owner wishes to demolish one (of two) of the existing dwellings on a property and replace it with a new dwelling house.

The second indicates that the proponents for "Altitude Aspire" wish to obtain development consent for a temporary sales office.

The applicant's consultant on these matters has expressed concern that such developments may get caught by the Tweed LEP 2000 Clause 53D(3)(a) which states:

"(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."

This report seeks clarification from Council that Clause 53D(3)(a) is considered satisfied for minor works which do not affect the overall strategic objectives for Area E.

Such an interpretation would allow minor alterations and additions around the fringes of Area E to proceed subject to a merit consideration within a development application.

RECOMMENDATION:

That:

- 1. Council receives and notes the update on the Voluntary Planning Agreement discussions between Council and the applicant for the "Altitude Aspire" Part 3A development, Area E, Terranora; and**
- 2. Clause 53D(3)(a) of the Tweed Local Environmental Plan 2000 is considered satisfied for minor works which do not affect the overall strategic objectives for Area E, Terranora.**

REPORT:

Tweed Shire Council and Altitude Aspire (Newlands) Voluntary Planning Agreement Update

As detailed in the summary, discussions were held with the proponents of "Altitude Aspire" and it was concluded that the most likely method of enabling their project to proceed would be by way of a Voluntary Planning Agreement (VPA) with Draft Section 94 CP No. 31 being used as the basis of negotiations.

Accordingly the proponents for Altitude Aspire submitted a Draft Voluntary Planning Agreement in January 2012 for further discussion with Council officers.

The Draft VPA has generally been formed by utilising the principles established in the Draft Section 94 CP No. 31, and has canvassed the following issues:

- Road infrastructure (including Broadwater Parkway and its intersection with Fraser Drive);
- Water supply;
- Sewer infrastructure;
- Stormwater drainage and flood mitigation infrastructure;
- Wetland acquisition and rehabilitation;
- Casual (passive) public open space;
- Structured public open space; and
- Altitude Aspires obligations under the shire wide Section 94 contribution plans and Section 64 charges for water and sewer.

The drafting of the VPA has recently been completed with both Council and Newlands being predominantly satisfied with the principles contained in the VPA. The document has been forwarded to Council's solicitors for review and official feedback on the legality and readability of the document.

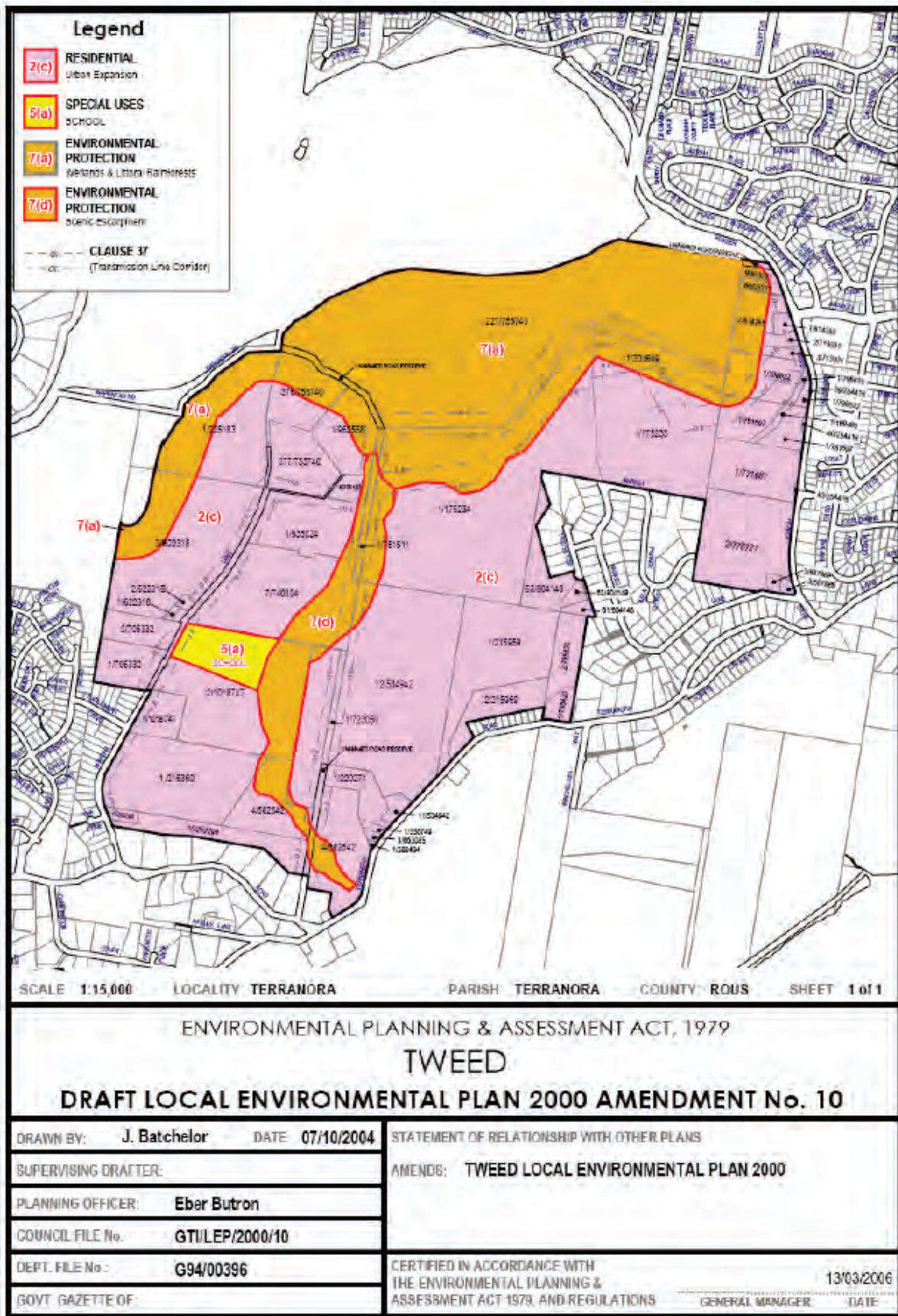
Discussions with the proponent and the DP&I have indicated that the VPA (once reviewed by the lawyers) will be placed on public exhibition concurrently with the Preferred Project Report (PPR) for Altitude Aspire. Such exhibition is considered crucial to enable other landholders within Area E to review the proposed mechanisms that would enable Altitude Aspire to proceed.

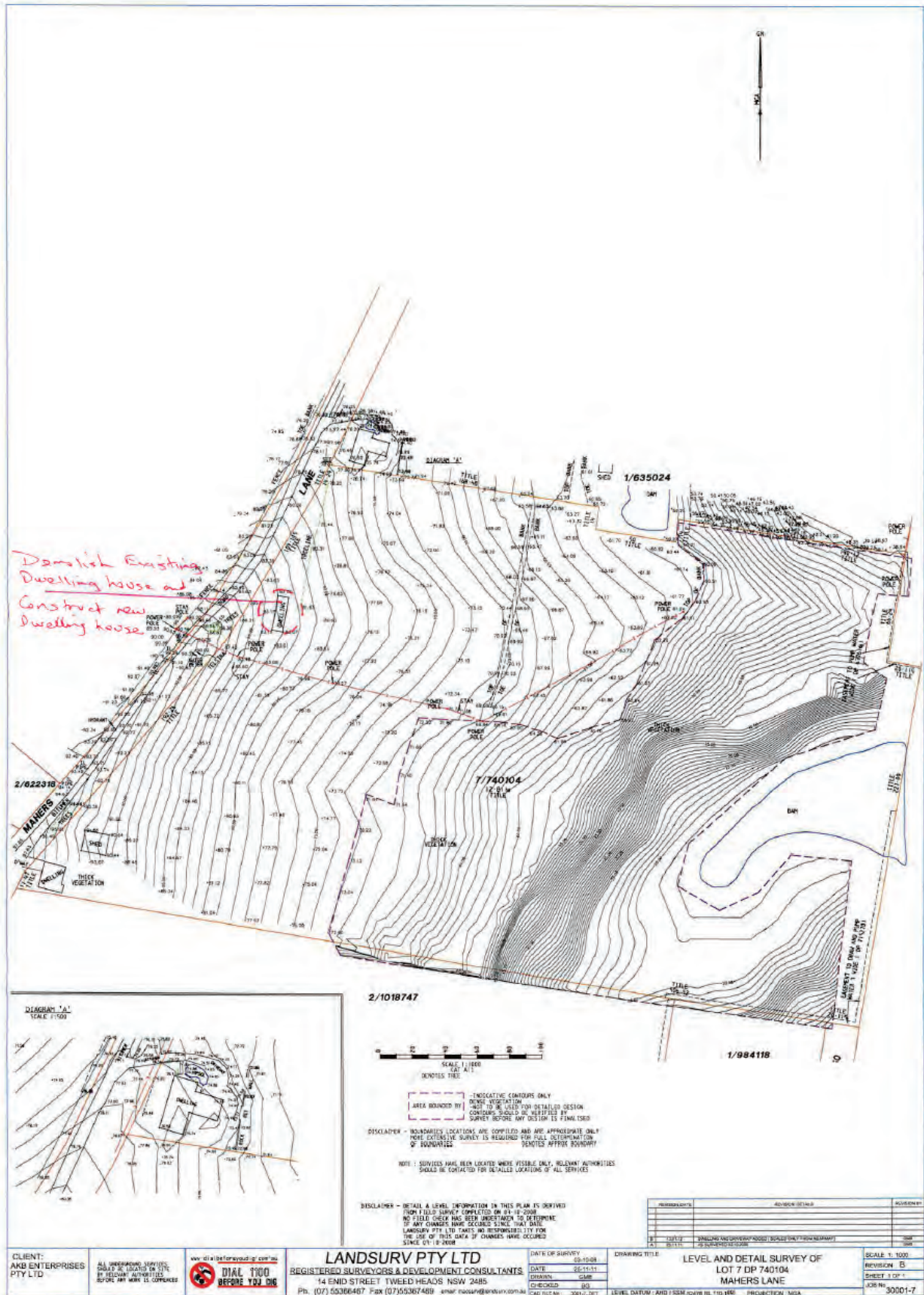
Additional requests for works within the mapped boundary of Area E

As detailed in the above summary, Council is in receipt of two (2) additional requests for works within the mapped boundary of Area E (as shown on the following map).

The first indicates that an owner wishes to demolish one (of two) of the existing dwellings on a property and replace it with a new dwelling house. The subject site is Lot 7 in DP 740104, Mahers Lane, Terranora. The site is currently zoned part 2(c) Urban Expansion and part 7(d) Environmental Protection (Scenic Escarpment). The below diagrams shows the approximate location of the proposed house and the proposed house having regard to the indicative structure plan contained within Draft Tweed DCP Section B24 – Area E Urban Release Development Code.

