

TITLE: [PR-CM] Development Application DA12/0527 for Internal Alterations and Additions Comprising a New General Store, Extension of Entrance and Carpark Reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads West

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0527 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of a Development Application which seeks approval for alterations and additions to the existing Seagulls Club to accommodate a full line supermarket. The supermarket is proposed to be operated by the Independent Grocers of Australia (IGA) franchise comprising a gross floor area of 1965m².

The application would involve a change of use of part of the existing club to accommodate the supermarket. The application proposes works to the north eastern façade to improve the access for the IGA and this would involve the creation of an additional 314m² of floor area to the existing building. The application also incorporates an amended car parking layout.

The subject site is zoned 6(b) Recreation in accordance with Tweed Local Environmental Plan 2000 (TLEP 2000). In accordance with the current TLEP 2000 shops (by definition) are prohibited in this zone.

The subject site is proposed to be zoned RE2 Private Recreation under Draft LEP 2012. In accordance with the Draft LEP 2012 shops (by definition) and neighbourhood shops (of less than 300m²) will be prohibited in this zone. Only kiosks, markets and food and drink premises will be permissible.

The applicant has lodged this application as a “general store” by definition (TLEP 2000) and seeks Council’s approval for this as a permissible land use. The applicant has submitted legal advice to support this view and such advice is discussed in this report and provided in full as an attachment to this report.

This report assesses the application for a supermarket on its merits having regard to the matters for consideration under the Environmental Planning and Assessment Act 1979.

In undertaking this merit assessment the size, scale and relationship of the 1965m² supermarket with the existing Seagulls Club has been considered. The proposed supermarket is proposed as a separate but complimentary use to the existing club and not an ancillary use and accordingly the merit assessment needs to review this development as a standalone business separate to the existing Seagulls Club. If the Seagulls Club for some reason was to cease operations the proposed supermarket if approved would be lawfully allowed to continue operations in accordance with their consent on the subject site. For this reason the proposed development for a supermarket must be assessed as a separate use to that of the Seagulls Club.

Whether the development is legally defined as a general store or a shop the proposed development has failed to adequately demonstrate how the proposed development:

- Satisfies the strategic objectives for the Tweed;
- Satisfies the primary objective of the recreational zone;
- Satisfies the test of cumulative impact;
- Satisfies the objectives behind social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2012;
- Satisfies Council Retail Strategy; and
- Satisfies the general public interest and the impact the proposal would have on the existing commercial zones in the locality.

Accordingly the application is recommended for refusal.

RECOMMENDATION:

That Development Application DA12/0527 for internal alterations and additions comprising of a new general store, extension of entrance and car park reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads West be refused for the following reasons:

- 1. The development is not considered to be consistent with Clause 4 - The aims of the Tweed Local Environmental Plan 2000 and the Strategic Planning documents that support the Local Environmental Plan.**
- 2. The development is not considered to satisfy Clause 8(1)(a) – Consent Considerations of the Tweed Local Environmental Plan 2000 as the primary objective of the 6(b) Recreation Zone has not been met.**
- 3. The development is not considered to satisfy Clause 8(1)(c) – Consent Considerations of the Tweed Local Environmental Plan 2000 as the development would have an unacceptable cumulative impact on the community, locality and catchment.**
- 4. The development is not considered to satisfy Clause 17 of the Tweed Local Environmental Plan 2000 as the application has not adequately demonstrated that the development won't have an unacceptable social or economic impact on the locality.**
- 5. The development is not considered to comply with Council's adopted Retail Strategy.**
- 6. The development is not considered acceptable having regard to Draft LEP 2012 as the proposed development would be prohibited in the zone and fails to satisfy the zone objectives of the RE2 Private Recreation zone.**
- 7. The development is not considered acceptable having regard to the general public interest and the impact the proposed development would have on the existing commercial zones in the locality.**

REPORT:

Applicant: Think Planners Pty Ltd
Owner: North Sydney Leagues Club Limited
Location: Lot 2 DP 881169; No. 54-68 Gollan Drive, Tweed Heads West
Zoning: Part 6(a) Open Space and Part 6(b) Recreation
Cost: \$2,750,000

Background:Site Details and History

The subject land is described as Lot 2 DP 881169 Gollan Drive, Tweed Heads West and is located approximately 1km west of the Pacific Highway (Kennedy Drive interchange). The site has a total land area of 4.94ha.

The site presently contains the substantial Seagulls Leagues Club building. Bituminised car parking areas providing a total of 582 car parking spaces are located around the club building. The grassed area adjacent to the northern boundary has approval for 232 car parking spaces. This grassed area is used for “over flow” car parking in association with major events at the club.

Vehicular access to the site is primarily via the main driveway at the north-eastern part of the site from Gollan Drive. A secondary driveway also accessing Gollan Drive is located to the southern side of the building.

The area surrounding the club comprises a mixture of remnant bushland, the Terranora Broadwater and low density residential housing.

The existing Seagulls Club was constructed in several stages with initial buildings constructed in the 1960's. At this time and up until the late 1990's the Club had the benefit of an adjoining sports field. These fields have since been re-developed for residential use. The last major addition to the club was constructed in 1983.

Since 1983 there has been multiple development applications, building applications, and complying development certificates that have shuffled the land uses within the approved building footprint. More recently the following applications have been determined:

- DA05/1134 – approved a public market each Sunday on the bitumen car park area. It is understood that these markets were not successful due to the heat of operating markets on the bitumen car park area.
- DA05/1452 – approved alterations and minor additions to the club over three stages. The club has acted upon Stages 1 and 2 of these works but has yet to commence Stage 3 works which trigger the formalisation of additional parking areas over the grassed areas of the site. The subject Development Application seeks to alter the methodology in calculating required onsite parking spaces on this site and accordingly if Council were to approve this application then DA05/1452 may need to have a Section 96 Modification to align the required car parking spaces across the site.
- CDC05/0213 – approved the relocation of gaming machines and staff room and a refurbishment of the toilets.
- CDC06/0023 - approved alterations to restaurants and gaming rooms including roof maintenance.
- CDC10/0005 – approved the redevelopment of internal areas for doorways and storerooms.

- CDC10/0042 – approved a new cool room relocation of an existing bottleshop and minor internal alterations.
- CDC10/0159 – approved minor internal alterations to level 1 and 2.
- CDC11/0145 – approved restaurant alterations.
- CDC12/0107 – approved restaurant alterations and modifications to the existing building to accommodate a children's play centre (Tabatinga) within the Seagulls Club.

The total gross floor area of the building is 16,508m² however the above alterations have had the effect of the club utilising less floor space within the building in an attempt to lower the overhead operating costs of the large facility. The Seagulls Club, futsal courts, ancillary gymnasium and the childrens' play centre (Tabatinga) do not occupy the entire 16,508m² as many areas of the club are not presently being used. Through the implementation of the gymnasium, a child's play centre (Tabatinga) and now an IGA supermarket the Club is trying to add alternative but complimentary uses to the existing club in a hope of eventually being able to grow back into the size of the Club.



Proposed Development

Council is in receipt of DA12/0527 which seeks approval for a new full line supermarket to be operated by the Independent Grocer of Australia (IGA) franchise comprising a gross floor area of 1965m² predominantly within the existing footprint of the Seagulls Club.

The applicant has provided the following breakdown of the proposal:

- *Internal alterations and additions to existing ground level floor space and fit out for a General Store;*

- *External works to a part of the ground floor façade and slight increase in floor space to provide for an improved entry to existing Club facilities and the proposed General Store;*
- *Reconfiguration of existing and previously approved carparking on site, to improve traffic flow and delineation; and*
- *Other incidental works such as landscaping and paving.*

The proposal is predominantly contained within the existing building bulk. Notwithstanding the significant scale and bulk of the existing building, the proposal effectively “softens” this bulk through the introduction of greater articulation of the ground floor façade and introduces improved activity to that part of the building.

The below diagram shows in yellow the proposed footprint of the proposed IGA in comparison to the Club layout:



The applicants have stated the following in regards to the need for the proposal:

"The Seagulls Club has been an iconic institution within the Tweed Heads region for several decades. The Club has operated successfully over these years however in recent years the club has been running a number of operating losses which have grown steadily since 2010. By way of context the last seven (7) years of operations on the site has only seen an operating profit in two (2) of these years, with these operating profits only being 0.67% and 2% of revenue. In 2009 a modest profit was recorded, which was largely due to accounting changes including a shift in the consideration of staff entitlements and the application of depreciation. However since that date, there has been a steady stream of increasing losses:

- \$915,000 loss in 2010;
- \$1,920,000 loss in 2011; and
- \$1,768,000 loss (projected) in 2012.

If it were not for the accounting adjustments in the 2009 financials the Club would have made a loss over each of the past 5 years, with a further loss in 2006 and a minimal profit of less than \$300,000 in 2007.

These increasing losses and a shrinking revenue base means that the operation of the Seagulls Club is not financially viable. In the absence of an increase in revenue and a return to profitability it is unlikely that the Club will continue to operate in the short term. The club has been examining a range of options and the leasing of a portion of the site for an alternate but complimentary use to the existing club was considered most appropriate. In particular given the demographic trends and the future expansion of release areas it was considered that the establishment of a general store to serve the needs of local residents would be most appropriate.

It is highlighted that in the absence of the redevelopment of the site there are serious doubts about the ongoing viability of the Seagulls Club."

It is important to note that the applicants have lodged this application on the basis of the supermarket being legally defined as a general store rather than a shop.

The subject site is zoned 6(b) Recreation and a general store is permissible in the zone with consent while a shop is a prohibited type of development.

This aspect of the development is discussed in detail below.

Land Use Definition

Tweed Shire Council has consistently defined supermarkets as a shop in accordance with the TLEP 2000 definitions which define a shop as:

"land used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this Schedule or used for a land use elsewhere specifically defined in this Schedule."

The subject site is zoned 6(b) Recreation and a shop is prohibited in this zone.

Given this prohibition the applicant has lodged the subject application as a general store in accordance with the TLEP 2000 definitions which define a general store as:

"a shop used for the sale by retail of general merchandise and which may include the facilities of a post office."

A general store is permissible with consent in the 6(b) Recreation zone subject to satisfying all the other merit considerations in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

The applicant has provided the following discussion on permissibility:

"Minutes of the Development Assessment Panel held at Tweed Council on Wednesday 9 November 2011 noted that a supermarket facility has been traditionally defined as a "shop", but "General Store" was a permissible use in the zone. This matter of characterisation of the proposal is fundamental and therefore is discussed in some detail below.

It is noted that the application proposes a General Store that may be more commonly referred to as a "supermarket". The day to day operator of the General Store is likely to be a company such as IGA. The General Store is intended to comprise the following types of items for sale:

- (a) *The majority of the retail display area will consist of food including:*
- *General food lines;*
 - *Grocery items;*

- Refrigerated meat;
 - Fresh fruit and vegetables;
 - Dairy products and juices;
 - Frozen food;
 - Hot food (including chicken);
 - Delicatessen items;
 - Alcohol; and
 - Bakery items.
- (b) *The remaining retail display areas will consist of, but not be limited to, the following food items:*
- Pet care and pet food;
 - Magazines;
 - Audio visual;
 - Electrical items;
 - Beauty and health care products;
 - Baby care products;
 - Pharmaceuticals;
 - Batteries;
 - Laundry and cleaning equipment;
 - Plastic bags and wraps;
 - Household cleaning products;
 - Clothes;
 - Manchester;
 - Gardening items;
 - Cigarettes/tobacco;
 - Toys;
 - Car care products;
 - Hardware items;
 - Fresh flowers; and
 - Other miscellaneous items.

In determining the correct categorisation of whether the proposal is to be considered a "General Store" or "Shop", consideration has been given to a number of relevant cases that have dealt with either categorisation of uses and/or a supermarket. Such cases include:

- *Shire of Perth v O'Keefe (1964) 110 CLR 529 at 535;*
- *Warriewood Properties Pty Ltd v Pittwater Council (2010) NSWLEC 215;*
- *Snowside Pty Ltd v Holroyd City Council (2003) 126 LGERA 279;*
- *Maryland Development Co Pty Ltd v Penrith City Council (2001) NSWLEC 135;*
- *Hastings Cooperative Ltd v Port Macquarie Hastings Council & Anor (2009) NSWLEC 99;*
- *Hastings Cooperative Ltd v Port Macquarie Hastings Council & Anor (2009) NSWCA 400*

The Hastings Cooperative Ltd matters are particularly relevant as this deals with a proposal for a General Store / Supermarket in a zone where "shops" are prohibited and "general store" is permissible. Further, the proposal considered by the Land and Environment Court and the Court of Appeal was for a supermarket with a retail gross floor area of about 2012m².

The Hastings LEP contained an identical definition of general store to the Tweed LEP and a very similar definition of a shop.

The Land and Environment Court noted that the essential difference between a "shop" and a "general store" is that a "shop" offers for sale by retail "goods, merchandise or materials" and a "general store" offers for retail "general merchandise":

The same distinction was discussed in *Maryland Development Co Pty Ltd v Penrith City Council* where it was held that "the operative element of the statutory definition is the retailing of "general merchandise": It is that concept which distinguishes "general store" from "shop": The distinction between a "shop" and a "general store" observed in this case is directly applicable to the supermarket proposal contemplated in this development application.

It is further noted that the Hastings Cooperative matters was appealed to the Court of Appeal. The Court of Appeal, in a majority decision, determined that a supermarket was properly characterised as a "general store" and was permissible with consent. It is noted that the provisions of the Hastings LEP and the Tweed LEP are effectively identical.

Having regard to the provision of the Tweed LEP, the directly relevant decisions of various Courts and the nature of the proposed supermarket that will offer for sale by retail a broad range of general merchandise, it is concluded that the proposal is rightly characterised as a "general store" which is permissible with consent in the 6(b) Recreation Zone."

In addition to this information the applicant has recently submitted their own legal advice from C W McEwen SC dated 2 May 2013. The advice states:

"Is the proposed supermarket properly characterised as a 'general store'?"