AREA E Map:





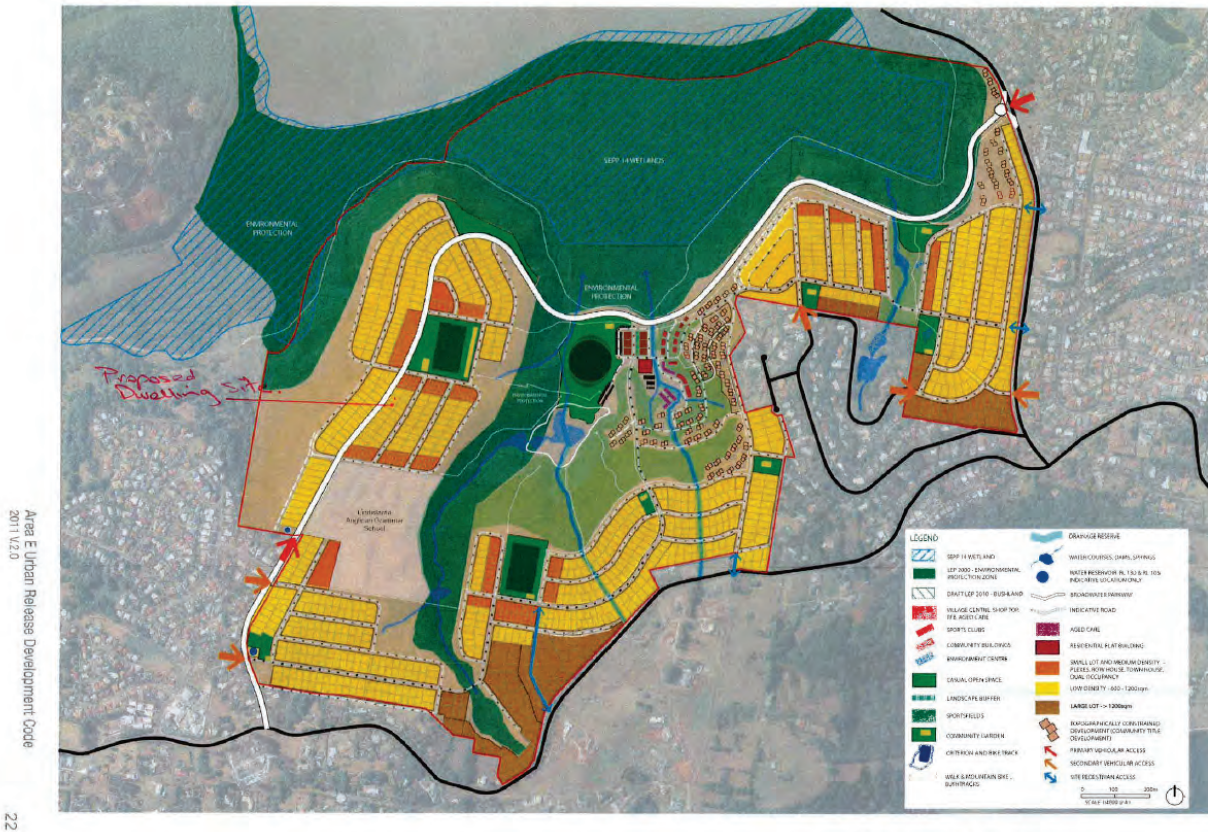


Figure 2.2- Indicative Structure Plan

The second request indicates that the proponents for “Altitude Aspire” wish to obtain development consent for a temporary sales office.

The applicant proposes to lodge a development application for a temporary Sales Office to be located on or adjacent to the existing pad comprising the corrugated iron agricultural shed on Fraser Drive. It will be a prefabricated building with access off Fraser Drive and will contain suitable staff and customer parking. A chemical toilet will be provided and power only will be connected.

The applicant’s consultant on these matters has expressed concern that such developments may get caught by the Tweed LEP 2000 Clause 53D(3)(a) which states:

“(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.”*

The Draft Tweed DCP Section B24 – Area E Urban Release Development Code was endorsed by Council on 13 December 2011 however public notice of the plan being made is not to occur until an appropriate framework of Developer Contributions is achieved and in place.

In this regard the Draft Section 94 CP No. 31 was abandoned on 13 December 2011 as there was little prospect of it being approved in a timeframe that could facilitate funding of infrastructure for the Part 3A application of “Altitude Aspire”. Also given the level of objections by landowners, there was little prospect of obtaining support from the landowners

in an application to the Minister to approve exceeding the Section 94 cap of \$30,000 per dwelling or subdivision allotment.

A notice was published in the Tweed Link on 20 December 2011 advising that Section B24 will not take effect until 1 October 2012. However, the advertisement states that should a contributions framework be/not be endorsed by this date, Council may resolve to bring forward/delay the Code's taking effect.

Upon review of these two (2) minor applications, it is Council Officers' view that such minor applications have no real bearing on the strategic outcomes envisaged as a result of Draft Tweed DCP Section B24 – Area E Urban Release Development Code. Accordingly it is concluded that Clause 53D(3)(a) is not an impediment to approval of a development application for minor works on the fringe of the mapped Area E site.

Such an interpretation would allow minor alterations and additions around the fringes of Area E to proceed subject to a merit consideration within any required development application.

OPTIONS:

1. Council receives and notes the update on the Voluntary Planning Agreement discussions between Council and the applicant for “Altitude Aspire”; and
2. That Clause 53D(3)(a) of the Tweed LEP 2000 is considered satisfied for minor works which do not affect the overall strategic objectives for Area E, Terranora.

OR

1. Council receives and notes the update on the Voluntary Planning Agreement discussions between Council and the applicant for “Altitude Aspire”; and
2. That Clause 53D(3)(a) of the Tweed LEP 2000 is not considered satisfied for minor works which do not affect the overall strategic objectives for Area E, Terranora.

CONCLUSION:

This report has not canvassed the merit considerations associated with the VPA, the major project application or the minor works proposed on the fringe of Area E. The purpose of this report is to keep Councillors and the general public aware of progress on these matters and to seek endorsement on the method of handling minor applications.

The merits of each of these matters will be covered in more detail during the assessment of individual development applications and when official exhibition occurs through the Department of Planning and Infrastructure for the major project and VPA.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable at this stage as the matter has been forwarded to solicitors seeking their opinion.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

18 [PR-CM] Seaside City Proposed Development Control Plan Amendment and Development Application

SUBMITTED BY: Development Assessment



Civic Leadership

SUMMARY OF REPORT:

On 10 May 2012 Council received correspondence from Planit Consulting on behalf of Richtech Pty Ltd in regards to Seaside City.

The first set of correspondence comprises a request to amend Tweed Development Control Plan (Tweed DCP) Section B11 – Seaside City. The proposed changes include:

- The removal of the mandatory tourist accommodation component within the central core area;
- The removal of “minimum density” designations from all accommodation areas within the DCP (including land owned by individuals other than Richtech Pty Ltd);
- Increasing the extent of low density housing areas by re-nominating areas to the “Coastal Housing” designation in accord with the Tweed DCP.
- Modifying the type of medium density housing adjacent to the village core (lands within Richtech ownership only) so as to facilitate ‘Courtyard Housing’;
- Concurrently amending the S94 Plan No. 28 Seaside City and the Voluntary Planning Agreement (VPA) between Council and Richtech Pty Ltd as necessary.

The applicant has stated that the proposed DCP amendment is in direct response to the financial pressures currently being experienced. Planit Consulting has stated that a significant outlay for civil works coupled with market conditions has necessitated urgent action by Richtech Pty Ltd.

The second set of correspondence comprises a development application seeking approval for 33 existing allotments to be re-subdivided to create a total of 50 residential allotments.

The proposed 50 allotments vary in size between 503m² to 1304m².

The existing Tweed DCP states that allotments in this area should comprise a combination of 2 storey coastal dwellings, 2 storey coastal multi dwelling housing, 3 storey coastal units, and 3 storey tourist accommodation (medium density tourist accommodation only).

The proposed development application seeks approval to create 48 low density coastal housing allotments (1/450m²) and 2 coastal multi dwelling allotments (1/220m²).

The development application clearly complies with the proposed changes to the Tweed DCP but not the current Tweed DCP Section B11 - Seaside City.

The purpose of this report is to:

1. Establish whether Council wants to pursue an amendment to Tweed DCP Section B11- Seaside City (this will have budget and resource implications); and
2. Establish whether Council should accept lodgement of the proposed development application prior to any amendment to the current Tweed DCP.

RECOMMENDATION:

That Council endorses one (1) of the following two (2) options:

Option A

1. Council informs the proponent that the requested Development Control Plan amendment does not form part of the Planning Reform Unit's 2012/2013 Work Program, however will be considered when formulating the 2013/2014 Work Program; and
2. Council returns the proposed development application (Seaside City) until an amended Tweed Development Control Plan Section B11 has been endorsed by Council.

OR

Option B

1. The Director of Planning and Regulation provides a further report to Council detailing the Planning Reform Unit's 2012/2013 Work Program with the view of including the requested Development Control Plan amendment; and
2. Council returns the proposed development application (Seaside City) until an amended Tweed Development Control Plan Section B11 has been endorsed by Council.

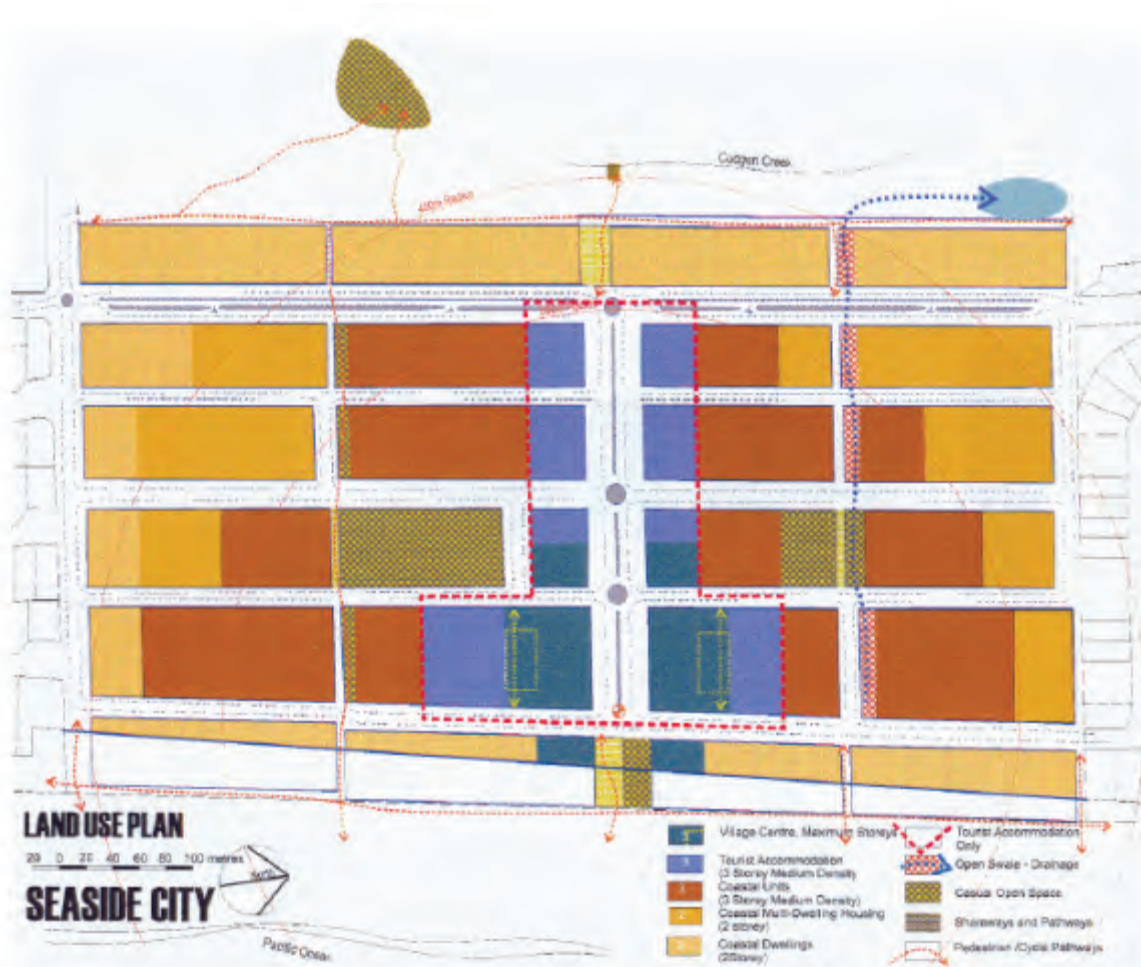
REPORT:

Seaside City has a long history dating back to the 1920's when the subdivision was originally created. More recently it has become the subject of a revitalisation development by way of three (3) primary development consents being DA05/0775, DA05/0793 and DA05/1464 which all approved the carrying out of works for the purposes of land clearing, earthworks, construction of roads and other services in preparation of the further development of the existing lots.