I am firmly of the opinion that the proposed supermarket is properly characterised as a general store as defined in TLEP. Further, the facts in this case, on the question of characterisation, are identical to those in Hastings Co-operative Ltd v Port Macquarie Hastings Council & Anor (2009) 167 LGERA 205 where Lloyd J determined that a proposed supermarket selling a range of goods identical to those proposed in the present case, was a 'general store'. The definition of general store was the same, as was the definition of shop. In Hastings Lloyd J summarised and applied other decisions of the Court to the same effect. In my opinion the weight of authority is overwhelmingly in favour of the opinion which I have expressed.

Although in general parlance a general store would be described as a shop; that is not to the point. It is the definitions which must be interpreted. Further, historical notions of general stores being small, general outposts must also be put to one side because the definition in TLEP will prevail. Pursuant to TLEP the definition of shop does not include a building or place elsewhere specifically defined. 'General store' is so defined as a shop used for the sale by retail of general merchandise.... The fact that the definition of general store refers to 'a shop' is of no consequence. For the purposes of TLEP a 'general store' is excluded from the definition of 'shop'. This fact was confirmed by the Court of Appeal in Hastings Co-op Ltd v Port Macquarie Hastings Council (2009) 171 LGERA 152.

As was made clear by Lloyd J in Hastings:

*It is clear from the definitions above that the essential difference between a 'shop' and a 'general store' is that a 'shop' offers for sale by retail 'goods, merchandise or materials' and a 'general store' offers for retail 'general merchandise'. Hastings Co-operative rightly submits that, as there is little difference between goods, merchandise and materials, the significant difference between the definitions comes from the use of the word 'general' [8]. As noted by Sheahan J in *Merryland* at [132], the definition is satisfied where a range and variety of product lines are offered for sale by retail. In the present case, it seems to me that the supermarket does offer a range and variety of product lines, and that they are by no means specialised merely because they may broadly be characterised as 'food and household items' ... Having regard to the broad range of merchandise which will be sold at the proposed supermarket, it is my view that the merchandise is general rather than specific in nature, particularly the range of non-food items. I conclude, therefore, that the proposed supermarket in the present case is, for the purposes of the Hastings Local Environment Plan, correctly characterised by the Council as a 'general store' [23].*

As previously noted, the range of goods proposed to be sold in the Hastings case is identical to that in the present case and there is no reason to distinguish the Hastings decision. It stands as clear authority for characterisation of the proposed supermarket as a general store. Indeed, in the present case the argument in favour of the proposal being a general store is even stronger than in Hastings. In that case general stores were not specifically permissible with consent. Permissibility arose because the use was not specifically prohibited, even though use for the purpose of a shop was specifically prohibited. In the present case use for the purpose of a general store is specifically identified as a permissible use in the 6(b) zone.

Finally, the size of the proposed store is of no relevance for the purpose of the definition because the general store definition does not limit the store to being of a maximum floor space. In Hastings the

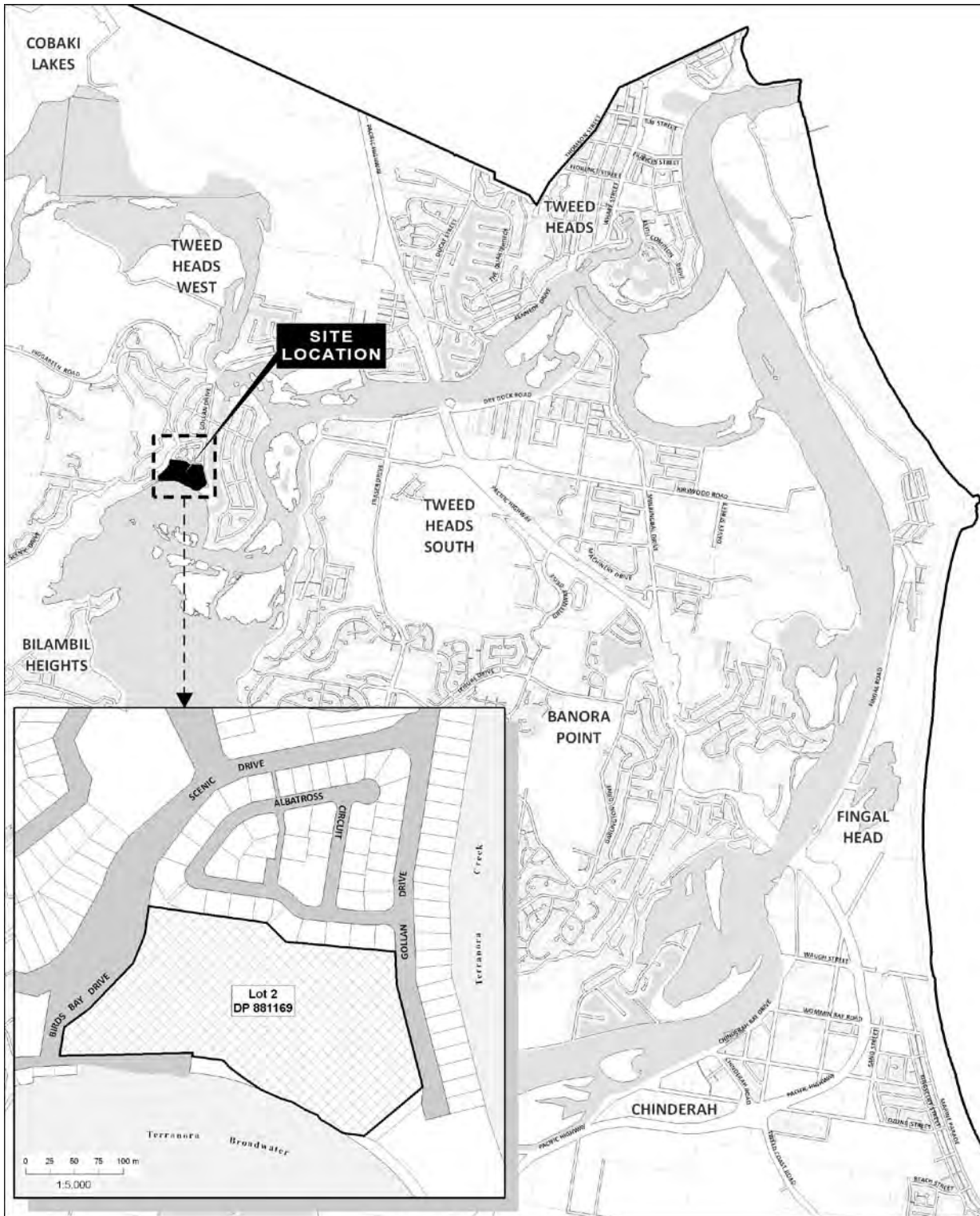
proposed supermarket had an area of approximately 3,011 m². In Merryland Development Company Pty Limited v Penrith City Council (2001) 115 LGERA 75 Sheahan J held that a proposed supermarket was a general store in circumstances where it proposed a floor space of 3,800 m² and a range of products which was less extensive than in the present case. The definition of 'general store' in TLEP requires only that the premises sell, by retail, general merchandise. If the range of products to be offered can be so described (as it clearly can in this case), then that is the end of the inquiry into permissibility and the development is a general store for the purposes of the planning instrument. This is reinforced by the fact that item 4 in the zoning table sets out prohibited development. What is prohibited is any buildings, works, places or land uses not included in item 1, 2 or 3. Because general stores is included in item 2, it must follow that use for the purpose of a general store is not a prohibited land use.

Tweed Shire Council has historically applied a delineation between general stores and shops by assuming a general store is a smaller corner store scenario as opposed to a shop which was more like a larger retail supermarket. However, based on the above advice this opinion does not appear to be legally correct and accordingly Council staff now accept the legal advice provided and confirm that the proposed supermarket (Supa IGA) can be legally determined to be a general store.

It should be noted that this matter will be better addressed by the Draft TLEP 2000 which proposes to restrict neighbourhood shops (general stores) to a floor area of 300m². This will clearly delineate between corner stores and larger retail developments into the future.

The acknowledgement that this supermarket can now be legally defined as a general store does not change the merit assessment undertaken within the rest of this report and accordingly the application (despite being permissible with consent) is recommended for refusal having regard to other merit considerations.

SITE DIAGRAM:



Locality Plan

Lot 2 DP 881169
No. 54-68 Gollan Drive, Tweed Heads West

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Cadastre 19/04/2013
 Land and Property Information (LPI) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

0 0.2 0.4 0.6 0.8 1 Km
 1:40,000 @ A4 Portrait
 TO FIT SCALE
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Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geocentric Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

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 E | planning@tweed.nsw.gov.au

DEVELOPMENT/ELEVATION PLANS:



CARPENTRY CALCULATIONS	
EXISTING	200
NEW SPACES	814
TOTAL	1014

EXISTING AREA	
EXISTING	200
NEW SPACES	814
TOTAL	1014

ORIGINAL SHEET SIZE: A1 (1114)	
DATE	27.11.22
COMMENTS	AS SHOWN ON

ASSESSMENTS	
DATE	27.11.22
COMMENTS	AS SHOWN ON

NO.	1
DATE	27.11.22
COMMENTS	AS SHOWN ON

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PROJECT NAME	EXISTING SITE PLAN & PARKING LAYOUT
CLIENT	PROPOSED GENERAL STORE SEAGULLS CLUB TWEED HEADS
SCALE	1:500 (A1)
DATE	11/24/22
DRAWING NO.	001
KEY	A

ORIGINAL SHEET SIZE: A2-584 x 420

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DIMENSIONS

Use figured dimensions.
DO NOT SCALE.
Check all dimensions on site before fabrication or install.

AMENDMENTS

DATE	REV	COMMENTS	DRAWN	C/K
12/11/12	A	REVISIONS	MS	MS



CLIENT
NORTH SYDNEY LEAGUES CLUB

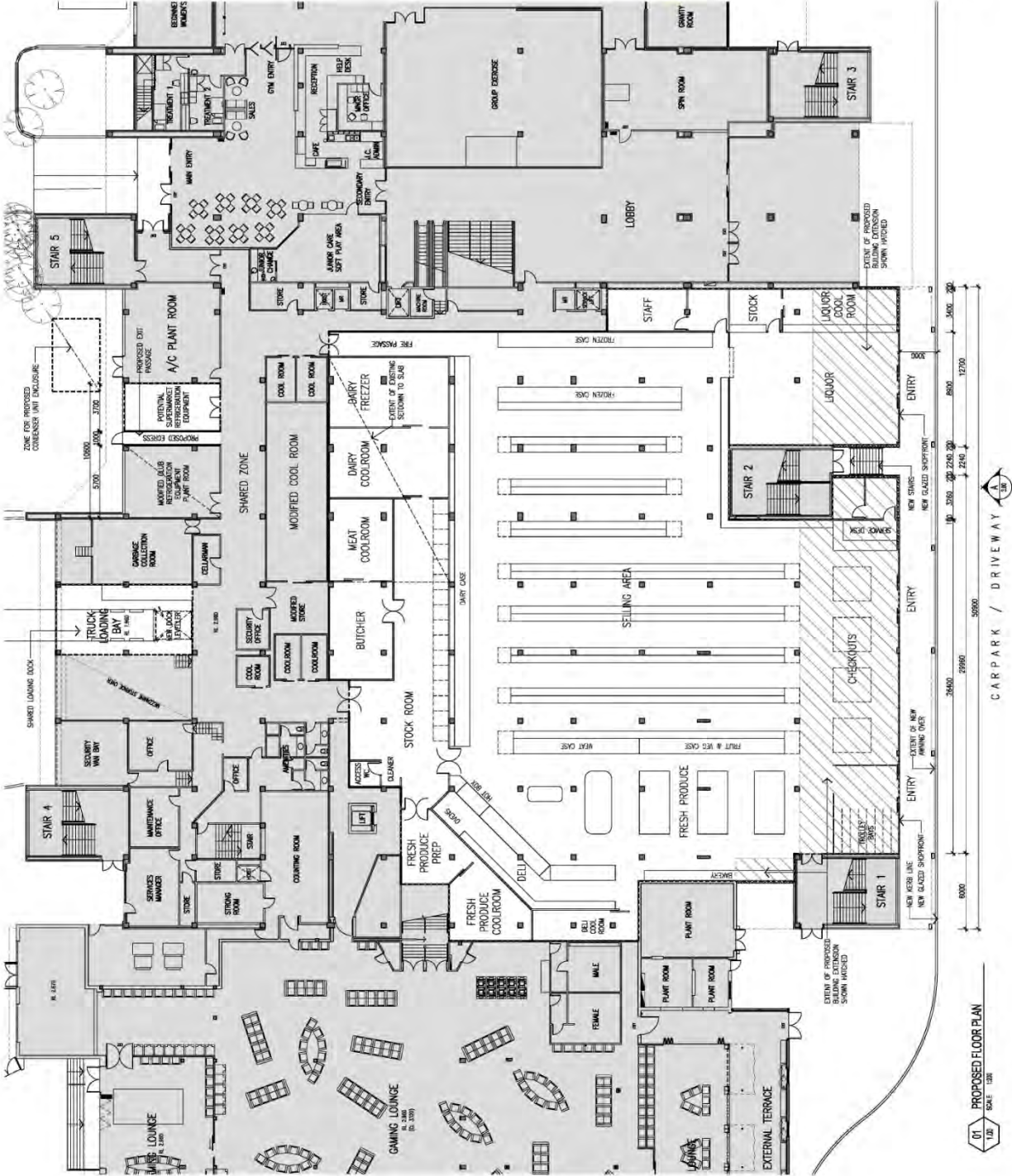


PROJECT NAME
**PROPOSED GENERAL STORE
SEAGULLS CLUB
TWEED HEADS**

DRAWING NAME
PROPOSED FLOOR PLAN

SCALE 1:200 @ A2

JOB NO	STAGE	DRAWING NO	REV
11948	DA	2.00	A



01 PROPOSED FLOOR PLAN
SCALE 1:200

CARPARK / DRIVEWAY



40. PROPOSED SITE PLAN
SCALE 1:100

<p>SETBACK CONTROL</p> <p>ALL SETBACKS TO BE MAINTAINED UNLESS OTHERWISE SPECIFIED.</p> <p>ALL SETBACKS TO BE MAINTAINED UNLESS OTHERWISE SPECIFIED.</p> <p>ALL SETBACKS TO BE MAINTAINED UNLESS OTHERWISE SPECIFIED.</p>	<p>PROPOSED LIFE</p> <p>PROPOSED LIFE: 25 YEARS</p> <p>PROPOSED DOWN TOOK EXTENSION: 25 YEARS</p> <p>PROPOSED DOWN TOOK EXTENSION: 25 YEARS</p>	<p>GENERAL STORE AREAS</p> <p>REAR AREA: 1450 SQ M</p> <p>FRONT AREA: 1450 SQ M</p> <p>REAR AREA: 1450 SQ M</p> <p>FRONT AREA: 1450 SQ M</p>	<p>CARPARKING CALCULATIONS:</p> <p>EXISTING: 200</p> <p>PROPOSED: 200</p> <p>OVERFLOW: 200</p> <p>TOTAL: 600</p>
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<p>CLIENT</p> <p>NORTH SYDNEY LEAGUES CLUB</p>	<p>PROJECT NAME</p> <p>PROPOSED GENERAL STORE SEAGULLS CLUB TWEED HEADS</p>	<p>DRAWING NAME</p> <p>PROPOSED SITE PLAN & PARKING LAYOUT</p>
<p>DATE</p> <p>12.11.22</p>	<p>SCALE</p> <p>1:100</p>	<p>SCALE</p> <p>1:100</p>
<p>ORIGINATOR</p> <p>GRAPHITE ARCHITECTS</p>	<p>DATE</p> <p>12.11.22</p>	<p>SCALE</p> <p>1:100</p>

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ORIGINAL SHEET SIZE: A2-594 x 420

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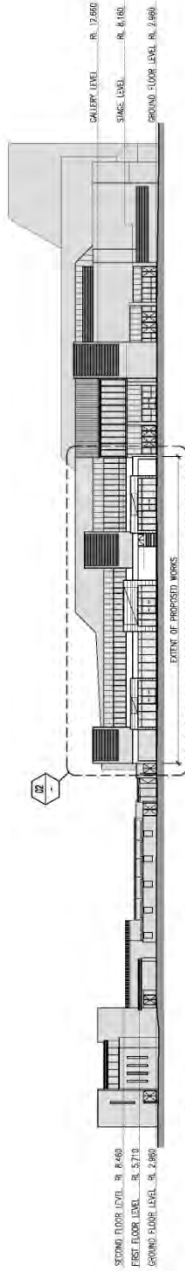
DIMENSIONS

Use figure dimensions -
DO NOT SCALE

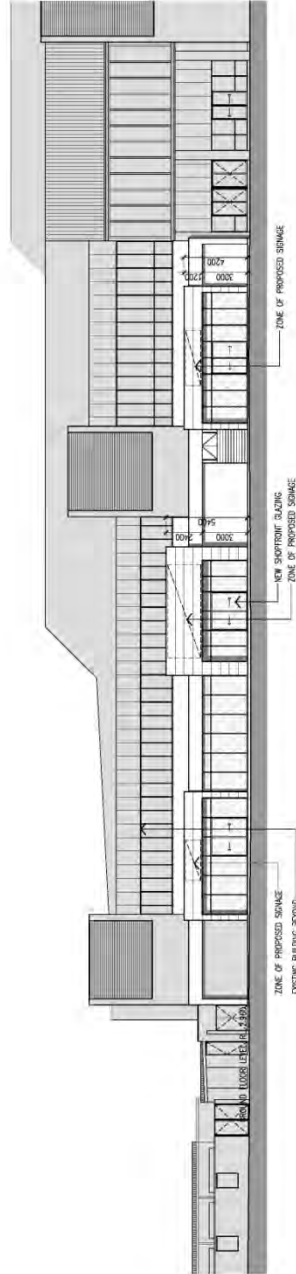
Check all dimensions on this before fabrication or start

AMENDMENTS

DATE	REV	COMMENTS	DRWN	CHK
02/11/19	A	ISSUED FOR QA	MS	MS



01 PROPOSED NORTHEAST ELEVATION
SCALE 1:50



02 PART ELEVATION
SCALE 1:50



CLIENT

NORTH SYDNEY LEAGUES CLUB



PROJECT NAME

PROPOSED GENERAL STORE
SEAGULLS CLUB
TWEED HEADS

DRAWING NAME

PROPOSED ELEVATION

SCALE AS SHOWN #1/2

JOB NO	STAGE	DRAWING NO	REV
11948	DA	3.00	A

Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 of the TLEP 2000 specifies that the aims of the plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:*
- “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and*
- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Heads 2000+ Strategy*
 - *Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

The Tweed Shire 2000+ Strategic Plan (published in 1997) in conjunction with Tweed 4/24 Strategic Plan 2004-2024 (published in September 2004) in conjunction with Tweed Community Strategic Plan 2011/2021 (published in December 2010) in conjunction with the Tweed Urban and Employment Land Release Strategy (published in 2009) in conjunction with the Far North Coast Regional Strategy (published in 2006) all form the strategic framework and visionary direction for the Tweed Shire. They set overarching goals that will help manage the Tweed into the future.

The following principals from Tweed Shire 2000+ Strategic Plan should be considered:

8. *Consolidate higher order retailing and commercial centres at Tweed Heads as a sub regional centre and at the district centres of Murwillumbah and Kingscliff. Assess and approve future district and neighbourhood centres with a view to encouraging reduced car dependence and self contained “village” communities.*

103. *Integrated Development – Future development will be based on the integration of land use and transportation planning, i.e. urban settlement patterns which promote neighbourhood self containment; provision for alternative access ways for walking/cycling; provision for public transport and mixed used developments to reduce private car dependence.*
104. *Council will employ contemporary urban design principals to maximise the desirability of town and district centres for public use. Consideration will be given to social interaction, recreation, amenity, culture, delivery of support services and the transaction of commerce.*

The following principals from Tweed 4/24 Strategic Plan 2004-2024 should be considered:

- Pg 12. *Finalising retail and commercial development frameworks to support existing centres, guide investment in new facilities, and implement the recommendations of the Tweed Heads Task Force.*
- Pg 12. *Identify suitable areas of industrial and commercial land to meet current and projection needs, and promote its timely release to the market.*
- Pg 21. *Finalise the retail development strategy.*

The following principals from Tweed Community Strategic Plan 2011-2021 should be considered:

- 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*

The Tweed Urban and Employment Lands Release Strategy 2009 puts forward an urban centres hierarchy that gives direction to the existing and future size, role and function of the urban areas of Tweed Shire.

The Far North Coast Regional Strategy promotes a clear hierarchy of commercial centres. New commercial development outside of the major centres, are to be *"located within the boundaries of towns and villages, utilising existing commercial centres where possible, and integrated with the Initial planning of new release areas"*.

Whilst these documents do not specifically relate to the current scenario in which an existing recreational facility wishes to expand their operations to incorporate a supermarket they can be used to understand the broad parameters in which Tweed Shire Council assesses the appropriateness of development.

The Tweed's retail hierarchy has historically been based on higher order retailing in the main townships of Tweed, Murwillumbah and Kingscliff with additional neighbourhood shopping available in other villages to provide for the local shopping needs of its residents. This philosophy has been reinforced with Council's zoning maps which have facilitated commercial activity in nominated business zones in close proximity to residential development.

This is now reinforced in Council's 7 Point Retail Strategy which has the following objectives:

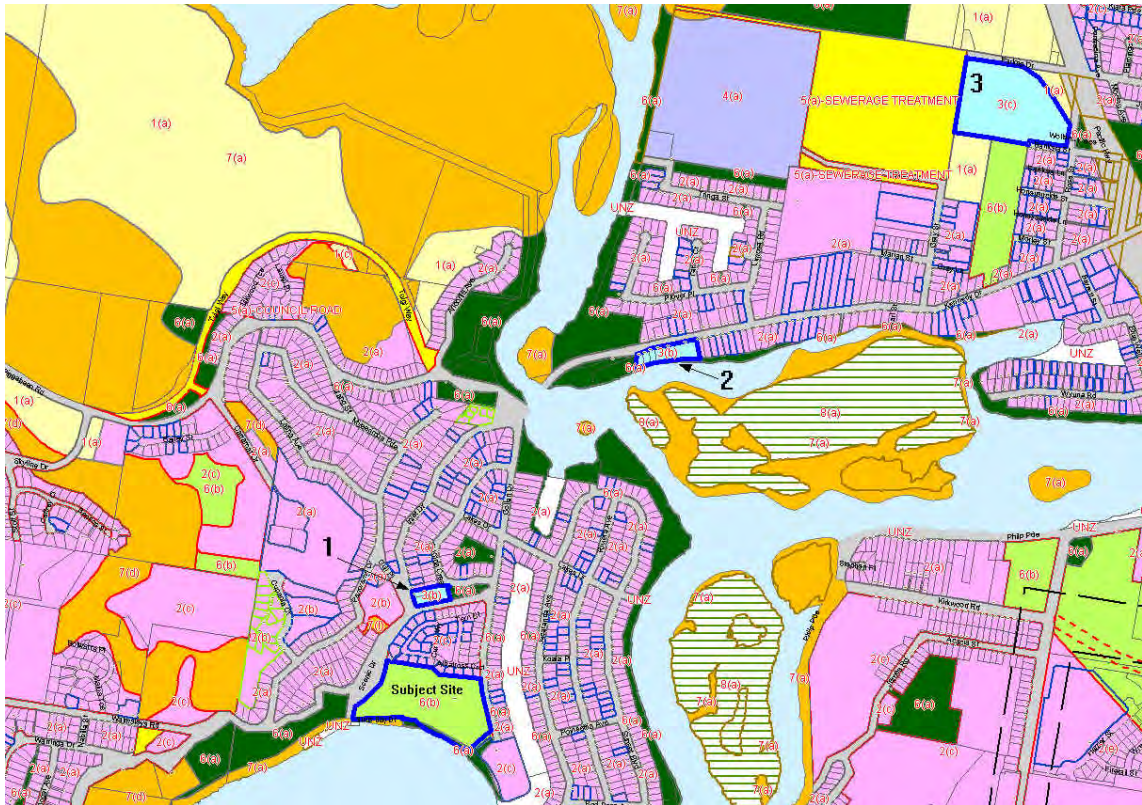
1. *The character of existing towns and villages and the retail facilities that have to be protected.*

2. *Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.*
3. *Reinforce Tweed Heads South as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased range and level of shopping.*
4. *Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.*
5. *Limit the scale of new retail centres in the coastal region to a level which caters for the majority of localised daily needs. This concept to reflect the need to reduce fuel consumption and to support sustainability within each centre.*
6. *Council does not support the establishment of another district retail shopping centre.*
7. *The retail concepts in these recommendations form the basis of locality plans in the Shire and any retail development applications which are submitted in the interim of these locality plans being prepared and approved by Council be assessed so that the above retail strategies are supported and not compromised.*

In the Tweed Heads West area there are three nominated business zones to provide services to the residential development in this area:

1. The corner of Gull Place and Scenic Drive two land parcels (Lot 200 in DP 29194 and Lot 4 in DP 700873) comprising a total land area of 3744m². This site is presently occupied by Panorama Plaza Shopping Centre which is a small local shopping area currently comprising of a small supermarket (including post office), bakery, butcher, hairdresser, takeaway food shop, bottle shop, a restaurant (Thai), and two vacant tenancies. This 3(b) General Business zone is located 280m north of the subject site (as the crow flies).
2. The southern side of Kennedy Drive (Numbers 212 – 226 Kennedy Drive which include 6 lots as follows: Lot 100 in DP 1128372, Lot A in DP 407658, Lot 4 in DP 203865, Lot 3 in DP 203865, Lot 2 in DP 203865 and Lot 1 in DP 203865) comprising a total land area of 6817.21m². This site is presently occupied by 5 residential houses and one commercial allotment which is used as a fish and chip shop, and a recently approved chemist and doctors surgery. This 3(b) General Business zone is located 1.2km north east of the subject site (as the crow flies) across Cobaki Bridge.
3. The western side of Wollemi Place (west of the service road to the Pacific Highway) which comprises Lot 10 in DP 1084319. This site has recently been rezoned to 3(c) Commerce and Trade for a new Boyds Bay Business Park consisting of 51500m². This site is located 1.8km north east of the subject site.

These are shown diagrammatically below as blue business zones and are labelled 1, 2 and 3 according to the above text.



As detailed above the subject site has been used for recreational purposes since the mid 1960's and accordingly the zoning of the site has followed the historical land use pattern. This site has never been considered for commercial activities as the whole planning framework for Tweed Shire Council has been to consolidate higher order retailing and commercial centres at Tweed Heads. The registered club is more akin to recreational purposes as reflected by the site's zoning.

The Development Application states at Page 11 of the Statement of Environmental Effects that:

“These increasing losses and shrinking revenue base means that the operation of the Seagulls Club is not financially viable. In the absence of an increase in revenue and a return to profitability it is unlikely that the club will continue to operate in the short term. The club has been examining a range of options and the leasing of a portion of the site for an alternative but complimentary use to the existing club was considered most appropriate.”

This statement raises significant concerns for Council in understanding the core function of the site and the relationship and scale that the proposed supermarket will have in comparison to the Seagulls Club itself.

Whilst the proposed supermarket may compliment the sites use as a registered club in an economic sense it does not mean that the proposed use is ancillary in nature. The proposed IGA is a separate land use that needs to be considered having regard to Section 79C of the Environmental Planning and Assessment Act 1979. This report details this assessment and concludes that the proposed supermarket is contrary to the zone objectives and Clause 8(1)(a) of the TLEP 2000 which requires development to be consistent with the primary objective of the zone which in this instance is:

“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”

The applicant has argued that the IGA will operate as a secondary offering to the Seagulls Club, with the intention to extract synergies between the club, restaurant, fitness centre, child minding and supermarket.

In addition to this information the applicant has recently submitted their own legal advice from C W McEwen SC dated 2 May 2013. The advice states:

"Will the proposed development be consistent with the primary objective of the 6(b) zone?"

Clause 8(1)(a) prevents the grant of development consent unless the consent authority is satisfied that the development is consistent with the primary objective of the zone within which it is located.

I am of the opinion for the reasons which follow that, having regard to the proper context of the clause, construed as part of the planning instrument as a whole, the relevant state of satisfaction can properly be reached.

In the 6(b) zone the primary objective is to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes. It is of particular importance to note that the secondary objective is to allow for other development that is compatible with the primary function of the zone. That other development must include the land uses which are specifically stated to be permissible with consent, including general stores, childcare centres, markets, tourist facilities, clubs, motels and refreshment rooms which are not generally for recreational purposes. The zoning table when read with the primary and secondary objectives makes it plain that such permissible land uses, although different in nature, are assumed to be compatible with the primary function which is the use of land for recreational purposes.