Concurrent to the consideration of the above development applications a site specific DCP and site specific Section 94 Plan were created in relation to the Seaside City Development and is Section B11 to the Tweed Shire Development Control Plan and Section 94 Plan No. 28. Additionally, Council entered into a Voluntary Planning Agreement with Richtech to enable Richtech to recoup infrastructure costs from those properties within the estate not owned by Richtech.

The subject site is zoned 2(e) Residential Tourist pursuant to the Tweed Local Environmental Plan 2000 (TLEP 2000) and is adjacent to land that is zoned 7(l) Environmental Protection (Habitat) bordering on the banks of the nearby Cudgen Creek to the west, and adjacent to land that is zoned 7(f) Environmental Protection (Coastal Lands) bordering the sand dunes to the east.

Seaside City is proposed under Section B11 of the Tweed DCP (current version) to be a coastal, residential village with a variety of residential types ranging from coastal dwellings to village centre tourist and residential living. The centre of this village is proposed to have a central shopping precinct. The structure plan is shown below:



The above structure plan shows a proposed combination of housing and land use types including:

- 2 storey coastal dwellings
- 2 storey coastal multi dwelling housing
- 3 storey coastal units
- 3 storey tourist accommodation (medium density tourist accommodation only)
- 3 storey village centre

The higher density tourist and village centre areas are focused along the central road "Ocean Ave" with densities tapering out to lower densities on the peripheries of the site adjoining Casuarina to the south, Salt to the north, and Cudgen Creek to the west.

The Proposed Amendment to Tweed DCP Section B11 – Seaside City

The applicant has made the following submission in regards to the proposed amendment:

"Pursuant to Section 74C of the Environmental Planning and Assessment Act (EP&A) 1979 we write to formally request Council amend Section B11 – Seaside City of the Tweed Development Control Plan (DCP) 2008. The following outlines the proposed changes and is considered to demonstrate a need to 'make' a DCP in order to meet the requirements of an environmental planning instrument applying to the site. In this regard, making a DCP to amend the current plan is considered necessary to meet the

objectives of the EP&A Act 1979 regarding the orderly and economic development of land.

This request to make a DCP to amend the existing Seaside City DCP is made concurrent with an application to subdivide the majority of the allotments fronting Casuarina Way. This request for an amendment to the DCP and proposed subdivision is driven by economic factors and marketing advices and represents the orderly and economic development of the land.

This proposal is in direct response to financial pressures being applied to our client. In this regard our client has provided significant financial outlay to undertake the civil works required to enable the seaside city allotments to be utilised for residential purposes. This process was undertaken after Council and the developer prepared and adopted a DCP for the area. This investment represented a significant outlay in order to facilitate pre-requisite infrastructure, however this investment, coupled with market conditions necessitates urgent action.

Since development of the DCP and carrying out of necessary infrastructure, financial situations have changed and the DCP now dictates densities and development types which are unrealistic and unachievable. The types of development prescribed by the DCP are such that securing buyers for the allotments or bank funding to develop the allotments is effectively impossible. The following amendments to the DCP are proposed to rectify this situation.

Council will note that given the multi owner structure, we have not suggested any amendments (with respect to densities and or designation other than the removal of the 'minimum density' references) to those lands not in the ownership of Richtech. Furthermore, the retention of the higher densities within these lands will maintain the objective of attaining a more intense level of development along the esplanade.

Justification

- The current DCP was prepared in extraordinary market conditions and the provision of significant levels of tourist only accommodation has proven unviable in both the adjoining developments of Salt and Casuarina. Examples of such problems are evident within peppers and mantra resorts within Salt. These tourist facilities have been subject to valuation write downs of up to 65%. Such markets conditions have effectively stifled development of Seaside for such development.
- The adopted Seaside S.94 plan largely provides for a vehicle in which Richtech P/L is reimbursed monies associated with the provision of pre requisite infrastructure (previously paid for by Richtech P/L). Importantly, the suggested DCP amendments do not lessen the densities achievable on those lands not in the ownership of Richtech P/L (other than to remove the minimum density requirement), it only impacts on those lands owned by Richtech P/L. Accordingly and as this request is being made on behalf of Richtech P/L, it would stand that whilst decreased densities will impact upon the amount of monies returned, Richtech is comfortable with such an arrangement in any event.
- The proposed amendment respects the overall intent for the structure of development within Seaside as it is currently promoted by the DCP. The structure of the proposed land use plan continues to 'step' development form

lower density on the fringe to higher density within the core. Further the proposal retains medium density development at the corner of Ocean Avenue and Casuarina Way, providing an entrance statement framed by density and a high standard of architecture. Finally the proposal retains the consolidation of medium density development along Cylinders Drive.

- The use of greater amounts of lower density 'Coastal Housing' provides for an improved interface with the adjoining lower density development within Salt and Casuarina. To demonstrate this, a Site Analysis looking at density within the directly adjoining areas within Salt and Casuarina and that now proposed along Casuarina Way at Seaside has been prepared. The proposal provides a density in keeping with that adjoining. This approach also replicates the urban design strategy currently employed within Salt and Casuarina which sees Casuarina Way lined with low density housing forms interspersed with medium density land marks leading to consolidated medium density central precincts.
- Development applications are systematically being lodged and generally being supported by Council within Casuarina. These applications have been lodged in response to current market conditions and have seen density reductions. The applications have been issued over what were identified as medium density allotments within the Casuarina master plan to be subdivided and utilised for low density housing. Prime examples include Lot 169 Casuarina Way and the Cotton Beach subdivision. Both of which have resulted in significant reduction in densities.
- This request will address the disconnect that the current DCP provides with regard to ensuring the orderly and economic development of the land in accord with Section 5 of the EP&A Act, 1979 (objects of the Act). Amendment of the DCP will see greater development options available and bring densities back to a realistic and achievable level allowing development to proceed in a timely and ordered manner. Pursuing development based on the current requirements of the DCP cannot be sustained economically.

Proposed Changes – Summary

The following points should be read in conjunction with the proposed Land Use Plan.

- i. Removal of the mandatory tourist accommodation component within the central core area (lands currently designated as Tourist Accommodation Area and Village Centre Accommodation (ref Fig. 20 & 21 of Section B11)). This represents prudent land use planning given the experiences within adjoining developments (Salt & Casuarina). The 'Tourist Accommodation' area will be re-nominated 'Village Centre Fringe' and will be utilised for permanent residential or tourist accommodation uses. The Village Centre Accommodation Area will remain but the requirement that residential uses in the area be for short-term only will be removed.
- ii. Removal of 'minimum density' designations from all accommodation areas within the DCP. This request is largely based on the disconnect that this requirement represents with the need to ensure the orderly and economic development of the land in accord with Section 5 of the EP&A Act, 1979 (objects of the Act). The removal of the 'minimum density' requirement does not preclude the attainment of the densities outlined; rather it removes the mandatory nature of the control which cannot be sustained economically.

- iii. *Increasing the extent of low density housing areas by re-nominating areas to the 'Coastal Housing' designation in accord with the DCP. This increase is solely restricted to those areas outside of the village core and has been located adjoining the existing low density housing areas within both Salt and Casuarina. This change is restricted to the lands located between Casuarina Way and Seaside Drive.*
- iv. *Modifying the type of medium density product adjacent to the village core (lands within Richtech ownership only) so as to facilitate 'Courtyard Housing'. These areas will be re-nominated as Coastal Multi-Dwelling Housing as opposed to Coastal Units. This alternative medium density product is also proposed at the entrance to Ocean Avenue upon the 1294.4m² and 1304.9m² lots depicted in Subdivision Plan (note these allotments are proposed as part of the subdivision currently before Council). These proposed lots will also be designated 'Coastal Multi-Dwelling Housing'.*

Importantly these areas will remain with frontage to designated open space areas and the proposed village core. The retention of medium density development at the entrance to Ocean Avenue maintains an entrance statement framing the entrance with density and a high standard of architecture as currently sought by the DCP. To demonstrate the intended development to Council the Architectural Concept Plan is provided.

- v. *Concurrent with the DCP amendment outlined above, will be a need to review and amend the Seaside S.94 Plan and potentially the VPA. In this regard it is noted that densities will be decreased from the theoretical figures outlined within the S.94 plan, however we would respectfully argue that a projected Tourist Population of 800 persons (within seaside) was and is not achievable in the first instance. A preliminary Comparative Analysis has been undertaken. This analysis shows a decrease in net residents from 1796 persons to 1211 persons.*

Specific DCP amendments

The following table provides a summary of the specific amendments proposed to the DCP to facilitate the above discussed changes.