*Returning to the primary objective, one must focus on the word 'primarily'. In context, 6(b) land is not required to be used solely for recreational purposes. 'Primarily' is an ordinary English word which should bear its ordinary English meaning of 'chiefly' or 'principally': see *Modog v Baulkham Hills Shire Council* (2000) 109 LGERA 443 at [12]; *Retirement by Design v Warringah Council* (2007) 153 LGERA 372 [97].*

Thus, in order to correctly approach the task set by c18, it must be recognised that the 6(b) zone intends to allow for development which, of itself, is not for recreational purposes but which will be compatible with the primary function of the zone. That primary function is described in the primary objective.

Clause 8(1)(a) refers to development that is consistent with the primary objective of the zone. Again, that word bears its ordinary meaning and has been considered in a number of decisions of the Court.

*I would hold that it has its ordinary and natural meaning (eg as in the Macquarie Dictionary: 1. Agreeing or accordant; compatible; not self-opposed or self-contradictory; 2. Consistently adhering to the same principles, course, etc.): *Dem Gillespies v Warringah Council* (2002) 124 LGERA 147.*

The word compatible is accepted to mean 'capable of existing together in harmony'. It follows, in my opinion that c18(1)(a) is to be approached by asking whether or not the use of part of the subject land for a general store will conflict with or be incompatible with the land being otherwise used primarily for recreational purposes. Put another way, will the proposed use of general store prevent the land being mainly or principally used for recreational purposes? In my opinion, it will not do so for the following reasons.

First, the primary objective must refer to all land within the Tweed Local Government area which is zoned 6(b) and not just the subject site. So understood, it is highly unlikely that a permissible non-recreational purpose on part of the subject land could be inconsistent with the primary objective. Second, even if limited to the subject land, as previously noted, the proposed supermarket will occupy only part of the ground floor of the three storey club and a minor proportion of the floor space of the Club (1,965 m² out of 16,822 m² [11.68 %]). The carparking needs of the supermarket will occupy a similar percentage of the available formal parking (69 spaces out of 582 [12%]). Numerically therefore the Club, and the land upon which it is located, will continue to be used primarily for recreational purposes because the existing uses of the Club will continue upon 90% of its area and those uses are properly described as recreational purposes. I refer to (and agree with) the comments of Mr Byrnes (Think Planners Pty Limited) addressed to the Council in a letter of 22 January 2013:

It is apparent from a review of the floor space and car parking demand that the General Store comprises a minor component of the site's use, which is predominantly that of a recreational facility. The Club provides a wide range of recreational activities on site. Members and their guests visit the Club for numerous reasons such as enjoying meal, dining/bistro facilities; socialise in the lounges; participate in recreational bingo, keno or gaming; meet with people at the bar; attend the gymnasium; allow their children to enjoy the recreation facilities; and play indoor sports at the futsal courts. The broadening of the site's uses to include a general store does not diminish the primary purpose and predominant business of Seagulls Club being that of a recreational facility. The general store forms a complementary activity on site.

Finally, the subject land has a total area of almost 5 ha (49,400 m²). The use of 2,000m² for a general store and 12% of the formal parking is, on any reasonable view, a minor use of the land and as such will in no way preclude it from being used primarily for recreational purposes. Accordingly the Council should be able to readily be satisfied that the proposed development is consistent with the primary objective of the 6(b) zone. There is no conflict. Indeed, it will be an harmonious relationship where the primary use will remain as one for recreational purposes thereby satisfying the requirements of cl8(1)(a).

With respect Council staff do not concur with the legal advice as outlined above.

The nature, scale and relationship between the existing Seagulls Club operations and the proposed supermarket is not accurately reflected in the above advice.

The existing Seagulls Club does not utilise the entire available gross floor area and accordingly based on current operations the proposed shopping centre will actually reflect 26% of the site's existing businesses not 12% as detailed above. This is based on the applicant's traffic report which provides a breakdown of usable floor area as follows:

- Lounge Area 2222m²
- Gaming Area 1572m²
- Futsal 1174m²
- Gym 1045m²
- Children Play Centre (Tabatinga) 490m²
- Proposed Supermarket 1965m²

This total's 7479m² of current utilised gross floor area. The proposed supermarket will utilise 1965m² which represents 26% of the total gross floor area.

In regards to the parking allocation the proposed supermarket will actually reflect 24% of the site's car parking demand not 12% as detailed by the above legal advice. This is based on the applicant's traffic report which provides a breakdown of parking demand as follows:

- Club = 140 car spaces
- Gym = 19 car spaces
- Futsal = 38 car spaces
- IGA store = 69 car spaces
- Children's adventure = 17 spaces

Total Parking = 283 parking spaces. The proposed supermarket will generate 24% of the total parking demand.

Once the scale of the proposed supermarket is established (26% of the current utilised floor area) Council needs to consider the relationship between the existing Seagulls Club and the proposed supermarket.

It is acknowledged that the Club may grow back into its total gross floor area however it must also be acknowledged that the Club due to unforeseen circumstances may have to cease operating.

The supermarket will be its own separate commercial entity. Customers would not need to be a member of the club to utilise the facility and customers would not need to enter the club to get to the supermarket. If the Seagulls Club happened to cease operations the proposed supermarket if approved could continue operating despite the club ceasing to operate.

Accordingly the applicant's argument that the proposed development satisfies the primary objective of the zone is not concurred with. If the proposed supermarket was in some way ancillary to the club then the recreational zone objective could be better satisfied however the application is very clear that the proposed supermarket is a separate use not an ancillary use.

Therefore the supermarket itself needs to be assessed against Clause 8(1)(a) of the TLEP 2000 and the corresponding zone objectives. When this exercise is undertaken the proposed development cannot be justified in this zone.

The proposed application is inconsistent with the orderly development of land as required by the Environmental Planning and Assessment Act, and the strategic planning instruments applicable to the site which inform the TLEP 2000 and its zoning hierarchy.

For these reasons the proposed development is not considered to be consistent with the aims of the TLEP 2000.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the TLEP requires consideration of the four principals of ecologically sustainable development. The proposed development seeks alterations and additions to an existing building. The additional footprint is limited in size and occurs in a highly modified urban area. The principals of ecologically sustainable development have not been comprised by this application.

Clause 8 - Consent Considerations

Clause 8 of the TLEP 2000 sets out the consent considerations when determining a development application.

- 8(1) 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 those other aims and objectives of this plan that are relevant to the development, and*
 - (c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

To address Clause 8(1) (a) the primary objectives of the 6(b) zone states:

Primary objective

“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”

The proposed supermarket comprises a floor area of 1965m². Whether the facility is legally defined as a general store, a shop or a commercial premises it

does not change the nature of the proposed use. The nature of the use is a supermarket and this use needs to be assessed against the primary objective for the 6(b) Open Space Recreation Zone.

According to the applicants traffic report the building's existing and proposed land uses area broken down as follows:

- Lounge Area 2222m²;
- Gaming Area 1572m²;
- Futsal Area 1174m²;
- Gym 1045m²;
- Children Facility – 60 children 490m² (Tabatinga Play Centre);
- Existing General Store – 68m² (kiosks throughout the club); and
- Proposed IGA – 1965m²

Please note that there is additional floor area unaccounted for in these figures such as back of house areas and currently unutilised floor area. The club hopes to grow back into the total floor area and at some stage in the future may expand.

The lounge and gaming areas are obviously directly related to the registered clubs use (recreational purposes).

The Futsal and Gym areas are also recreational activities by nature.

The children's facility is a separate commercial business that could be considered ancillary to the other recreational facilities on the site.

The existing kiosks throughout the club are minor in nature and could also be considered ancillary in nature.

Based on the above figures the proposed supermarket development at 1965m² represents approximately 26% of the buildings current land uses. The proposed supermarket would be a standalone retail business with no direct correlation to the existing recreational purposes on site. It is a large retail use that the applicant's say will increase revenue to enable the club to continue operating.

Whilst the registered club will continue to operate the proposed supermarket in itself is not deemed ancillary to the club but rather it is a standalone retail use which must be assessed against the primary objective of the zone.

The proposed IGA is not considered to satisfy Clause 8(1) of the TLEP 2000 as Council staff are of the view that the primary objective of the 6(b) zone has not been met as the supermarket use is retail in nature and not recreational.

To address Clause 8(1)(b) this report considers those other aims and objectives of this plan that are relevant to the development.

To address Clause 8(1)(c) this report in its entirety represents a cumulative impact report. This planning report weighs up the development as a whole and makes a recommendation based on consideration of the implications on or from the perspective of site suitability, permissibility, social impacts, retail hierarchy, traffic, amenity, character, economic ramifications, and the general public interest. However specifically in regard to cumulative impact Council has considered various cases before Justice Pain and Justice Pearson (which specifically involved Tweed Shire Council) in which it was provided that cumulative impact incorporates the consideration of what effect this development could have on existing developments and the approval of further similar

developments and how these developments might impact on a locality, community and catchment.

The potential impacts as a result of the development need to be considered assuming a duplication of a similar development on other adjoining properties to consider the overall cumulative impact.

The Tweed Local Government area has many registered clubs operating on land zoned 6(b) Recreation. Were all of these registered clubs to be developed for supermarket purposes in the manner proposed by this application there would be an unacceptable impact on the retail hierarchy of planning in the Tweed. Such an action would have major economic impacts on the existing businesses operating in commercial zones and potentially render those existing businesses unviable and undermine the objectives of the zone and the LEP.

Furthermore, the Tweed Heads West area is predominantly residential with existing business zones located along the major roads. This establishes a character of development with local shops easily identifiable for the travelling public. Were the subject application to be approved it would be contrary to the existing established pattern of development in the area.

Therefore it is concluded that the development would have an unacceptable cumulative impact on the community, locality and catchment and accordingly cumulative impact forms one of the recommended reasons for refusal.

Clause 11 - Zone Objectives

The subject site is zoned 6(b) Recreation and has the following zone objectives which must be considered:

Primary objective:

“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”

Secondary objective:

“to allow for other development that is compatible with the primary function of the zone.”

As discussed above Clause 8(1)(a) mandates that that consent may only be granted if the development is consistent with the primary objective of the zone within which it is located.

The proposed supermarket in itself cannot be considered to be recreational in any way. It is a retail use that must be considered as a standalone development. Therefore the primary objective of the zone has not been satisfied. This forms one of the reasons for the recommendation for refusal of this application.

The secondary objective of the zone offers some additional flexibility for the 6(b) Recreational zone. To understand the level of flexibility that is afforded to the 6(b) Recreational zone you need to review the permissible uses in the zone table of the Tweed LEP 2000 which are as follows:

Item 1 allowed without consent:

- beach maintenance

Item 2 allowed only with consent:

- | | |
|----------------------|-----------------------------|
| • agriculture | • bed and breakfast |
| • boating facilities | • bushfire hazard reduction |
| • camping grounds | • car parks |

- child care centres
- community buildings
- dwelling houses if for caretakers
- emergency service facilities
- forestry
- hotels
- markets
- outdoor eating areas
- public buildings
- recreation areas
- recreation facilities
- roads
- tourist facilities
- utility installations (other than gas holders or generating works)
- clubs
- cruise craft docks
- earthworks
- environmental facilities
- general stores
- marinas
- motels
- places of assembly
- public utility undertakings
- recreation establishments
- refreshment rooms
- tourist accommodation
- urban stormwater water quality management
- works for drainage & landfill

Item 3 allowed only with consent & must satisfy the provisions of clause 8 (2):

- caravan parks
- helipads
- retail plant nurseries
- educational establishments
- heliports
- tourist resorts

Item 4 prohibited:

- any buildings, works, places or land uses not included in Item 1, 2 or 3

This list demonstrates the additional permissible uses that can be considered subject to compliance with all other aims, objectives and clauses of the LEP.

As detailed in the above report a general stores is listed as “allowed only with consent” in the subject zone. However, the interpretation of this definition needs to be reviewed having regard to other possible definitions within the LEP.

Council staff are of the opinion that the proposed development is better defined as a shop in accordance with the TLEP 2000 and accordingly a shop is prohibited by Item 4 above. However, whether the proposed supermarket is legally defined as a general store or a shop the development has been assessed against all relevant considerations. Having regard to all these considerations the proposed development is considered inappropriate for the subject site and therefore the legal definition of the development has not been the only contributing factor in the recommendation for refusal.

Clause 15 - Essential Services

Clause 15 of the TLEP requires Council to ensure adequacy of services prior to determining any application. All essential services are currently provided to the subject site.

Clause 16 - Height of Building

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. The subject land has a maximum height limitation of 3 storeys.

The existing club is a large building with multiple mezzanine levels. The proposed development represents a change of use within the existing building. The change of uses will incorporate additional floor area at ground level only and thus satisfy the statutory three storey height limit.

Clause 17 - Social Impact Assessment

The TLEP specifies that:

“Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.”

Tweed DCP Section A13 – Socio-Economic Impact Assessment specifies that a Socio Economic Impact Assessment is required where a place of employment employees more than 25 people, where a club exceeds a gross floor area of 1000m², or where a retail development exceeds a gross floor area of 1500m². Given the proposed supermarket has a gross floor area of 1965m² the proposed development requires a Socio Economic Impact Assessment.

Below is a duplication of the applicant’s summary of their findings in regards to socio economic impact:

"Summary

At one point Seagulls was a heavily patronised club (driven by poker machine patrons from Queensland) with a national rugby league side. The club has contracted significantly since that time due to changes in legislation in Queensland reducing visitor numbers and the loss of the football team. The land abutting the club to the north was once the playing fields and stadium but has subsequently been redeveloped for residential.

The site is now occupied by a modest club operation with entertainment, gym and indoor sporting facilities. Redevelopment of the club to include a 1,965 Sq M supermarket (SupalGA) is required for the club to remain viable.

Catchment

The proposed SupalGA on the Seagulls site will be the first full line supermarket (albeit a small footprint full line supermarket) on the western side of the Pacific Motorway in this part of Tweed Shire. As such it will trade to a wide area that utilises the Kennedy Drive, Gollan Drive, Scenic Drive corridor. The Primary Trade Area is defined as those parts of Tweed Heads West to the west of the Kennedy Drive Bridge, Bilambil Heights and surrounding areas. Tweed Heads West between the motorway and the Kennedy Drive Bridge will form the secondary trade area (STA). The subject site will be the closest and most convenient supermarket for these residents. The new supermarket will enable local residents to more easily conduct regular and bulk weekly supermarket shopping.

Demand

The population of the total catchment at capacity is projected to be over 17,400 people and these residents will generate in the order of \$78 million of supermarket related expenditure. This expenditure will be distributed amongst full line supermarkets, convenience supermarkets, convenience (general) stores and a range of specialty shops that carry the same product lines as supermarkets (e.g. fruit and veg, butcher, deli).

The future 17,400 residents of the trade areas will generate demand for over 10,000 Sq M of supermarket (and related) floorspace. This is sufficient to support two full line supermarkets in the order of 3,000 Sq M each and 4,000 Sq M of smaller supermarkets and specialty retailers distributed through a number of centres.

The implication of the population capacity assessment of the Bilambil Heights urban expansion area is that the primary and secondary trade area as currently defined will have the future capacity to support two full line supermarkets: the first to be located at the Seagulls site and the other to be located on a yet to be identified site central to the future Bilambil Heights urban expansion area. It is noted that at 1,965 Sq M the subject site can be considered a small format full line supermarket.

Tweed Retail Strategy

The intent of the Retail Strategy principles is to develop supermarket anchored shopping centres throughout the Shire to service the needs of the population while directing development of higher order and specialised retail to the district centres of Tweed Heads and Tweed Heads South. Where possible, these supermarkets should be integrated with existing centres and towns. The development of a SupalGA at the Seagulls Club fulfils

these requirements (without impact the role and function of the district centres at Tweed Heads and Tweed Heads South) and provides for the needs of the local community.

Impact

Any impacts on existing centres in Tweed Shire are expected to be alleviated over time as the population of the total catchment (Bilambil Heights urban expansion area) continues to grow. As such, the proposed supermarket development on the subject site is not expected to affect the viability of any current centres with all centres maintaining the opportunity to operate at viable levels.

The proposed supermarket also has the potential to impact on the trading performance of local retail centres. While most local retail centres currently serving the trade area will likely see a reduction in trade in the vicinity of 4% to 7%, the impact on the nearby Panorama Plaza could potentially be greater. Individual stores located in this centre will need to rely on convenience (exposure, parking and accessibility), a response to new competition (price, product range etc) and marketable points of difference in order to avoid a significant impact on turnover.

Conclusion

The establishment of a small format full line supermarket at the Seagulls Club is considered to be a good fit with the needs of the community. The development (the supermarket in conjunction with the revitalised club) will offer a range of economic and social benefits to the community. A supermarket will also benefit the community through a greater level of convenience and an increase in choice, local jobs, competition (resulting in lower prices) and product offer.

The proposed supermarket will fulfil an established need of the local community. Local residents are currently required to travel four or five km to the larger centres at Tweed Heads and South Tweed Heads in order to undertake what is it regular shopping activity. The redevelopment of the club will also provide 20 equivalent full-time (EFT) construction jobs with the ongoing workforce being approximately 80 EFTs. The operational workforce will consist of a large number of part-time and casual staff which will provide employment opportunities for people entering or re-entering the workforce.

The redevelopment of the Seagulls Club will also allow this facility to remain viable and continue to service the community and entertainment needs of local and regional residents.

The above summary and the full socio economic assessment are not considered to represent all issues that may arise from the proposed development. Council staff have the following issues with the report:

- The terminology throughout the report indicates a distribution of expenditure through full line supermarkets, convenience supermarkets, convenience (general) stores and a range of speciality shops. The report then acknowledges that the land use is a proposed small format full line supermarket (SupalGA). The report does not assess the proposed use as a convenience (general) store.
- The report acknowledges that “*planning for a number of supermarket anchored centres to service the designated growth areas will help ensure the local retail network will successfully cater for residents to retain needs in the short, medium and long term*”. The current planning (zoning) regime has already undertaken this exercise and it ensures all residential areas have sufficient land zoned for commercial use to enable residents to have the convenience of localised shopping. The proposed development will undermine this planning process by authorising a retail development within a recreational zone.
- The report states that the retail catchment area will incorporate Bilambil Heights expansion area. The Bilambil Heights expansion area will be planned to accommodate its own local commercial areas and will not need to travel to the subject site for local shopping needs.

- The report indicates that the nearby Panorama Plaza caters primarily to passing traffic and impulse shopping and offers a different experience to the larger full line supermarkets and thus is complimentary to all centres currently located in the local area. These comments are contrary to the objections which have been received that clearly state that if the development is approved it would jeopardise the viability of Panorama Plaza. Furthermore the report contradicts the above statement by stating that *“the proposed supermarket also has the potential to impact on the trading performance of local retail centres. While most local retail centres currently serving the trade area will likely see a reduction in trade in the vicinity of 4% to 7%, the impact on the nearby Panorama Plaza could potentially be greater. Individual stores located in this centre will need to rely on convenience (exposure, parking and accessibility), a response to new competition (price, product range etc) and marketable points of difference in order to avoid a significant impact on turnover.”* The impact of the proposed development on the local commercially zoned sites is a major concern to Council.
- The report reiterates the applicants position that the proposed development will allow the Seagulls Club to remain viable. The primary objective of the 6(b) Recreational Zone is *“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes”*. A retail use at the subject site is not consistent with the primary objective of the zone and should not be used to justify the viability of the registered club.
- The report indicates that the proposed development complies with Council's Retail Strategy (7 Point Strategy) which are:
 1. *The character of existing towns and villages and the retail facilities that have to be protected.*
 2. *Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.*
 3. *Reinforce Tweed Heads South as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased range and level of shopping.*
 4. *Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.*
 5. *Limit the scale of new retail centres in the coastal region to a level which caters for the majority of localised daily needs. This concept to reflect the need to reduce fuel consumption and to support sustainability within each centre.*
 6. *Council does not support the establishment of another district retail shopping centre.*
 7. *The retail concepts in these recommendations form the basis of locality plans in the Shire and any retail development applications which are submitted in the interim of these locality plans being prepared and approved by Council be assessed so that the above retail strategies are supported and not compromised.*

This statement is not concurred with as:

- The proposed development will change the character of the local area as presently commercially zoned areas are located on major roads (not

residential streets as proposed by this application) and furthermore the proposed development will have a greater than 7% reduction on trade for local centres;

- The report indicates that existing centres do not have the capacity to expand to cater for a full line supermarket. These comments are not concurred with. The existing commercially zoned sites are underutilised and could be re-developed to expand operations; and
- The development does not integrate with existing centres or towns and actually impacts and jeopardises the existing commercial areas.
- The report states that the development will not have any unsustainable impacts on existing centres yet then goes on to state that *“The store at Panorama Plaza that is most directly comparable/competitive with the proposed supermarket is the existing convenience store. The store will need to rely on convenience (exposure, parking and accessibility) and marketable points of difference (as a Lotto agent) in order to avoid a significant impact on turnover.”* This statement indicates that the proposed development could have an unsustainable impact on an existing centre.
- The report appears to identify that the local population could accommodate additional retail opportunities. However it fails to demonstrate that the subject site is the most suitable and appropriate for this use given the sites zoning.
- The report does not discuss what if any impact there may be from having a supermarket located within a registered club that incorporates gaming machines.

Council communicated the concerns in regards to this application with the applicant and accordingly the applicant has provided an addendum letter addressing socio economic impacts. Both of these documents are attached to this report to enable the elected Councillors to read them in full in conjunction with this report.

Upon review of the addendum letter Council maintains the view that the proposed development is not suited to the subject site given the sites recreational zoning and the potential impact on adjoining commercial zones.

For the above reasons the proposed development is considered unacceptable having regard to Clause 17 of the TLEP 2000 as the application has not adequately demonstrated that the development won't have an unacceptable social or economic impact on the locality.

Clause 22 – Development near designated roads

This clause applies to land that has frontage to a Designated Road. The subject site has frontage to Scenic Drive but vehicular access is via a residential area off Gollan Drive. The proposed development has been referred to the Development Traffic Advisory Group in accordance with Schedule 3 of the SEPP (Infrastructure) 2007 and accordingly the applicant was requested to provide additional information to satisfy Council's Traffic Engineer of the sites capacity to cater for the proposed development. Based on the additional information submitted Council has no objection to the proposal from a traffic or parking perspective. The development as proposed is capable of satisfying Clause 22 subject to a statutory assessment of any signage that may be visible from Scenic Drive.

Clause 25 – Development in 7(a) Environmental Protection and on adjacent land

The subject site adjoins land zoned 7(a) off Birds Bay Drive, however the proposed development will have no impact on this environmental zone. Onsite drainage can be suitably accommodated if the application were to be approved.

Clause 31 – Development adjoining waterbodies

The subject site adjoins Terranora Broadwater, however the proposed development will have no impact on this waterway. Onsite drainage can be suitably accommodated if the application were to be approved.

Clause 34 Flooding

The site is partially mapped as being affected by flooding. The proposed change of use within an existing building is suitable for the subject site subject to normal conditions of consent ensuring commercial operations have adequate storage for times during flood events.

Clause 35 - Acid Sulfate Soils

The subject site is located on land identified as Class 2 on the Acid Sulfate Soil Planning Maps. The applicants Statement of Environmental Effects (Pg 29) states:

"the proposal does not involve any significant works below the ground surface or works that are likely to lower the water table. It is noted that the construction method will comprise screw piles for support and only minor trenching under the existing building for the purpose of laying hydraulic services. Therefore the detailed provisions of this clause are not relevant to the proposal. An acid sulphate soils management plan for minor works can be found at Attachment 2 of this SEE".

The level of site disturbance is considered to be very minor. Further the degree of historical disturbance and oxidation of existing site materials is also relevant. Council has no objection to the application of the Acid Sulfate Soil Management Plan for minor works and if Council wanted to approve this application appropriate conditions could be drafted.

Clause 39A Bushfire Protection

The subject site is partially mapped within a bushfire buffer. The proposed change of use would be considered an acceptable land use despite this constraint subject to suitable conditions of consent.

Clause 47 – Advertising Signs

There is no signage proposed as part of this development application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 46 & 47 Objectives and Principles for Commercial and Industrial Development

This Clause states:

46 Objectives

The objective of this plan in relation to commercial and industrial development is to encourage an adequate supply of zoned land located where there are planned growth areas foreshadowed and where essential services can be provided with minimal environmental damage.

47 Plan preparation and development control—principles for commercial and industrial development

- (1) *Before preparing a draft local environmental plan relating to commercial or industrial development, the council should take into consideration the following principles:*
- (a) *strong multi-functional town centres should be maintained to focus the drawing power of individual businesses and maintain the integrity of the main business area by only zoning land for further commercial or retail development where that development adjoins or is adjacent to the existing town centre,*
 - (b) *provisions contained in local environmental plans relating to retail, commercial, business and industrial zones should be flexible, especially to enable the development of light service industry near the central business district,*
 - (c) *there should be an adequate supply of zoned industrial land located where it is physically capable of development for industrial purposes, is not environmentally fragile and can be serviced at a reasonable cost.*
 - (d) *(Repealed)*
- (2) *Before granting consent for industrial development, the council must take into consideration the principle that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas."*

The above clause reinforces the importance of land zoning in determining appropriate sites for commercial and industrial development.

The subject site is not zoned commercial but is relying on the proposed supermarket being defined as a "general store" to be capable of consideration under the 6(b) Recreation zoning.

The proposed development is considered contrary to the objectives of this SEPP in that the site as a Recreational site is not suitable for the proposed retail development.

SEPP No 71 – Coastal Protection

The subject site is located within the coastal zone and is subject to the normal matters for consideration under Clause 8 of this Policy. The proposed development will primarily be located within the footprint of an existing development. The application satisfies the provisions of Clause 8.

SEPP (Infrastructure) 2007

Section 104 of SEPP (Infrastructure) 2007 requires Council to consider all traffic generating developments and consult with the local Development Traffic Advisory Group to determine the accessibility of the site concerned, the efficiency of movement and any potential traffic safety, road congestion or parking implications of the development.

A traffic generating development is considered an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.

In this regard Schedule 3 of the SEPP lists different land uses and specifies a size or capacity deemed to be traffic generating. The proposed development was referred to Council's Development Traffic Advisory Group as any shop over 500m² requires consideration by this Group.

The Group requested additional information in regards to the adequacy of the storage bay on Scenic Drive for vehicles turning right into Gollan Drive.

This additional information was received by the applicant and endorsed by Council's Traffic Engineer as being suitable for the proposed development. Accordingly Council has no objection to the proposed development from a traffic or parking perspective.

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

The Draft LEP 2012 as exhibited proposes to re-zone the subject site from 6(b) Recreation to RE2 Private Recreation.

The RE2 zone has the following objectives and permissible uses

Zone RE2 Private Recreation

1 Objectives of zone

To enable land to be used for private open space or recreational purposes.

To provide a range of recreational settings and activities and compatible land uses.

To protect and enhance the natural environment for recreational purposes.

2 Permitted without consent

Environmental facilities; Environmental protection works

3 Permitted with consent

Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Charter and tourism boating facilities; Child care centres; Community facilities; Eco-tourist facilities; Emergency services facility; Entertainment facilities; Flood mitigation works; Food and drink premises; Forestry; Function centres; Helipad; Heliport; Industrial training facilities; Information and education facilities; Jetties; Kiosks; Marinas; Markets; Mooring; Mooring pens; Places of public worship; Public administration building; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Respite day care centres; Roads; Sewerage systems; Signage; Tourist and Visitor accommodation; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities

4 Prohibited

Any development not specified in item 2 or 3

Based on the new definitions within the Draft LEP 2012 the proposed development would be best defined as a commercial premises, which has a more specific definition of retail premises which has a more specific definition of a shop which has a more specific definition of a neighbourhood shop (limited to 300m²).