Section	Proposed Changes
<i>B11.1 Introduction</i>	<i>None – Keep Section</i>
<i>B11.1.1 The Vision & Principles</i>	<i>None – Keep Section</i>
<i>B11.1.2 Aims of this Section</i>	<i>None – Keep Section</i>
<i>B11.2 Administration</i>	<i>None – Keep Section</i>
<i>B11.2.1 Land to which this Section applies</i>	<i>None – Keep Section</i>
<i>B11.2.2 How does this Section relate to other Sections and Environmental Planning Instruments?</i>	<i>None – Keep Section</i>
<i>B11.2.3 Site & Context</i>	<i>None – Keep Section</i>
<i>B11.2.4 Planning Management</i>	<i>None – Keep Section</i>
<i>B11.2.5 Urban Structure & Form</i>	<ul style="list-style-type: none"> • <i>Replace Figure 7 – Structure Plan with a figure reflecting Proposed Land Use Plan.</i>

Section	Proposed Changes
	<ul style="list-style-type: none"> • Amend Building Style & Design for Areas Outside of Village Centre – Building Design – Garages – paragraph 5 from ‘Garage doors and carports are to be no greater than 25% of the frontage of the property so as not to dominate the street frontage of the building’ to ‘Garages and carports are to comply with the relevant part of Section A1 – Tourist and Residential Development Code’ • Amend Building Style & Design for Areas Outside of Village Centre – Building Height – paragraph 3. Delete reference to Development Control Plan 48 – Tweed Coast Building Heights. DCP has been repealed. • Amend Building Style & Design for Areas Outside of Village Centre – Deep Soil Zones – paragraph 2 from ‘the deep soil zones in Seaside City are to consist of a 3 metre setback of 75% of the frontage’ to ‘Deep soil zone are to comply with the relevant part of Section A1 – Tourist and Residential Development Code’ • Amend Building Style & Design for Areas Outside of Village Centre – Setbacks – Rear: from ‘The backyard with a minimum dimension of 6m is to be provided for each development. The building set-backs to the rear of a dwelling abutting another dwelling is to terrace back in accordance with the building envelope. The building setbacks to the rear of a dwelling abutting open space can be built to the 6m set-back line.’ to ‘A backyard with a minimum depth of 6m is to be provided for each development’.
<p>B11.2.6 Building Controls Accommodation Area</p>	<ul style="list-style-type: none"> • Replace Figure 14 – Accommodation Types with a new figure a reflecting Proposed Land Use Plan. • Amend Table 1 – Built Form Controls removing the minimum number of units/m2 of full site area control from the density column. • Replace Coastal Housing Figure 15 with a new figure reflecting Proposed Land Use Plan. • Amend Lorna Street South/East – specific requirements, replace Figure 16 with a new figure reflective of the proposed land use plan under attachment A. • Replace Coastal Multi-Dwelling Housing Figure 18 with a figure reflecting Proposed Land Use Plan. • Amend Coastal Multi-Dwelling Housing – Density. Delete Minimum density requirement. • Replace Coastal Units Figure 19 with a figure reflecting Proposed Land Use Plan. • Amend Coastal Units – Density. Delete Minimum density requirement. • Rename ‘Tourist Accommodation Area’ to Village

Section	Proposed Changes
	<p><i>Centre Fringe.</i></p> <ul style="list-style-type: none"> • <i>Replace Tourist Accommodation Area Figure 20 with a figure reflecting Proposed Land Use Plan.</i> • <i>Amend Tourist Accommodation – Density. Delete minimum density requirement.</i> • <i>Amend Village Centre Accommodation – paragraph 2 from ‘To reduce the conflict between residents and other uses such as restaurants and cafes the residential uses are provided for short-term use only’ to ‘To reduce the conflict between residents and other uses such as restaurants and cafes the residential uses are provided for a mixture of short-term and long-term uses’</i>
<i>B11.2.7 Bibliography</i>	<i>None – Keep Section."</i>



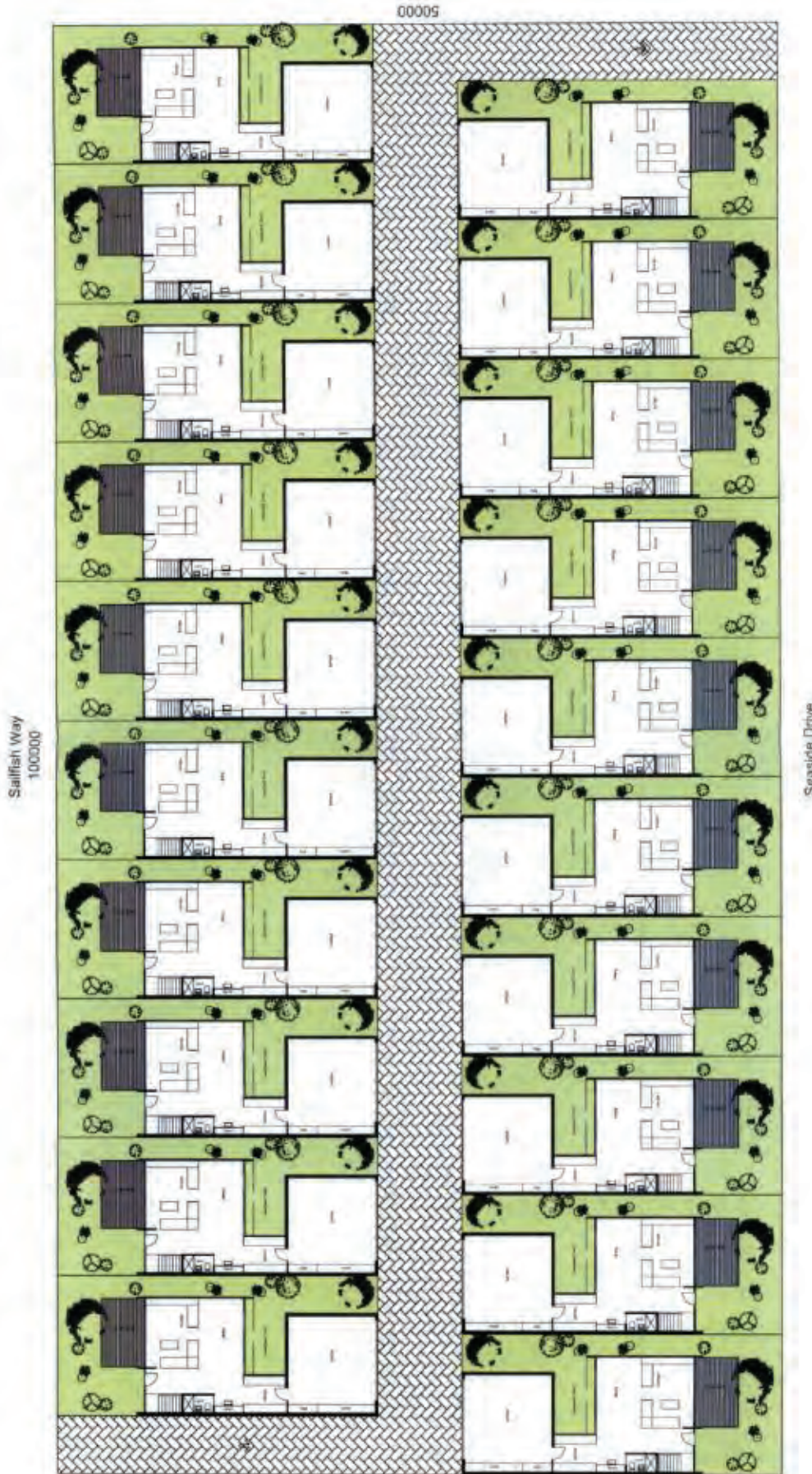
1. AREA OF SEASIDE CITY LAND - 204 LOTS = 23.97ha VIA RE-SURVEY (23.94ha VIA DP114895)
 - LOT 1971 IN DP133919 = 9.6ha
 TOTAL = 33.6ha
2. AREA OF LAND TO BE DEDICATED - ROAD WIDENINGS = 2.4ha
 - PUBLIC RESERVE = 1.5ha
 - LOT 1971 IN DP133919 = 9.6ha
 TOTAL = 13.5ha
3. AREA OF SALEABLE LAND = 20.1ha
4. AREA OF SALEABLE LAND OWNED BY RICHTECH PTY LTD = 16.6ha


- DENOTES LAND PROPOSED TO BE DEDICATED AS PUBLIC ROAD
- DENOTES LAND PROPOSED TO BE DEDICATED AS PUBLIC RESERVE
- DENOTES LAND OWNED BY OTHERS (NO CHANGE FROM EXISTING SEASIDE DCP)
- DENOTES PROPOSED DRAINAGE RESERVE
- DENOTES PROPOSED SEWER PUMP STATION SITE
- DENOTES ROAD CLOSURE AND WIDENING "SWAP" S.E.C.NR
- COASTAL MULTI DWELLING (1/220m²)
- COASTAL HOUSING LOW DENSITY (1/450m²)
- 3 STOREY MEDIUM DENSITY (1/125m²) TOURIST OR PERMANENT
- 3 STOREY COASTAL UNITS (1/160m²) TOURIST OR PERMANENT
- VILLAGE CENTRE (TOURIST OR PERMANENT)

PROPOSED SEASIDE LAND USE PLAN
 SEASIDE CITY, KINGSCLIFF

SCALE: 1:4000
 DATE: 05/12
 DRAWN: ZP





Courtyard Housing - Alternative Site Plan

DRAWN	DATE	SCALE	SNG No	WD 03	RD
KH	Mar 2012	Ints	A3		B

Seaside Living Pty Ltd
 9/27 - 10/100 Stn
 South Hayes Centre
 85-86 Seaside Drive
 Uppon Moor (postcode 3224 VIC)



REVISION	DATE
REVISED LAYOUT FOR COURTYARD HOUSING - SEE LAMP NOTES	8.8.17
REVISED LAYOUT FOR COURTYARD HOUSING - SEE LAMP NOTES (STANDARD) (REVISED)	8.1.12



LEGEND

- ZONE (ZF) - TOURIST
- ZONE (ZE) - RESIDENTIAL TOURIST
- SEASIDE (1 DWELLING / 652m²)
- SALT (1 DWELLING / 520m²)
- CASUARINA BEACH (1 DWELLING / 827m²)

<p>SEASIDE CITY, CASUARINA SITE ANALYSIS PLAN</p>	<p>SCALE: 1:1000 @ A3 DRAWN: ZF DATE: 05/12 REV: 01</p>	<p>DRAWN: SEASIDE_ANALYSIS_01 CHECKED: UN</p>
<p>PLANIT CONSULTING 10/100 SEASIDE DRIVE, SEASIDE, QLD 4216 TEL: 07 5522 2222 FAX: 07 5522 2223 WWW.PLANITCONSULTING.COM.AU</p>		

Type of Development	Minimum		Probable		Maximum		Average
	No. of Dwellings / units	Total Residents	No. of Dwellings / units	Total Residents	No. of Dwellings / units	Total Residents	
Coastal Dwellings	80	208	105	273	160	416	299
Coastal Multi Dwelling Housing	120	204	150	255	210	357	272
Coastal Units	354	602	472	802	708	1204	869
Tourist Accommodation	136	231	170	289	289	491	337
Village Centre Accommodation	64	109	104	177	104	177	154
TOTAL	754	1354	1001	1796	1471	2645	1931

Table 1: Seaside S.94 Plan Yield Table (reference: Page 28-8)

Type of Development	No. of Dwellings / Units	Total Residents
Coastal Dwellings	168 lots inc. those already re-subdivided on western side of Casuarina Way @ 2.6 persons per lot	437
Coastal Multi Dwelling Housing	Approx 19,661m ² @ 1/220m ² = 90 dwellings @ 2.6 persons per lot	234
Coastal Units	Approx 19,218m ² @ 1/160m ² = 120 dwellings @ 1.7 persons per unit	204
Tourist / Permanent Residential Accommodation	Approx 8,906m ² @ 1/125m ² = 71 dwellings @ 1.7 persons per unit	121
Village Centre Accommodation	Approx 12,586m ² @ say 1/100m ² = 126 dwellings @ 1.7 persons per unit	215
TOTAL	575	1211

Table 2: Potential Seaside S.94 Plan Yield Table

NB. Includes assumption of re-subdivision of additional Coastal Housing allotments

The Proposed Development Application

In addition to the request for an amendment to Tweed DCP Section B11 the applicant has provided Council with a development application seeking approval for 33 existing allotments to be re-subdivided to create a total of 50 residential allotments. At this point of time, the application has not been formally lodged.