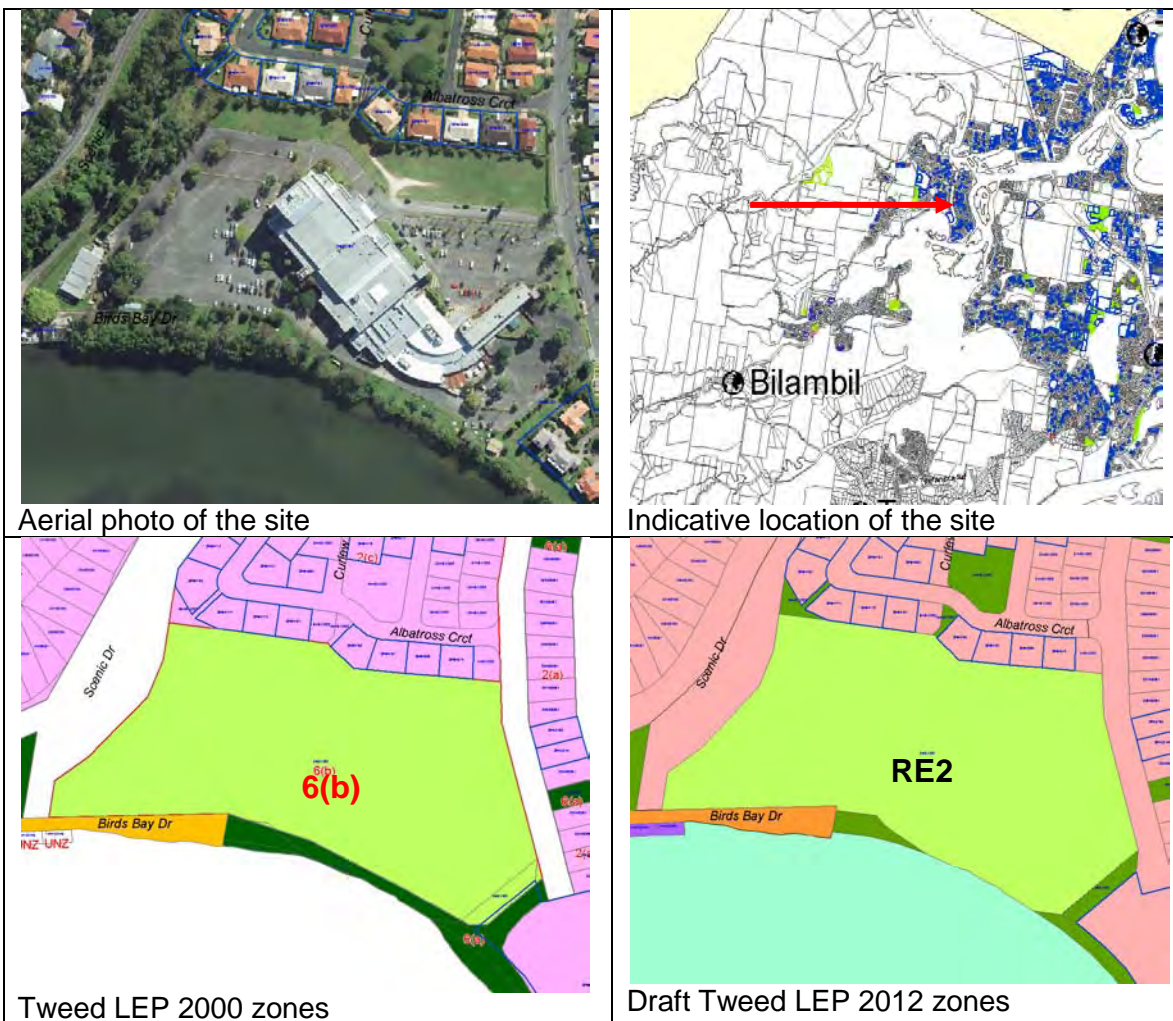
All of which are **prohibited** in the RE2 Private Recreation zone.

The applicant for this Development Application has objected to the Draft Tweed LEP 2012 and has requested that Council consider an inclusion to Schedule 1 – Additional Permitted Uses of the Draft LEP 2012 identifying development for the purposes of a “shop” as permitted with consent.

A copy of the applicant's submission is attached to this report.

This request has not been supported by Council staff with the following justification:

Site: Lot 2 DP 881169, 54-68 Gollan Drive, Tweed Heads West – Seagulls Club



Applicant: Think Planners on behalf of Seagulls Club	
Summary of the request:	Request to amend the draft TLEP 2012 to permit development of a shop on the site.
Details of the proposal:	The submission seeks amendments to the draft LEP to facilitate development of a shop (IGA supermarket) through Clause 2.5 Additional Permitted Uses for Particular Land and overlay map Additional Permitted Uses Map.
Analysis:	
Site description	<p>The site is located at Terranora Broadwater and comprises club with associated car park. The overall area of the lot is 4.94 ha.</p> <p>The site is located within low density residential suburb of Tweed Heads West.</p>
Consistency of proposal with State and Council strategic planning initiatives	<p>When analysing consistency of the proposal with relevant local, regional and state planning initiatives, consideration needs to be given to the methodology of converting the current LEP 2000 into the Standard Instrument LEP:</p> <ul style="list-style-type: none"> The subject site is currently zoned 6(b) Recreation zone. This zone permits general stores with development consent if consistent with the primary objective of this zone, which is to <i>designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.</i>

	<ul style="list-style-type: none"> The Standard Instrument LEP provides the RE2 Private Recreation zone as an equivalent to the 6(b) zone of the current LEP. Under the new zone, the land use table has been tailored to achieve consistency with the objectives of the zone. In result, the only types of 'retail' land uses permissible with consent under the RE2 zone are kiosks, markets and food & drink premises. The standard zones provided under the Standard Instrument Template have limited flexibility in terms of integrating recreational and commercial uses under a recreational zone. A more suitable approach would be to look at options to rezone the entire site to a commercial zone. This however should be carried out via a planning proposal process, separate to the Standards Instrument Template implementation process. <ol style="list-style-type: none"> <u>Preliminary</u> analysis of the consistency of the proposal with Section 117 Directions. <ul style="list-style-type: none"> The proposal is generally consistent with Directions. <u>Preliminary</u> analysis of the consistency of the proposal with the Far North Coast Regional Strategy. <ul style="list-style-type: none"> The proposal is generally inconsistent with the Strategy. <u>Preliminary</u> analysis of the consistency of the proposal with State Environmental Planning Policies (SEPPs). <ul style="list-style-type: none"> The proposal is generally consistent with the SEPPs.
Land use and land use pattern in the surrounding area:	The surrounding area combines low and medium density residential allotments located along Terranora Broadwater.
Proximity to nearest centre:	The site is located approximately 2.5 km from Tweed Heads South business and commercial precinct.
Access:	Access is available from Gollan Drive.
Planning Consideration:	Given recent advice received from Department of Planning & Infrastructure that use of Clause 2.5 should be limited to exceptional circumstances only, and inconsistency of a full line supermarket development with objectives of the RE2 zone, the proposal is not supported.
Recommendation:	The proposal is not supported. Amendments to the LEP in order to facilitate the development of a supermarket should be subject to a separate planning proposal process.

Draft TLEP 2012 is being reported to Council for consideration of the submissions at the Council Meeting of 16 May 2013. This Draft LEP 2012 is considered to be imminent and accordingly should be given significant weight.

It should be noted that Draft LEP 2012 has a savings provision relating to development applications which state:

"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had been exhibited but had not commenced."

Based on this Clause the subject Development Application must consider Draft LEP 2012 only ever as a Draft as the subject Development Application was lodged prior to Draft LEP 2012 being adopted. However, as a Draft the document can still be given considerable weight in terms of establishing the future desired character of an area.

It is clear that the objectives of the RE2 zone reinforce the site as a recreational area, not a retail or commercial area, as the only types of 'retail' land uses permissible with consent under the RE2 zone are kiosks, markets and food and drink premises.

Commercial premises, retail premises, shops and even neighbourhood shops (limited to 300m²) are all prohibited.

Therefore, the lack of ability for the subject development application to even be considered under Draft LEP 2012 (as the use is prohibited) forms another reason why this application has been recommended for refusal.

Given the site's difficulty in maintaining viability as a registered club the applicants may be best pursuing a re-zoning process to establish the best utilisation of the site.

For the reasons outlined in this report and having regard to Draft LEP 2012 the proposed development for a supermarket at the subject location is not supported.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The subject site has a long and detailed history in regards to changes to the internal configuration of the existing building. In more recent times there have been a series of Complying Development Certificates issued that authorised the internal reshuffling of spaces and uses.

The last Development Application that reviewed the onsite parking requirements in regards to the existing building was DA05/1452 which approved substantial changes to the internal configuration of the building. Below is an extract from the car parking assessment for DA05/1452 to understand the history of parking on the site:

"Below is an extract from the applicant's submission detailing the car-parking breakdown:

TABLE 3 – DCP NO.2 CAR PARKING REQUIREMENTS DA05/1432						
CLUB ELEMENT	PARKING UNIT	DCP NO.2 RATE		DCP NO.2 REQUIREMENT		Total (Incl reduction on ESD principle)
		CUSTOMER	STAFF	CUSTOMER	STAFF	
Lounge Area	1,063m ²	1 space /7m ²	-	151.86	-	121.49
Indoor Dining Area	1,241m ²	1 space /7m ²	-	177.29	-	141.83
Outdoor Dining Area	932m ²	1 space /7m ²	-	133.14	-	106.51
Gaming Area	1,097m ²	1 space /7m ²	-	156.71	-	125.37
Auditorium Area	1,299m ²	1 space /15m ²	-	86.60	-	69.28
Function Area	576m ²	1 space /7m ²	-	82.29	-	65.83

Shops	424m ²	3.5 spaces /100m ²	-	14.84	-	11.87
Gymnasium	850m ²	6 space /100m ²	-	51.00	-	40.80
Staff	130 (max)	-	0.3 spaces / staff	-	39	31.20
TOTALS				853.73	39	714.18

The current club relies upon 582 formed car spaces and a grassed overflow parking area, which can accommodate approximately 232 spaces. The applicant's submission indicates that this club after refurbishment would require a total of 714 spaces.

On this basis it is likely that at least 132 spaces within the grassed areas would need to be constructed with weather proof seal and formal spaces marked out.

The applicant originally provided that:

"It is certainly the experience of the senior management of the Club, that the existing bitumen car parking spaces easily account for the normal day to day operation of the Club. We have been informed that it is only on a limited number of occasions per year such as a high profile concert that the grass "over flow" car parking area is utilised. This observation is confirmed in the letter attached.

Considering the benefits that the "green space" adjacent to the northern boundary provides to the area in terms of visual amenity, reduced surface water runoff and improvements to stormwater quality, it is considered unnecessary to alter the existing car parking arrangements.

The existing car parking arrangements also comply with Council's requirements in terms of driveway access, gradients, circulation aisle and end aisle extension dimensions.

However, once car parking was raised with the applicant as an issue the following response was received:

"The possibility that Seagulls will have to extend the existing sealed car park, as a condition of consent has been discussed with our client.

Our client agrees in principle to addressing the car park issue despite the recommendations set out in the Statement of Environmental Effects submission December 2005 on the following proviso:

We refer to the attached marked up plan 11176 DA 1.00A and wish to express the following:

It is acknowledged that Seagulls has 582 formed spaces with 232 as "overflow parking" on grassed area - a total of 814 car spaces.

With the current number of 582 formed car spaces, the Club would need to seal an extra 133 spaces. The plan indicates a proposed 135 car spaces that is proposed to be sealed at the completion of the building program.

The required number of 715 formed car spaces would be exceeded by 2 – 717 total. The Club would therefore maintain a grassed area as indicated"

It is therefore recommended that the following conditions of consent be imposed:

- 1. Prior to issue of a Construction Certificate for Stage 3 the applicant is to submit to Tweed Shire Council's General Manager or his delegate a car parking layout plan that details a weather proof seal and formal spaces marked out within the existing overflow grass parking area. This sealed area is to comprise 135 spaces to achieve total on site parking requirements as specified within DCP No. 2.*
- 2. Prior to use of Stage 3 part of the overflow grassed parking area is to be constructed in accordance with the approved Plan required by this consent."*

The above conditions were adopted as part of DA05/1432.

In summary the last development consent issued for the site required 715 onsite parking spaces for the registered club. In addition the site had approval to operate markets each Sunday morning on the bitumen parking area however this was deemed to be at a time when club patronage was low and accordingly consent was granted for this use. These markets no longer operate.

Since the approval of DA05/1452 the club has been scaling back operations to try to ensure lower operating costs. The applicants hope to grow back into the club and accordingly if the club did return to full scale operation the original level of parking may still be necessary.

In regards to the subject application for the IGA (DA12/0527) the applicant has submitted a new traffic report that only analyses the floor space currently being used by the club and how the proposed IGA can be accommodated by the existing parking on site (it does not review the entire gross floor area as many parts of the club are currently not being utilised, it appears that approximately 8200m² is unaccounted for in these figures as the total gross floor area of the building is 16508m²).

The applicant's current traffic report can be summarised as follows:

TABLE 5: FUTURE PARKING REQUIREMENT AS PER DCP

Club Element	Parking Unit	Customer Rate	Staff Rate	Customer	Staff	Total Parking
Lounge Area	2222m ²	1/7m ²	-	317	-	317
Gaming Area	1572m ²	1/ 7m ²	-	224	-	224
Futsal	1174m ²	6/100m ²	-	70	-	70
Gym	1045m ²	6/100m ²	-	63	-	63
Children facility	60 children	1/ 6 children	-	10	-	10
Existing General Store	68	3.5/100m ²	-	2	-	2
IGA General Store	1,965	3.5/100m ²	-	69	-	69
Total Staff	90	-	0.3 per staff	-	27	27
TOTALS				755	27	782

The applicant then applies a 20% ecologically sustainable development discount as per the DCP and reduces this total of 782 down to 626 on site parking spaces.

The applicant has then undertaken a parking demand assessment drawing upon actual patronage of the club and the Roads and Maritime Services "Guide to Traffic Generating Developments" and estimates that the club as proposed will only generate the need for the following parking demands:

- Club=140 car spaces
- Gym= 19 car spaces
- Futsal= 38 car spaces
- IGA store= 69 car spaces
- Children's adventure= 17 spaces

TOTAL Parking = 283 parking spaces

This is a significant reduction in the required car parking compared to the Tweed DCP Section A2 figures above (however this is partly due to the traffic report only assessing current uses not total gross floor area and partially due to the revised methodology. Despite these anomalies Council's Traffic and Transport Engineer has stated that:

"The submitted traffic analysis accompanying the application is thorough and addresses parking and traffic generation.