The following information has been submitted by the applicant:

"Planit Consulting has been commissioned by Richtech Pty Ltd to prepare and submit a Statement of Environmental Effects relating to a proposed fifty (50) Lot Residential Re-Subdivision on land at Seaside City. The report has been prepared in accordance with Council's requirements for Subdivision. The proposal is to be carried out over four (4) stages.

This proposal is in direct response to financial pressures being applied to our client. In this regard our client has provided significant financial outlay to undertake the civil works required to enable the Seaside City allotments to be utilised for residential purposes. This process was undertaken after Council and the developer prepared and adopted a DCP for the area. This investment represented a significant outlay in order to facilitate pre-requisite infrastructure, however this investment, coupled with market conditions necessitates urgent action.

Since development of the DCP and carrying out of necessary infrastructure, financial situations have changed and the DCP now dictates densities and development types which are unachievable and in conflict with market requirements. The types of development prescribed by the DCP are such that securing buyers for the allotments or bank funding to develop the allotments is effectively impossible.

This application for subdivision is made concurrently with an application to amend Section B11 of the Tweed Development Control Plan (TDCP) 2008. The amendment will see a change to the structure plan to allow additional coast housing and alternative forms of medium density development such as court yard housing and town houses. This application should be read in conjunction with the request to amend Section B11 of the TDCP 2008."

The proposed 50 allotments vary in size between 503m² to 1304m². This includes 48 low density coastal housing allotments (1/450m²) and 2 coastal multi dwelling allotments (1/220m²). The two (2) larger allotments (1294m² and 1304m²) are located on the Ocean Avenue entrance central to the site.

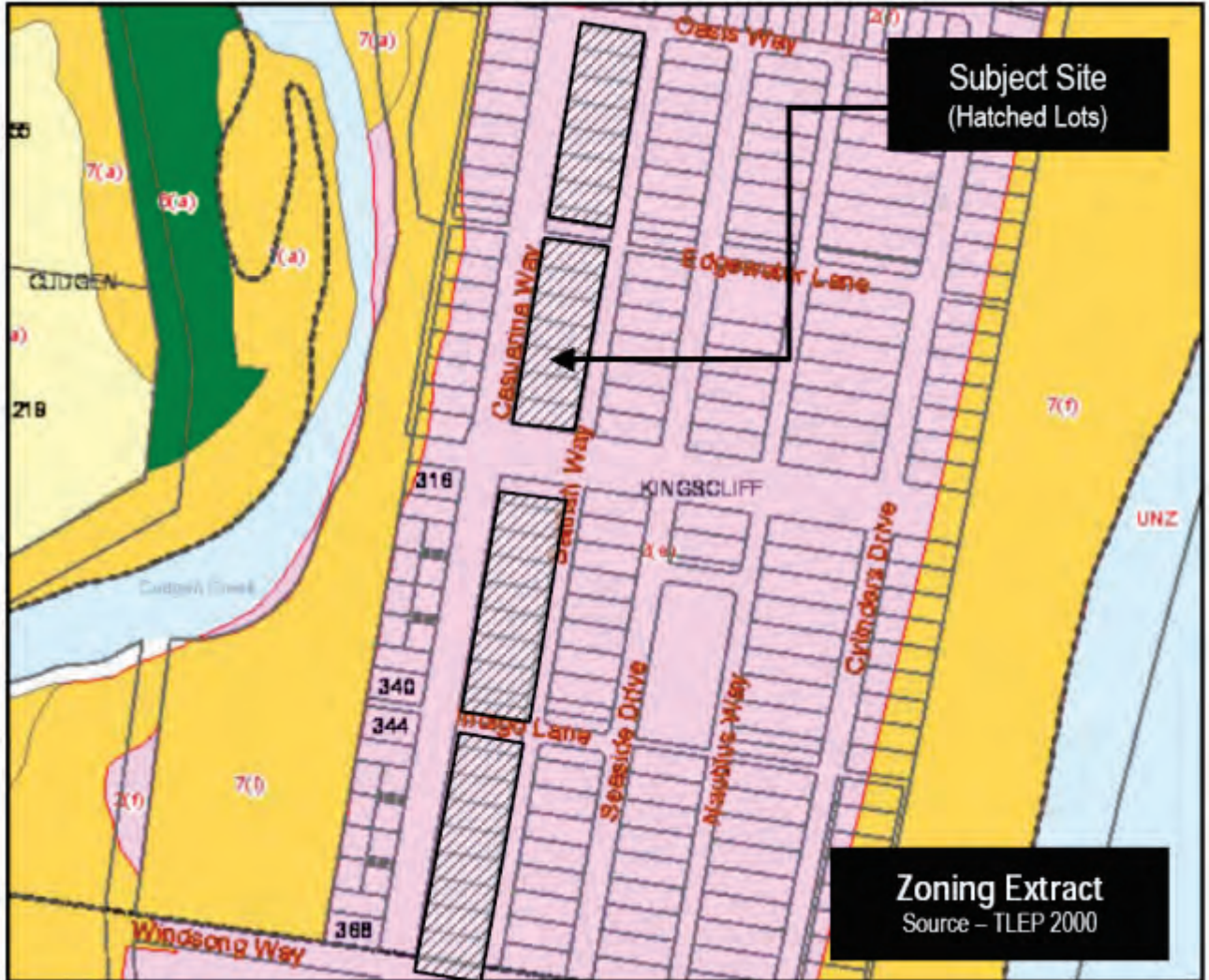
The existing Tweed DCP states that allotments in this area should comprise a combination of 2 storey coastal dwellings, 2 storey coastal multi dwelling housing, 3 storey coastal units, and 3 storey tourist accommodation (medium density tourist accommodation only).

The development application clearly complies with the proposed changes to the Tweed DCP but not the current Tweed DCP Section B11 - Seaside City.

The development application constitutes "Integrated Development" as the subject site is partially located within a mapped bushfire prone area. The application has not been accompanied with a payment to enable referral to the NSW Rural Fire Service.

The development application is affected by SEPP 71 – Coastal Protection and requires a master plan waiver issued by the Department of Planning & Infrastructure (DP&I) given the number of lots proposed. This waiver is normally required to be lodged with the development application and has not been submitted to date.

The following plans demonstrate the proposed staged development:





SEASIDE CITY, CASUARINA
STAGING PLAN - PART 01

SCALE: 1:100 @ A3
DRAWN: JP
DATE: 02/10
REV: 02

DRAW NO: SEASIDE_STAGING_PT01
CHECKED: AS





Council Officer's Review of the Submitted Documentation

Council's Planning Reforms Unit (PRU) presented a report to the Council meeting of 15 May 2012, detailing a three-year work program, with particular focus on the 2012/2013 financial year. Council resolved to adopt this work program, which fully commits PRU resources for the 2012/2013 year. The subject DCP amendment does not specifically form part of the endorsed work program. Accordingly, to date, the PRU has not undertaken any detailed assessment of the requested DCP amendment, except for a cursory review for the purpose of this report.

Section B11 – Seaside City of the Tweed DCP was adopted on 12 April 2007, accordingly this Section of the DCP has been established for 5 years. It is considered best practice strategic planning to review such documents every 5 years to ensure their validity. The adopted work program allocates resources to policy maintenance broadly, however other Sections of the Tweed DCP have had a greater time period without review and as such, are more likely to a higher priority. These competing interests will be considered when the policy maintenance project commences.

Should Council resolve to pursue this DCP amendment, a framework has been established for the PRU and proponent to pursue the project independently by external consultants. Whilst recent experience confirms that this option creates a lesser resource impact upon the PRU, an impact is still present in the procurement and project management of these processes. Accordingly, should Council be of an opinion to proceed with a review of Section B11 of the Tweed DCP, a further Council report would be necessary to consider the adopted PRU Work Program with the view to reprioritising the current projects to enable sufficient resourcing. A future report would provide appropriate opportunity to debate the wider public benefit of pursuing any competing 'private' proposals.

With regard to the merit of this requested amendment, as stated previously, a genuine assessment has not yet been undertaken. However, on a precursory review, concerns are raised that the review is confined to one landowner, as opposed to a holistic review of the entire Section B11 of the Tweed DCP. It is acknowledged that the requested amendments only apply to one landowner, however these amendments, if supported, will result in 'flow-on' effects to other landowners and the integrity of the Seaside City vision. The interrelationships of the future desired urban fabric need to be appropriately considered. This is of particular relevance in light of the significant reduction in proposed density and dwelling targets on the sustained viability and vibrancy of the Village Centre.

In summary, should Council wish to pursue this DCP amendment further, a further report should be prepared to revise the PRU Work Program 2012/2013 which details the implications of commencing a review of Section B11 of the Tweed DCP and the reprioritisation of resources. Additionally, should the requested amendment be adopted as part of the PRU Work Program 2012/2013 a 'Costs and Expenses Agreement' is required between Council and the proponent to holistically review Section B11 – Seaside City of the Tweed DCP as the project is currently unfunded.

For the above reasons it is premature to accept any development application that is contrary to the current DCP and accordingly it is recommended to return the development application to the applicant until such time as the DCP has been amended.

OPTIONS:

Option A

1. Council informs the proponent that the requested Development Control Plan amendment does not form part of the Planning Reform Unit's 2012/2013 Work Program, however will be considered when formulating the 2013/2014 Work Program; and
2. Council returns the proposed development application (Seaside City) until an amended Tweed Development Control Plan Section B11 has been endorsed by Council.

OR

Option B

1. The Director of Planning and Regulation provide a further report to Council detailing the Planning Reform Unit's 2012/2013 Work Program with the view of including the requested Development Control Plan amendment; and
2. Council returns the proposed development application (Seaside City) until an amended Tweed Development Control Plan Section B11 has been endorsed by Council.

CONCLUSION:

The requested DCP amendment cannot be accommodated within the current Planning Reform Unit's adopted Work Program 2012/2013. In light of the above, should Council wish to pursue the amendment within the 2012/2013 financial year a further report to discuss the merits of this proposal and the possible reprioritisation of projects and resources will be necessary.

Finally, should this amendment be adopted as part of the PRU Work Program 2012/2013, prior to commencement, a 'Costs and Expenses Agreement' be required between Council and the proponent to holistically review Section B11 – Seaside City of the Tweed DCP as the project is currently unfunded.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Any DCP amendment would need to be funded as it is not currently resourced.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Any DCP amendment would need to satisfy the requirements of the Environmental Planning & Assessment Act 1979.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
 - 1.1.1.3 Assessment of new developments (Development Assessment unit)
 - 1 Civic Leadership
 - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
 - 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
 - 1.5.2.2 Planning Controls updated regularly

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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19 [PR-CM] Tweed City Centre Local Environmental Plan 2012

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/LEP/2012



Civic Leadership



Caring for the Environment

SUMMARY OF REPORT:

This report details actions undertaken by Council's Planning Reforms (PRU) and Natural Resource Management (NRM) Units' since previous Council reporting in December 2011. The report concludes that the application of the E2 Environmental Conservation zone should not be pursued on the subject Charles Street, Tweed Heads properties at this stage. It is however the intention of the PRU and NRM to pursue a zone more reflective of the quality of the land within the work-in-progress Shirewide environmental strategy.

RECOMMENDATION:

That Council in respect of the previously endorsed Draft Tweed City Centre Local Environmental Plan 2009:

1. **Receives and notes the content of submissions received as part of the further consultation with Charles Street, Tweed Heads landowners affected by the draft E2 Environmental Conservation zoning;**
2. **Endorses the removal of the E2 Environmental Conservation zoning to the subject Charles Street properties, as shown in Figure 1 of this report, and apply a translation of the current Tweed Local Environmental Plan 2000 residential zones; and**
3. **Endorses the finalisation of a report to the Director General of the Department of Planning and Infrastructure, pursuant to the provision of Section 68(4) of the Environmental Planning and Assessment Act 1979 to assist in the making of the Tweed City Centre Local Environmental Plan 2012 in accordance with the zoning amendment.**

REPORT:

Background

At its meeting of 13 December 2011, Council considered a report regarding the Tweed City Centre Vision, Local Environmental Plan and Development Control Plan (Section B2) (the Plans). The report discussed the progress of the Plans following a second public exhibition period (A full copy of the report is contained within Attachment 1). After considering the report, Council resolved on a number of matters, including:

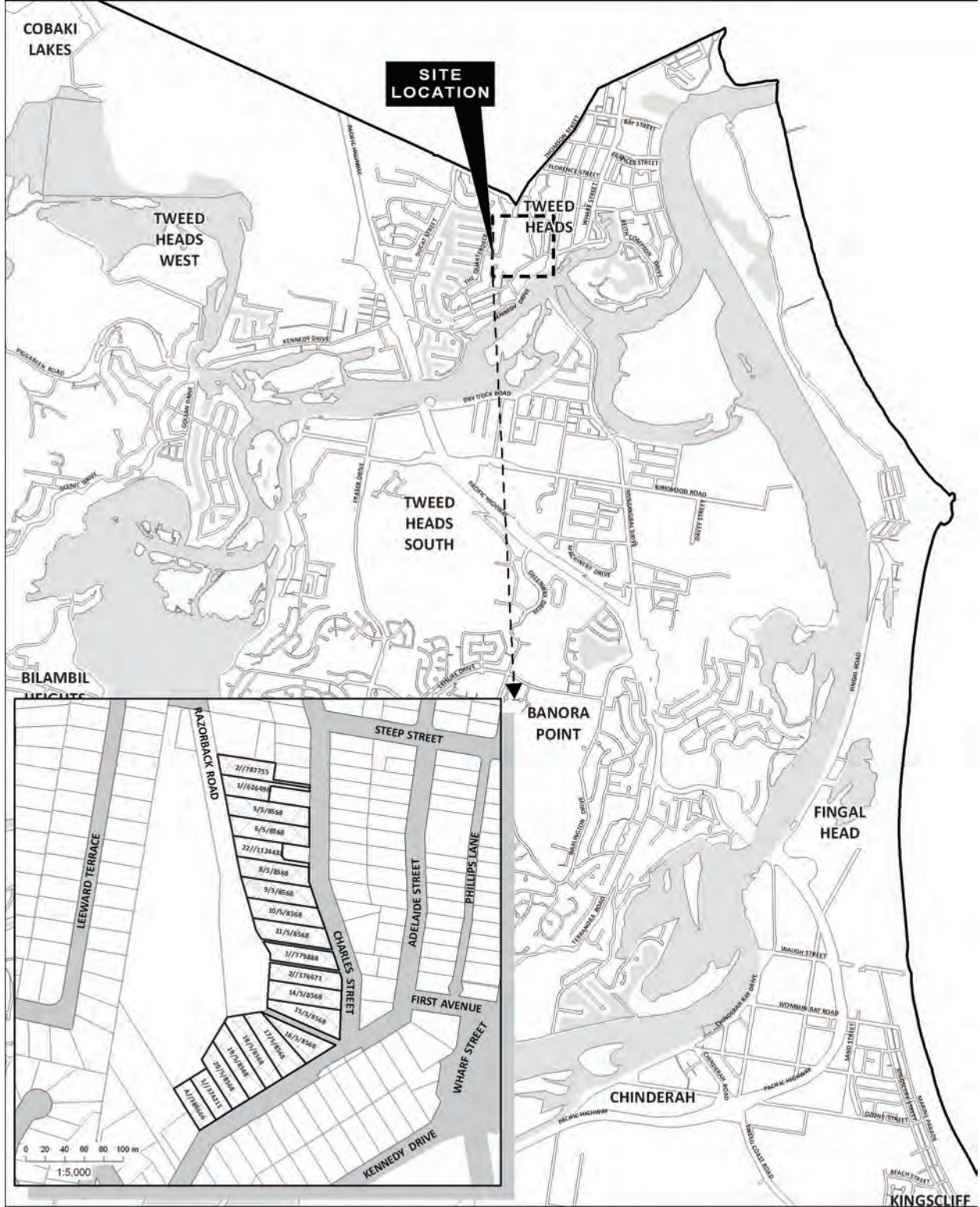
Tweed City Centre Local Environmental Plan 2012

4. *Endorses the adoption of the Draft Tweed City Centre Local Environmental Plan 2012;*
5. *Endorses the preparation and subsequent furnishing of a report to the Director General, pursuant to the provision of s68(4) of the Environmental Planning and Assessment Act 1979 to assist in the making of the Tweed City Centre LEP 2012;*

This report provides an update on the abovementioned resolution, with specific regard to a number of residential properties on Charles Street, Tweed Heads which, under this resolution, were endorsed to be zoned to part E2 - Environmental Conservation (E2) zoning.

Charles Street is located within the 'Ridgeline & Razorback Precinct' of the Tweed City Centre. The affected properties immediately adjoin the Razorback Reserve, which forms the western peak of the study area. The location of the properties affected by the E2 zoning are displayed in Figure 1.

Figure 1 – Affected Charles Street Properties



Locality Plan
Charles Street, Tweed Heads

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council make no representation or warranties, expressed or implied, statutory or otherwise, as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaim all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before you Dig' enquiry must be made by calling 8100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 07 June, 2012
© Land and Property Management Authority (LPMA) & Tweed Shire Council.
Boundaries shown should be considered approximate only.

0 0.45 0.9 Km
1:40,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projections: Universal Transverse Mercator
Horizontal Datum: Geoidic Datum of Australia 2014
© 2011 Map of Australia, Scale 50

Civic and Cultural Centre
3 Tamburlugh Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2425
W | www.tweed.nsw.gov.au
E | planningreform@tweed.nsw.gov.au



Subsequent to the December Council Meeting

Following the December resolution, Council's PRU received several submissions from Charles Street residents relating to the adopted part E2 zoning of their properties and the draft Local Environmental Plan (LEP) plan-making process. In response, PRU requested NRM officers conduct a site inspection to confirm, or otherwise, the suitability of the previous findings prior to referring the LEP to the Department of Planning & Infrastructure (DP&I) in order for the LEP to be made.

NRM officers undertook an inspection in mid February, viewing the affected land from public vantage points and concluded the E2 was validly applied.

On 6 March 2012, affected landowners were invited to attend a meeting with Council staff to discuss the resolved change in land-use zoning. The meeting was hosted by PRU and NRM staff. Within the meeting, landowners were provided a contextual background to the Plans process, as well as the use and need for the E2 zoning, facilitating general discussion. At the conclusion of the meeting it was agreed that a NRM officer would undertake a detailed on-site inspection of each affected property to more accurately determine the location and extents of the E2 zoning.

On 28 March, the abovementioned field inspection was undertaken by NRM staff with several landowners also participating. As a result of those investigations, NRM staff recommended that the boundary of the E2 zone be redefined. Figure 2 and Table 1 show the changes between the previously resolved boundary as a blue dashed line and the NRM recommended E2 boundary adjustment.