Parking on site is considered adequate for the proposed development.

The additional traffic implications on the intersection of Gollan Dr and Scenic Dr has been assessed and indicates that a level of service A will be available and queue lengths turning right into Gollan Dr will not impact on through traffic.

The modelling indicates that actual traffic volumes on Kennedy Drive at Cobaki Bridge will decrease as a result of the development as trips towards Tweed Heads are reduced due to residents from the west (Bilambil) accessing the IGA.

Accordingly, based on the submitted traffic report I have no concerns with the proposed development."

It should be noted that at present there are 582 approved formalised car parking spaces located at the front and rear of the site. In addition the site has access to a further 232 informal parking spaces which could be used in an overflow manner.

The proposed plans show a reconfigured parking arrangement that demonstrates 650 formalised car parking spaces with capacity for a further 164 informal parking spaces which could be used in an overflow manner.

Therefore if Council wanted to approve the subject application there is considered to be sufficient parking on site to cater for the proposed development.

Furthermore the existing road network and servicing provisions are also considered adequate to cater for the proposed development.

A3-Development of Flood Liable Land

As detailed under Clause 34 of the TLEP 2000 in the above report the site is affected by flooding but not to the extent to warrant refusal of this application on flooding grounds. If the application were to be approved appropriate conditions of consent could be recommended to mitigate flooding implications.

A4-Advertising Signs Code

No signage is proposed as part of this application.

A11-Public Notification of Development Proposals

The proposed development was notified to adjoining neighbours and publically exhibited in the Tweed Link. Following the exhibition period Council received 16 letters of objection raising issues with the possible impact on the existing Panorama Plaza commercial development, traffic impacts, the incompatibility with the existing zoning, permissibility, the effect of Draft LEP 2012 and the site suitability given the location of the existing club. These submissions are considered in detail later in this report.

A13-Socio-Economic Impact Assessment

As detailed under Clause 17 of the TLEP 2000 in the above report the proposed development is not considered suitable having regard to the potential social and economic impacts as a result of the proposed development.

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

Clause 92(a) Government Coastal Policy

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this Policy.

Clause 92(b) Applications for demolition

The proposed development could be appropriately conditioned to satisfy the demolition requirements.

Clause 93 Fire Safety Considerations

The proposed development could be appropriately conditioned to satisfy the fire safety requirements.

Clause 94 Buildings to be upgraded

The proposed development could be appropriately conditioned to satisfy the building code of Australia provisions.

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

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this Policy.

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

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this 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

As detailed in the above report the proposed development would have an unacceptable economic impact on the existing commercial zones in the locality. The applicant's own report indicates that there will be at least a 7% reduction in revenue for these businesses with Panorama Plaza experiencing a possibly higher level of impact. It is unreasonable to have such an impact on these businesses when the proposed land use does not comply with the primary zone objective in which the site is located.

(c) Suitability of the site for the development

This report details that from a physical perspective the site is capable of adequately accommodating this business, however from a planning perspective the proposed development should not be approved on the subject site due to the site's recreational zoning.

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

Development Traffic Advisory Group and Roads and Maritime Services

The proposed development was referred to both the Development Traffic Advisory Group and the Roads and Maritime Services in regards to traffic and parking considerations. Upon receipt of additional information the proposed development was deemed to be acceptable on traffic and parking grounds.

Public Notification

The proposed development was publically exhibited between 28 November 2012 and 12 December 2012. Following the exhibition period Council received a total of 16 submissions objecting to the proposed development. The following table summarises these objections:

Objection 1	<i>I like the services I have now and don't see any need for any more. I feel the shops we have now will suffer if this application is approved.</i>
Objection 2	<i>The applicants community needs and benefits analysis is misleading as the community has not received any benefit of income produced but rather we lost iconic Cunningham Oval. An IGA shop on gaming club premises brings with it added negative repercussions. The existing services in the area already offer the same services in a personalised and community driven manner. The store would bring negative social impacts from loitering and vandalism. The application is driven by North Sydney Leagues Club without consultation with the local community. The declining revenue of the club should not result in ad hoc planning.</i>
Objection 3	<i>A general store should not go into the Seagulls Club. It should go in Kennedy Drive. It will affect existing business which are trying to make a living.</i>
Objection 4	<i>The supermarket will duplicate services provided by Panorama Plaza which is 500m from Seagulls Club. The IGA will rely on the custom currently using Panorama Plaza Our businesses have been built over 20 years at considerable cost and the financial loss if the DA is approved will be substantial if the supermarket is established. The proposed supermarket has the financial support of the IGA conglomerate which we do not have. If this supermarket were approved Panorama Plaza would have to reduce staff. If approved business in Panorama Plaza would have to close as at present they operate on a small margin of profit</i>
Objection 5	<i>There are adequate existing services already. The Clubs have double standards as they were afraid of losing jobs when the poker machine laws changed and now they are happy for other businesses to lose staff to suit their needs.</i>
Objection 6	<i>It will impact on local businesses. People with a gambling or drinking problem will be more tempted to just drop into the pub "for a quick one" prior to doing their groceries. This may in turn lead to the grocery money being fed into the poker machines or spent on alcohol instead. Alcohol and gambling are the two biggest family destroyers and are in your face wherever you go. Lets not have it a temptation when doing the groceries too, You will end up with young employees serving the intoxicated patrons of Seagulls. Not an environment I would be allowing my child to be placed in.</i>
Objection 7	<i>The proposal is not viable as IGA can not compete with the major supermarkets on price and shop keepers do not need a dilution of their customer base and I as a local resident will not be using it preferring to shop at Woolworths at Tweed Centro.</i>
Objection 8	<i>The development is next door to Seagulls Shore a gated security complex . The end of Gollan Drive is not suitable for any more traffic coming in to the area as</i>

	<p><i>we already have cars from the club to contend with. The entrance to this end of Gollan Drive from Scenic Drive is unsafe both coming and going and is not big enough to take any more traffic.</i></p> <p><i>It would do so much harm to the Panorama Shopping Centre. It would probably shut them down.</i></p>
Objection 9	<i>See Objection 3 and Objection 4</i>
Objection 10	<p><i>The development would make the Panorama Plaza unviable.</i></p> <p><i>The nearby G&G Seafood closed recently. The nearby Fruit and Veg shop may also be closing. There are too many similar businesses. Panorama Plaza fulfils the needs of the local community.</i></p> <p><i>This application is disappointing. A supermarket off the main road is not the answer. It will not solve the clubs problems and has the potential to reap financial havoc on local traders not to mention damage Seagulls reputation as a great community player.</i></p>
Objection 11	<p><i>If this DA is approved it will financially strain every business in Panorama Plaza.</i></p> <p><i>The zoning is not appropriate.</i></p> <p><i>People with gambling problems would spend their money on poker machines before even going into the supermarket.</i></p> <p><i>Consider locals before interstate club who have no idea about the local community.</i></p>
Objection 12	<p><i>A licensed club with gaming is not the place to have a supermarket.</i></p> <p><i>Panorama Plaza would be ruined if the IGA goes ahead.</i></p> <p><i>The area is not zoned for commercial use.</i></p> <p><i>Seagulls need to look at other avenues to help the community not destroy it.</i></p>
Objection 13	<p><u><i>Permissibility and Appropriateness</i></u></p> <p><i>The Seagulls Club site is zoned 6(b) Recreation under the Tweed LEP 2000. General Stores' are permissible with consent within the zone, however 'Shops' are prohibited. While supermarkets are traditionally defined as Shops the applicant has used case law to argue that the supermarket can be defined as a General Store and is therefore permissible. The reliance upon case law to support the use, requires careful consideration on terms of merit and appropriateness. The primary objective of the 6(b) Recreation zone is:</i></p> <p style="padding-left: 40px;"><i>to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.</i></p> <p><i>The secondary objective of the zone is:</i></p> <p style="padding-left: 40px;"><i>to allow for other development that is compatible with the primary function of the zone.</i></p> <p><i>A supermarket is not a recreational use and the proposed supermarkets size and prominence will erode the presentation of the Club as the primary function on the site and will be at odds with the primary objective of designating land for recreational purposes.</i></p> <p><i>The proposed supermarket will encompass approximately a quarter of the Club's total floors pace at ground floor level and is located within the centre of the Club and within its main frontage. The supermarket is also positioned to benefit from the prime carparking area at the front of the site.</i></p> <p><i>The proposed shared loading dock to the rear of the site will further impact upon the Clubs operations, requiring stock to be brought in through the Club's retained back of house office areas. This will result in the floorplate of the club being effectively divided in two, which will fragment the club operations and reduce the presence of the club across the site.</i></p> <p><i>Equally a supermarket use is not considered to be a compatible or complementary or land use such as other small smaller scale uses such that relate to the site such as refreshments rooms/cafes, a merchandise store relating to the sporting teams of the Club or tourist accommodation. These types</i></p>

of uses would be used in conjunction with the Club, supporting its primary recreational purpose. The proposed supermarket however will attract users for the sole purpose of shopping and as such is not compatible with the primary function of the site.

Inconsistency with the Draft LEP 2010

it is also noteworthy that under the Draft Tweed LEP 2010 the proposal is prohibited. This provides a clear direction that a development of this nature is not a strategic direction held by Council for this site. Furthermore, a supermarket of the size and nature proposed, coupled with the proposed central location of the supermarket indicates a clear erosion of a use which the site currently supports, and is proposed to be preserved into the future by way of land use zoning and permissibility. The proposed supermarket does not support the site's primary purposes of supporting 'recreational purposes', nor providing a compatibly development which supports the primary function.

Accordingly it is not considered an appropriate form of development for the 6(b) Recreation zone.

Inconsistency with Draft Retail Strategy and Centres Policy - Creation of a New Centre

Following the preparation of a Draft Tweed Retail Strategy, Council resolved at its meeting of 16 November 2005 seven principles as a Retail Strategy for the Tweed Shire. The Draft Tweed Retail Strategy and these principles support the expansion of existing retail centres rather than the creation of new centres or out of centre retailing.

The Tweed Urban and Employment Lands Release Strategy 2009 puts forward an urban centres hierarchy that gives direction to the existing and future size, role and function of the urban areas of Tweed Shire.

The Far North Coast Regional Strategy promotes a clear hierarchy of commercial centres. New commercial development outside of the major centres, are to be "located within the boundaries of towns and villages, utilising existing commercial centres where possible, and integrated with the Initial planning of new release areas".

The provision of a full line supermarket on the Seagulls Club site would constitute the creation of a new small centre which cumulatively would impact the retail hierarchy of the Tweed Shire.

Similarly the NSW Draft Activities Centres Policy (May 2010) (the 'draft Centres Policy') seeks to locate new retail activity in existing centres, or planned new centres. While new centres will need to be formed, these should be considered on a strategic basis and would require a rezoning of the land. Further it requires a demonstration of existing undersupply prior to creating new out of centre retailing. Consideration of the draft Centres Policy and the existing supply of zoned land to support a supermarket have not been included in this DA.

Conclusions and Recommendations

The proposed development includes an excessive retail area in the form of a full line supermarket.

The proposal in its current form:

- Despite potential classification as a General Store which is permissible, represents a full line circa 2,000m² supermarket, which is inappropriate and inconsistent with the intent of the 6(b) zoning objectives;
- Demonstrates excessive retail development of a site zoned 'primarily for recreational purposes', creating a new centre;
- By nature of the proposed uses, an approval would be tantamount to a rezoning of the site;
- It will negatively impact upon established retail hierarchy of the Tweed Shire.
- Has the potential to create a precedent of Council to depart from its retail hierarchy which would create an undesirable level of uncertainty for other

	<p><i>established retail centres in the locality such.</i></p> <ul style="list-style-type: none"> • <i>Demonstrates non-compliance with strategic planning documents including Council's Draft Tweed Retail the NSW State Governments draft Centres Policy.</i>
Objection 14	<p><i>Small businesses will be profoundly impacted and staff loses would occur.</i></p>
Objection 15	<p><u><i>1. Economic Impacts on Our Clients and Existing Business's in the local area</i></u></p> <p><i>Tweed Heads West, and more specifically the area surrounding the Seagulls Club, is primarily a low to medium density residential area. This is demonstrated visually by the land use zoning pursuant to the Tweed Local Environmental Plan 2000 (TLEP2000) which is shown in Figure 1 (residential zonings shown in pink).</i></p> <p><i>The potential approval and location of a 'full line supermarket' in a primarily residential area would show a complete disregard for basic retail planning strategy. The creation of satellite development projects, such as the proposed Supa IGA at Seagulls, would serve only to tear business away from pre-existing and established retail centres within the Tweed. Residents of Tweed Heads West would make fewer trips into the existing Tweed Heads CBD and therefore result in a decrease in the level of economic activity taking place in established retail areas.</i></p> <p><i>The proposed Supa IGA is not to be located in a retail space where other local businesses can operate and benefit from the positive externalities that a 'full line supermarket' provides. Small scale butchers, bakers and fresh produce stalls would have a large portion of their regular consumer base taken away as all of their services would now be provided within the Supa IGA, monopolising the Tweed Heads West area.</i></p> <p><i>An example of the economic impact that this development would have on small business can be demonstrated when looking at the most immediate business centre dealing in the similar trade of goods and services; Panorama Plaza. Panorama Plaza is located only 160m away from the Seagulls site and would be the business hub most affected should this development proceed. The centre provides the following services;</i></p> <ul style="list-style-type: none"> • <i>General store;</i> • <i>Bottleshop;</i> • <i>Butcher;</i> • <i>Baker;</i> • <i>Takeaway;</i> • <i>Chicken Carvery;</i> • <i>Chemist; and</i> • <i>Hairdresser.</i> <p><i>It is noted that the Supa IGA proposal includes a general store, bottleshop, fresh produce, butcher and bakery. Being a 'full line supermarket', the proposal will also draw on elements of a chicken carvery and chemist by selling roast chickens from the deli as well as cosmetics and various healthcare items.</i></p> <p><i>The similarities between the existing Panorama Plaza and the proposed Supa IGA are numerous and only serve to demonstrate that the subject application would have negative economic impacts upon small business owners within the Panorama Plaza. A 'one-stop-shop' development such as the Seagulls Supa IGA will effectively dismiss the need for consumers to visit the Panorama Plaza.</i></p>



Figure 1 – Land Use Zoning – Source; Tweed SC GIS Mapping

The Socio-economic Impact Assessment submitted as part of the proposal states;

“Impact

Any impacts on existing centres in Tweed Shire are expected to be alleviated over time as the population of the total catchment (Bilambil Heights urban expansion area) continues to grow. As such, the proposed supermarket development on the subject site is not expected to affect the viability of any current centres with all centres maintaining the opportunity to operate at viable levels.