Figure 2 – Previous and Proposed Charles Street Zonings

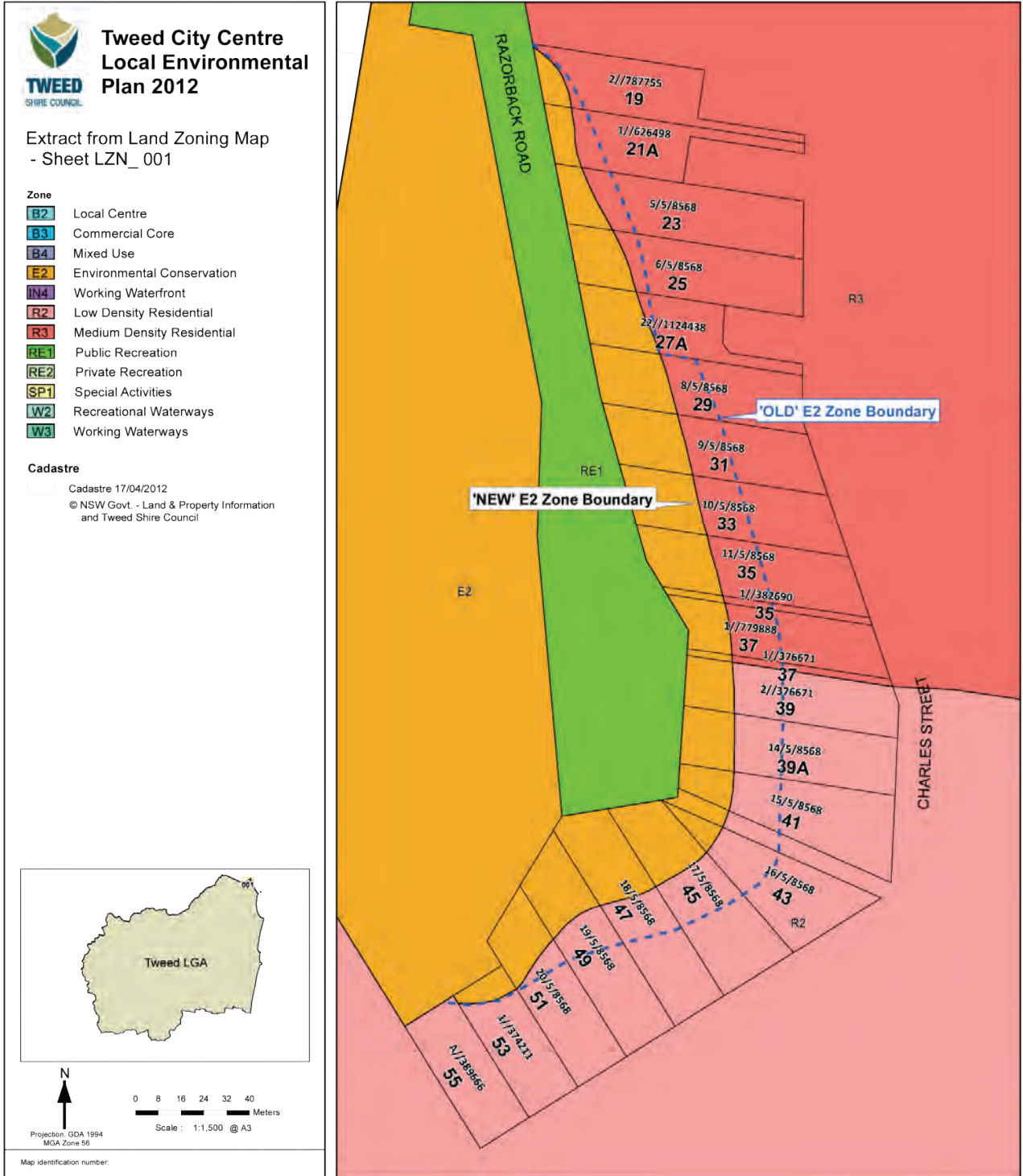


Table 1 – Affected Land Areas of Previous and Proposed Charles Street Zonings

HOUSE NUMBER	ZONE	LOT/SEC/DP	AREA_M ²	PARCEL COVERAGE %	GAIN/LOSS AREA M ²	HOUSE NUMBER	ZONE	LOT/SEC/DP	AREA_M ²	PARCEL COVERAGE %	GAIN/LOSS AREA M ²
19	PARCEL	2/1787755	1,271.06			37	PARCEL	1/1376671	176.57		
	OLD	E2 2/1787755	191.92	15.10%			OLD	E2 1/1376671	82.18	46.54%	
	NEW	E2 2/1787755	145.24	11.43%	-46.68		NEW	E2 1/1376671	38.87	22.02%	-43.30
	OLD	R3 2/1787755	1,079.14	84.90%			OLD	R3 1/1376671	94.39	53.46%	
	NEW	R3 2/1787755	1,125.82	88.57%	46.68		NEW	R3 1/1376671	137.69	77.98%	43.30
21A	PARCEL	1/1626498	1,127.74			39	PARCEL	2/1376671	1,329.08		
	OLD	E2 1/1626498	343.16	30.43%			OLD	E2 2/1376671	611.75	46.03%	
	NEW	E2 1/1626498	184.84	16.39%	-158.32		NEW	E2 2/1376671	302.86	22.79%	-308.89
	OLD	R3 1/1626498	784.58	69.57%			OLD	R2 2/1376671	717.33	53.97%	
	NEW	R3 1/1626498	942.90	83.61%	158.32		NEW	R2 2/1376671	1,026.22	77.21%	308.89
23	PARCEL	5/58568	1,729.27			39A	PARCEL	14/58568	1,528.26		
	OLD	E2 5/58568	444.04	25.68%			OLD	E2 14/58568	714.99	46.78%	
	NEW	E2 5/58568	250.99	14.51%	-193.06		NEW	E2 14/58568	375.02	24.54%	-339.98
	OLD	R3 5/58568	1,285.22	74.32%			OLD	R2 14/58568	813.27	53.21%	
	NEW	R3 5/58568	1,478.28	85.49%	193.06		NEW	R2 14/58568	1,153.25	75.46%	339.98
25	PARCEL	6/58568	1,644.07			41	PARCEL	15/58568	1,487.74		
	OLD	E2 6/58568	504.41	30.68%			OLD	E2 15/58568	497.17	33.42%	
	NEW	E2 6/58568	382.10	23.24%	-122.32		NEW	E2 15/58568	215.43	14.48%	-281.74
	OLD	R3 6/58568	1,139.65	69.32%			OLD	R2 15/58568	990.56	66.58%	
	NEW	R3 6/58568	1,261.97	76.76%	122.32		NEW	R2 15/58568	1,272.30	85.52%	281.74
27A	PARCEL	22/1124438	1,114.55			43	PARCEL	16/58568	1,264.95		
	OLD	E2 22/1124438	496.43	44.54%			OLD	E2 16/58568	444.76	35.16%	
	NEW	E2 22/1124438	456.78	40.98%	-39.65		NEW	E2 16/58568	123.00	9.72%	-321.76
	OLD	R3 22/1124438	618.12	55.46%			OLD	R2 16/58568	820.19	64.84%	
	NEW	R3 22/1124438	657.77	59.02%	39.65		NEW	R2 16/58568	1,141.94	90.28%	321.76
29	PARCEL	8/58568	1,478.32			45	PARCEL	17/58568	1,689.68		
	OLD	E2 8/58568	801.69	54.23%			OLD	E2 17/58568	965.52	57.14%	
	NEW	E2 8/58568	525.32	35.54%	-276.37		NEW	E2 17/58568	555.71	32.89%	-409.81
	OLD	R3 8/58568	676.63	45.77%			OLD	R2 17/58568	724.16	42.86%	
	NEW	R3 8/58568	953.00	64.46%	276.37		NEW	R2 17/58568	1,133.97	67.11%	409.82
31	PARCEL	9/58568	1,476.09			47	PARCEL	18/58568	1,625.50		
	OLD	E2 9/58568	844.68	57.22%			OLD	E2 18/58568	999.74	61.50%	
	NEW	E2 9/58568	534.05	36.18%	-310.63		NEW	E2 18/58568	680.67	41.87%	-319.07
	OLD	R3 9/58568	631.41	42.78%			OLD	R2 18/58568	625.77	38.50%	
	NEW	R3 9/58568	942.04	63.82%	310.63		NEW	R2 18/58568	944.84	58.13%	319.07
33	PARCEL	10/58568	1,502.22			49	PARCEL	19/58568	1,521.79		
	OLD	E2 10/58568	847.48	56.42%			OLD	E2 19/58568	776.40	51.02%	
	NEW	E2 10/58568	510.95	34.01%	-336.53		NEW	E2 19/58568	511.46	33.61%	-264.94
	OLD	R3 10/58568	654.74	43.58%			OLD	R2 19/58568	745.39	48.98%	
	NEW	R3 10/58568	991.27	65.99%	336.53		NEW	R2 19/58568	1,010.33	66.39%	264.94
35	PARCEL	11/58568	1,515.85			51	PARCEL	20/58568	1,315.96		
	OLD	E2 11/58568	834.58	55.06%			OLD	E2 20/58568	519.83	39.50%	
	NEW	E2 11/58568	487.49	32.16%	-347.09		NEW	E2 20/58568	418.68	31.82%	-101.16
	OLD	R3 11/58568	681.28	44.94%			OLD	R2 20/58568	796.13	60.50%	
	NEW	R3 11/58568	1,028.37	67.84%	347.09		NEW	R2 20/58568	897.29	68.18%	101.15
35	PARCEL	1/1382690	178.42			53	PARCEL	1/1374211	1,012.72		
	OLD	E2 1/1382690	93.71	52.52%			OLD	E2 1/1374211	165.98	16.39%	
	NEW	E2 1/1382690	51.39	28.80%	-42.32		NEW	E2 1/1374211	157.11	15.51%	-8.87
	OLD	R3 1/1382690	84.71	47.48%			OLD	R2 1/1374211	846.74	83.61%	
	NEW	R3 1/1382690	127.03	71.20%	42.32		NEW	R2 1/1374211	855.61	84.49%	8.87
37	PARCEL	1/1779888	1,252.84			55	PARCEL	A/1389666	1,014.52		
	OLD	E2 1/1779888	611.58	48.82%			OLD	E2 A/1389666	7.19	0.71%	
	NEW	E2 1/1779888	301.37	24.05%	-310.22		NEW	E2 A/1389666	0.00	0.00%	-7.19
	OLD	R3 1/1779888	641.26	51.18%			OLD	R2 A/1389666	1,007.32	99.29%	
	NEW	R3 1/1779888	951.47	75.95%	310.22		NEW	R2 A/1389666	1,014.52	100.00%	7.20

As outlined in Figure 2 and Table 1, the revised zone boundary reduces the amount of land subject to the E2 zone across all properties.

Landowners were informed by letter dated 17 April 2012 of the post-inspection, provided with maps illustrating the change, and offered an opportunity to comment in writing by close of business on 7 May 2012.

At the close of this period, a total of eight (8) submissions were received. A complete copy of the submissions received can be found as Attachment 2 of this report, however the issues raised can be summarised as follows:

1. *Public exhibition process* – Concern was raised that landowners were not adequately informed, insufficient exhibition material was made available and Council reporting failed to alert Councillors that the E2 zone affected up to 60% of the individual private properties involved;
2. *'Generalised approach' of identifying the zone boundary* – Concern was raised that the basis of the introduced E2 zoning did not arise from a specific study developed from robust data sources and analysis;
3. *'Quality' of vegetation* – Concern was raised that the vegetation present is not a significant area of natural vegetation and therefore does not specifically require the use of an environmental zone;
4. *Land values and (re)development potential* – Concerns were raised regarding the draft zoning restricting development potential and adversely affecting the value of properties with no compensation being offered.
5. *Land Management* – Concern was raised that the E2 zoning would not result in the vegetation being restored and could result in safety issues from fire risk and snakes.

A brief response to each broad issue raised is as followed:

Issue 1: The Environmental Planning & Assessment Act 1979 (EP&A Act 1979) and the Environmental Planning and Assessment Regulation 2000 establish the requirements for making an LEP, including when and how to consult with the community. The PRU adhere to these requirements when preparing LEPs to ensure the LEPs are legally made. Whilst individual property owners were not directly notified, the Plans were exhibited and reported consistent with the legislative requirements. No changes to the LEP are recommended as a result of this issue.

Issue 2: The subject land was identified within the Tweed Vegetation Management Strategy 2004 (TVMS) as 'Very High' Ecological Status and 'High' Ecological Sensitivity. These findings informed Council's 'Bushland' mapping within the LEP, exhibited both in 2010 and 2011.

Following the 2010 submission period, NRMs environmental officers further reviewed aerial photography of the area. This review concluded with a recommendation that an amendment be made to the Zoning map to apply the E2 zone prior to re-exhibition of the Plans.

Since this recommendation, the site has been inspected on two (2) occasions by environmental scientists, including one (1) inspection of each property affected. The findings of these inspections have confirmed the application of the E2 zone.

The review of the site by suitably qualified professionals, both at a desktop and on-site level and including the findings of the TVMS is considered to constitute a robust data source and analysis. The analysis undertaken is considered to satisfy the necessary interrogation to apply the E2 zoning. No changes to the LEP are recommended specifically as a result of this issue.

Issue 3: The EP&A Act 1979 provides a variety of opportunities for local councils to protect land possessing environmental quality. Opportunities available within an LEP include zoning and local clauses (such as Council's proposed 'Bushland' clause 6.4). The precise use and coordination of these tools is predominately governed by the quality of the vegetation, whether that is for biodiversity, scenic quality or other. The hierarchy of protection within an LEP is as follows:

1. Zoning – The Standard Instrument Order 2006 (SI) provides four environmental zones specifically for land where the primary focus is the conservation and/or management of environmental values.
2. Local Clauses – Throughout the preparation of a the LEP, Council has pursued the use of an 'Additional local provision' clause titled 'Environmentally sensitive land – bushland'. The clause applies to land mapped as 'Bushland' and details heads of consideration for the consent authority to consider prior to any consent being granted. The clause does not affect permitted land uses, rather provides an additional layer of assessment before a development approval can be granted.

A number of the affected property owners have expressed the opinion that the vegetation does not specifically warrant an E2 zoning, rather, should remain zoned as residential, coupled with the retention of the bushland mapping and clause. This proposal is considered by the landowners to:

- Enable the community to be aware that the land possess higher environmental qualities;
- Requires applicants to address the environmental heads of consideration established within the bushland clause, and;
- Enables the consent authority to refuse development that is not designed and located as to have minimum adverse impact, and incorporates effective measures to remedy or mitigate any adverse impact caused.

The above proposal has been discussed at length with NRM officers. NRM maintain their view that the environmental qualities of the lands in question are of such significance that the E2 zoning is warranted. Accordingly, the exclusive residential zoning of these lots is not considered to be appropriate in the longer term.

However, both the PRU and NRM are currently reviewing and developing an environmental strategy for the Shire as part of, and to be implemented through, the zoning structure within Standard instrument LEP 'template', based Draft Shirewide LEP. An issue presently being reviewed within the Draft Shirewide LEP, which impacts on the subject Charles Street properties, is whether the environmental zone should be applied prior to the broader strategy being finalised and endorsed by the Council.

Within recent months the Department of Planning and Infrastructure has indicated that a new environmental zone is likely to be incorporated into the standard instrument in the near

future. The introduction of an additional zone will afford further opportunities to protect environmentally sensitive land appropriately through regulating land use. However, development of the zone (particularly permissibility & prohibitions) is still in a development stage.

In light of the above, it is recommended that for affected private urban land within the Tweed City Centre area, the current zone provisions of the Tweed LEP 2000 be translated into the Tweed City Centre LEP until such time as the broader strategy and zones are settled. Should this recommendation be supported, the affected properties would retain a residential zoning, however the local 'Bushland' clause would regulate development pursued in the short-term. In the longer-term, Council officers will be recommending pursuing additional protection and conservation of this land through an alternate zoning as part of the wider, Shirewide environmental strategy.

Issue 4: The imposition of the E2 Environmental Conservation zone will undoubtedly restrict the range of development landowner could have previously pursued on the land, however a variety of land uses remain permissible with and without consent. The Land Acquisition (Just Terms Compensation) Act 1991 establishes the process for land acquisition, however the affected sites are not specifically earmarked for, nor required to be acquired. No amendment to the LEP is recommended specifically as a result of this issue.

Issue 5: The imposition of the E2 Environmental Conservation zone is not considered to adversely restrict maintenance to allow sufficient asset and human safety. No changes to the LEP are recommended as a result of this issue.

Environmental Zoning on Public Land

Simultaneous to applying the E2 zone to the referred Charles Street properties, the zone was also applied to other public land within the City Centre area, including vegetated areas to the immediate South of 'The Anchorage Islands', as well as adjoining Eden Street and Tweed Terrace on Flagstaff Hill (illustrated in Figure 3). Through the subsequent re-exhibition process no formal submissions were raised. Whilst the 'private' land of Charles Street is recommended to return to an urban zone, it is considered appropriate to maintain the E2 zone on the public land. Application of this zone will be again reviewed within the wider, Shirewide environmental strategy.

Figure 3 – Public Land rezoned for Environmental Conservation



DRAFT Tweed City Centre Local Environmental Plan 2012

ZONE

 E2 - Environmental Conservation

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Cadastre: 07 June, 2012
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 Boundaries shown should be considered approximate only.

0 100 200 300 m
 1:19,500 @ A4 Portrait
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 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidetic Datum of Australia 1984
 GDA
 Map of Australia, Zone 56

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OPTIONS:

1. Remove the application of the E2 Environmental Conservation Zone from the Charles Street properties identified in Figure 1; or
2. Amend the application of the E2 Environmental Conservation Zone on the Charles Street properties as amended in Figure 2.

Option 1 is recommended by the Council officers.

CONCLUSION:

Subsequent to Council's previous resolution of 13 December 2011, Council's PRU and NRM Units have extensively investigated the application of the E2 Environmental Conservation (E2) zone to a number of properties on Charles Street, Tweed Heads. Whilst the current Tweed LEP 2000 zones these properties for residential use, the quality of vegetation found across these sites is considered worthy of conservation through the application of the E2 zone. However, Council's PRU and NRM are currently reviewing and developing an environmental strategy for the Shire as part of, and to be implemented through, the zoning structure within the Standard instrument LEP 'template', based Draft Shirewide LEP. It is considered that this wider strategy is the appropriate document and opportunity to pursue zoning changes that introduce environmental zones to private land.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.2 Advancement of the Council wide and Tweed City Centre Draft Local Environmental Plans (LEPs)
- 1.1.1.2.1 Prepare Draft LEPs in accordance with the sustainability objectives of the Environmental Planning and Assessment Act 1979 and other relevant legislation
- 4 Caring for the Environment
- 4.1 Protect the environment and natural beauty of the Tweed

- 4.1.1 Retain open space and greenbelts for conservation and for all people to enjoy.
- 4.1.1.1 Appropriate zoning controls and planning provisions
- 4.1.1.1.1 Create appropriate zoning controls and planning provisions through the Council wide Local Environmental Plan

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Council report of 13 December 2011 - Tweed City Centre Vision, Local Environmental Plan and Development Control Plan (Section B2) (ECM 51557474)
 2. Submissions received during the additional consultation period (ECM 51558481)
-

20 [PR-CM] Approvals to Operate Markets - Kingscliff, Pottsville, Knox Park Murwillumbah and Recreation Reserve, Tweed Heads

SUBMITTED BY: Building and Environmental Health



Supporting Community Life



Strengthening the Economy

SUMMARY OF REPORT:

The current approvals to conduct the markets at Kingscliff, Tweed Heads Recreation Ground, Knox Park Murwillumbah and Pottsville expire on 30 June 2012.

On 17 April 2012 Council resolved to call for Expressions of Interest from any person or group who wishes to be considered as a candidate to operate the four (4) markets from 1 July 2012, for a period of three years.

The period for receipt of Expressions of Interest closed on 15 May 2012. A limited number of submissions have been received as detailed in this report.

Separate reports will be put to the Reserves Trusts for endorsement.

RECOMMENDATION:

That:

- 1. Approval is granted to operate the respective markets from 1 July 2012 for a period of three years to the following:**
 - (a) Recreation Ground Tweed Heads – Tweed Heads Police and Community Youth Club.**
 - (b) Pottsville – Pottsville Beach Neighbourhood Centre.**
 - (c) Kingscliff – Lions Club of Kingscliff (Inc.).**
- 2. Relevant conditions are applied to those approvals as determined by the General Manager or his delegate.**

REPORT:

The current approvals to conduct the markets at Kingscliff, Tweed Heads Recreation Ground, Knox Park Murwillumbah and Pottsville expire on 30 June 2012. On 17 April 2012 Council resolved to call for Expressions of Interest from any person or group who wishes to be considered as a candidate to operate the four (4) markets from 1 July 2012, for a period of three years. The period for receipt of Expressions of Interest closed on 15 May 2012.

Three (3) submissions were received for the markets at Tweed Heads, Pottsville and Kingscliff by the existing market operators, as detailed below. A summary of the submissions is provided in the Tables below.

Submission – Recreation Reserve, TWEED HEADS

Submissions	Experience	Business Skills	Policy Compliance	Financial Return to Council	Benefits to Community Based Organisations
Tweed Heads Police & Community Youth Club (PCYC)	Has over 12 years experience successfully operating the subject market.	Employs a Market Coordinator who supervises markets.	No major Policy non-compliance issues have been identified in the previous 3 years operation.	15% of stall rental income	PCYC is a not-for-profit company which provides services and facilities for young people and the wider community.

Submission – KINGSCLIFF

Submissions	Experience	Business Skills	Policy Compliance	Financial Return to Council	Benefits to Community Based Organisations
Lions Club of Kingscliff (Inc.)	Has successfully operated the market since July 2006	Has a Market Management Committee with several members dedicated to market operation.	No major Policy non-compliance issues have been identified in the previous 3 years operation.	15% of stall rental income	Lions is a community service based organisation with the 'net profits' passed onto the local community.

Submission - POTTSVILLE

Submissions	Experience	Business Skills	Policy Compliance	Financial Return to Council	Benefits to Community Based Organisations
Pottsville Beach Neighbourhood Centre (PBNC)	Has 9 years experience successfully operating the subject market.	Has a dedicated Market Coordinator who supervises the markets.	No major Policy non-compliance issues have been identified in the previous 3 years operation.	17.5% of stall rental income	PBNC provides substantial monetary and in-kind support to individuals and local community based organisations and groups.

The submission by the Tweed Heads Police and Community Youth Club, the Lions Club of Kingscliff (Inc.) and the Pottsville Beach Neighbourhood Centre are welcomed as each respective candidate has a proven record of professional and competent market operation.

If approval is granted to the respective candidates it would be viewed as a continuation of a valuable income source to community service organisations which provide ongoing community support and youth development programs. Further, the respective markets are regular vibrant local events which attract visitors to the Tweed Valley and provide an opportunity for promotion and sale of local goods and produce.

Knox Park Murwillumbah

No submissions were received from any interested party seeking to operate the markets at Knox Park Murwillumbah.

It is noted that a 'farmer's market' has been operating for about 12 months each Wednesday morning at the Murwillumbah Showground, which may have provided an alternative opportunity to promote and sell local produce.

Markets are also held at the Murwillumbah Showground on the fourth Sunday of the month.

OPTIONS:

1. Issue No Further Approval for any Markets

The markets are an attraction to visitors and residents and provide income sources to the operators and numerous stall holders involved (under suitable economic conditions).

2. Council to Operate and Administer the Markets

Additional staffing resources would be necessary to achieve internal management of markets. It is highly unlikely that income would fund the associated costs. This is not necessarily a function which Council is seeking to perform and it can be performed adequately by private or community based service organisations (under suitable economic conditions).

3. Approve Issue of an Approval to the Identified Applicants

Public Expressions of Interest have been sought to determine the most appropriate person or group to manage the markets. In this instance the existing operators have been the only parties to express an interest in operating the markets. The existing managers have a successful record of operating the respective markets and it is recommended that approvals be issued for them to operate and manage the markets for another three years, as outlined in this report.

CONCLUSION:

It is recommended that Council approves operation of the respective markets for a period of three years from 1 July 2012 as follows:

- (a) Recreation Ground Tweed Heads – Tweed Heads Police and Community Youth Club;
- (b) Pottsville – Pottsville Beach Neighbourhood Centre; and
- (c) Kingscliff – Lions Club of Kingscliff (Inc.)

COUNCIL IMPLICATIONS:

a. Policy:

Vending of Food on Public Reserves Version 1.1.

b. Budget/Long Term Financial Plan:

Between 15% and 17.5% of stall rental income from the respective markets is returned to Council from the annual market operators.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.6 Provide social, economic and cultural initiatives which enhance access, equity and community well-being
- 3 Strengthening the Economy
 - 3.1 Expand employment, tourism and education opportunities
 - 3.1.6 Support creative practitioners and entrepreneurs to access professional and business development opportunities, to enhance their contribution to the creative economy
 - 3.1.6.1 Creative economy

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