The proposed supermarket also has the potential to impact on the trading performance of local retail centres. While most local retail centres currently serving the trade area will likely see a reduction in trade in the vicinity of 4% to 7%, the impact on the nearby Panorama Plaza could potentially be greater. Individual stores located in this centre will need to rely on convenience (exposure, parking and accessibility), a response to new competition (price, product range etc) and marketable points of difference in order to avoid a significant impact on turnover.”

The proponent states within their application that there will be an impact on local business, as well as a significant impact upon the Panorama Plaza complex. The development application makes reference to the poor economic standing of the Seagulls Club being the reasoning behind the proposal. It is considered that a lack of profitability does not justify a poorly sited retail facility. The approval of such a facility would only serve to shift the problem onto local businesses such as that of our client. It is considered that no impact upon the viability of surrounding businesses is acceptable.

2. Social Impacts associated with the Proposed Development

Another significant aspect that should be taken into consideration regarding this application is the relationship between a ‘full line supermarket’ and a registered licensed club.

A supermarket is a family based development which provides residents of the Tweed with day to day living items. A registered club offers recreational services, the service of alcohol and gambling facilities. These uses are not seen as compatible when located in such close proximity.

Examples of situations that have the potential to arise are as follows;

- Supermarket staff being harassed by intoxicated patrons leaving the registered club;
- Customers and families feeling threatened by intoxicated patrons

	<p><i>leaving the registered club;</i></p> <ul style="list-style-type: none"> • <i>Night workers starting and finishing work during peak patron times (5-6pm after work and 11-12pm club closing); and</i> • <i>General stores and supermarkets are typical meeting points for children and adolescents. The location of such a development within a busy car park and in close proximity to alcohol and gambling services is not considered to be a desirable arrangement. Car accidents, anti-social behaviour, sexual harassment, assault, loitering and vandalism may result.</i> <p><i>Council is directed to look further into the compatibility of uses for this development application to assess potential issues that may arise in the future.</i></p> <p><u>3. Transport Impacts associated with the Proposed Development</u></p> <p><i>The proposed location of the supermarket within the Seagulls Club does not allow for a steady dispersment of patrons on the site. With a registered club already considered a high demand development, the addition of a 'full line supermarket' will only increase the total amount of patrons wishing to enter and exit the site. As there is no spread of businesses, all patrons that enter the site will be making their way to a single point. This has the potential to create heavy on-site traffic congestion in close proximity to the Seagulls Club. It is envisaged that this would be similar to the level of congestion experienced within the car parks of regional shopping centres and is at odds with a suburban club located in a residential area.</i></p> <p><u>4. Compliance with 'The Right Place for Business and Services' – NSW Planning Policy; Integrating Land Use and Transport - NSW Department of Urban Affairs and Planning, Roads and Maritime Services and Transport NSW</u></p> <p><i>The above policy outlines why businesses and services which generate transport demand should be in locations that offer a choice of transport. It is noted that dispersed locations cannot be accommodated without significant community and environmental cost. This is clearly the case with this proposal.</i></p> <p><i>The objectives of the 'Right Place for Business' document are as follows:</i></p> <p>Note - (<u>DNC</u> = Does not comply)</p>	
	<p>Assessment Criteria Compliance</p>	
	<p><i>To locate trip generating development which provides important services in places that:</i></p>	
	<p><i>Help reduce reliance on cars and moderate the demand for car travel.</i></p>	<p><u>DNC</u></p>
	<p><i>Encourage multi-purpose trips.</i></p>	<p><u>DNC</u></p>
	<p><i>Encourage people to travel on public transport, walk or cycle, and</i></p>	<p><u>DNC</u></p>
	<p><i>Provide people with equitable and efficient access.</i></p>	<p>-</p>
	<p><i>Minimise dispersed trip generating development that can only be accessed by cars.</i></p>	<p>-</p>
	<p><i>Ensure that a network of viable, mixed use centres closely aligned with the public transport system accommodates and creates opportunities for business growth and service delivery.</i></p>	<p><u>DNC</u></p>
	<p><i>Protect and maximise community investment in centres, and in transport infrastructure and facilities.</i></p>	<p>-</p>
	<p><i>Encourage continuing private and public investment in centres, and ensure that they are</i></p>	<p>-</p>

	<i>well designed, managed and maintained.</i>		
	<i>Foster growth, competition, innovation and investment confidence in centres, especially in retail and entertainment sectors, through consistent and responsive decision making.</i> <u>DNC</u>	<u>DNC</u>	
	<p>The policy then goes on to discuss the 'net community benefit' and 'net community cost' assessment criteria. It is stated that 'Development on isolated, stand alone sites is generally not acceptable. However alternatives may be acceptable when a net community benefit can <u>clearly</u> be established'. The Socio-economic Impact Assessment that was submitted as part of the proposal does not address this policy and does not establish a <u>clear</u> net community benefit. Using the assessment criteria discussed within the Policy, the following is an assessment of the proposal to deduce the level of community benefit.</p> <p>In determining the net community benefit or cost, the following assessment criteria must be considered:</p>		
	Assessment Criteria	Comment	Compliance
	<i>the degree to which the policy and its objectives can be satisfied</i>	<i>It is noted in the above objectives assessment that the proposed development does not comply with all aims of the policy. Particular reference is made to the non-compliance with reducing reliance on personal transport and multi-purpose trips.</i>	<u>DNC</u> . Community cost.
	<i>the proposed level of accessibility to the catchment of the development by public transport, walking and cycling</i>	<i>The location of the proposed 'full line supermarket' within the Seagulls Club, West Tweed Heads is considered to be isolated and not easily accessible to pedestrians and cyclist. Being a satellite development, far removed from the established high streets and CBD of Tweed Heads, it is considered that the proposal does not satisfy this clause.</i>	<i>Does not make provision. Community cost.</i>
	<i>the likely effect on trip patterns, travel demand and car use</i>	<i>Increased traffic generation to a site that is located away from high level Council infrastructure. Pressure put on roads and services. Adjacent hills and isolation from CBD does not allow for high level of pedestrian or cycle activity. Therefore heavy reliance on personal transport or bus lines.</i>	<i>Generates heavy traffic pressure. Community cost.</i>
	<i>the likely impact on the economic performance</i>	<i>The nearby Panorama Plaza, which provides all</i>	<i>Harmful impact upon small business. On-stop-</i>

	<i>and viability of existing centres (including the confidence of future investment in centres and the likely effects of any oversupply in commercial or office space on centres — see section B of the explanatory notes)</i>	<i>of the goods and services proposed within the Supa IGA, will be the most effected should this development proceed. Other small businesses existing within the Tweed CBD will lose consumer base due to the 'one-stop-shop' nature of a supermarket. Will impact upon any potential for commercial investment in West Tweed Heads as club/supermarket development has the potential to monopolise consumer choice and will shut small business investment out of the market.</i>	<i>shop nature of development would destroy Panorama Plaza. Community cost.</i>
	<i>the amount of use of public infrastructure and facilities in centres, and the direct and indirect cost of the proposal to the public sector</i>	<i>Roads and service infrastructure within the West Tweed Heads area has not been designed for substantial retail development. Increased pressure due to traffic congestion will generate the need for upgrades.</i>	<i>Roadways and service infrastructure not equipped. Community cost.</i>
	<i>the practicality of alternative locations which may better achieve the outcomes the policy is seeking</i>	<i>Supermarket development is much more suited to be located within the Tweed Heads CBD and high street areas. Established retail and commercial precincts allow for multipurpose trips, integration with existing street character and will not detract from small business centres such as the Panorama Plaza.</i>	<i>More suitable locations for this type of development. Neutral benefit/cost.</i>
	<i>the ability of the proposal to adapt its format or design to more likely secure a site within or adjoining a centre or in a better location.</i>	<i>Supermarkets are designed to form a retail anchor within a complex where other small businesses prosper from positive externalities. The proposal seeks to create a satellite centre where only the club and supermarket gain whilst surrounding small business loses. A more appropriate location for this type of development would be within the Tweed Heads CBD or high street area.</i>	<i>Satellite supermarket development not suited to the West Tweed Heads area. Neutral benefit/cost.</i>
	<i>As determined within the above assessment, the proposed Supa IGA development would generate a significant net community cost. Where an</i>		

	<p>isolated, stand alone site cannot clearly establish the generation of a net community benefit it is deemed not acceptable.</p> <p><u>5. Compliance with the Tweed Retail Strategy 2005</u></p> <p>Tweed Shire Council resolved to adopt the Tweed Retail Strategy on the 16th November 2005. This strategy outlines the aims and objectives for substantial retail development within the Tweed into the future. A number of key objectives are raised within this document which can be applied to the subject proposal to assess its suitability and compliance with Tweed Shire Council's strategy. The Socio-economic Impact Assessment that was submitted as part of the proposal has been written to promote compliance with the Retail Strategy. However, the following information should also be taken into account when undertaking assessment as the proposal does not comply in this regard.</p>		
	Assessment Criteria	Comment	Compliance
	<p>1. The character of existing towns and villages and the retail facilities that have to be protected.</p>	<p>West Tweed Heads is a primarily residential area with limited retail and commercial development. The retail development that does exist is small in scale and suited to servicing the surrounding population. As previously mentioned, the Panorama Plaza will be the business centre most impacted by the potential approval of this application. A large scale, 'one-stop-shop' style development will monopolise the area and give consumers no reason to continue their patronage to the Panorama Plaza and other small businesses. The proposed Supa IGA will be a conglomerate general store, bottleshop, baker, butcher, chemist, carvery and fresh produce store. No competition will remain.</p>	<p>Small businesses will suffer from the potential approval of the application. Competition will be destroyed and a monopoly will form over the West Tweed Heads area. <u>DNC.</u></p>
	<p>2. Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.</p>	<p>The proposal does not seek to improve upon an existing retail centre. It seeks to create a new retail hub and effectively capture the patronage from small businesses within the one complex.</p>	<p><u>DNC</u></p>
	<p>3. Reinforce Tweed Heads South as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased</p>	<p>The proposal seeks to expand retail development into West Tweed Heads, therefore fracturing the retail centre of the Tweed. A satellite development will</p>	<p><u>DNC</u></p>

	<i>range and level of shopping.</i>	<i>reduce patronage to the Tweed CBD and high street area.</i>	
	<i>4. Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.</i>	<i>N/A – The subject site is far removed from Murwillumbah.</i>	<i>N/A</i>
	<i>5. Limit the scale of new retail centres in the coastal region to a level which caters for the majority of localised daily needs. This concept to reflect the need to reduce fuel consumption and to support sustainability within each centre.</i>	<i>N/A – The subject site is not located within the coastal region.</i>	<i>N/A</i>
	<i>6. Council does not support the establishment of another district retail shopping centre.</i>	<i>N/A – The proposal is not for a district retail shopping centre.</i>	<i>N/A</i>
	<i>7. The retail concepts in these recommendations form the basis of locality plans in the Shire and any retail development applications which are submitted in the interim of these locality plans being prepared and approved by Council be assessed so that the above retail strategies are supported and not compromised.</i>	<i>The proposal does not meet the objectives of the Tweed Retail Strategy 2005 and therefore should not be supported.</i>	<u><i>DNC</i></u>
	<p><u><i>Conclusion</i></u></p> <p><i>DA12/0527 is considered to be an unacceptable development that would serve only to fragment and destroy the existing retail environment within the West Tweed Heads area. Justification of the development application based on the future viability of the Seagulls Club is no reason to shift economic struggle onto other business owners within the area. When assessing the development application, it is essential that Council look to the impacts and content that was not included in the developers submission so as to see the effect that such a development would have on small business and the Tweed retail environment as a whole.</i></p> <p><i>Our clients reserve the right to further challenge any approval given, based on the significant economic impact that will result from the approval of the application.</i></p>		
Objection 16	<p><i>Business in the Tweed has taken a nose dive. If this business is approved it will ruin another centre nearby. There are already enough empty shops in the Tweed.</i></p> <p><i>To have a supermarket which is family friendly inside a club which serves alcohol and supports gambling is morally wrong. A lot of locals have stated they are not conformable with this at all.</i></p>		

Some of the issues raised in these objections have contributed to the recommendation for refusal of this application.

(e) Public interest

There are two opposing views on the matter.

The first is the developer's interest in maintaining their right to apply to develop their property to assist the financial feasibility of the existing registered club.

The second comprises some residents and business owners view of wanting to maintain the viability of the existing commercial zones and not develop the subject site for the purpose of a retail premises contrary to the zone objectives.

Despite these two opposing viewpoints each Development Application needs to be assessed on its individual merits.

On review of this application it is recommended that this DA be refused as the development has failed to demonstrate suitable compliance with the relevant heads of consideration in accordance with Section 79C of the Environmental Planning & Assessment Act 1979.

OPTIONS:

1. Refuse the application in accordance with the recommended reasons for refusal; or
2. Request that conditions be brought back to the next Council Meeting to enable the Council to consider approving the subject application.

Council officers recommend Option 1.

CONCLUSION:

The proposed development seeks approval for a general store (1965m² of retail space for a full line supermarket) within a recreational zone.

Whether the development is legally defined as a general store or a shop the proposed development has failed to adequately demonstrate how the proposed development:

- Satisfies the strategic objectives for the Tweed;
- Satisfies the primary objective of the recreational zone;
- Satisfies the test of cumulative impact;
- Satisfies the objectives behind social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2012;
- Satisfies Council Retail Strategy; and
- Satisfies the general public interest and the impact the proposal would have on the existing commercial zones in the locality.

Accordingly the application is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

If the applicant lodges an appeal with the NSW Land and Environment Court Council will incur legal costs to defend any such appeal.

c. Legal:

The applicant may appeal any decision of the Council before the NSW 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
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Applicants Submission to Draft Tweed Local Environmental Plan 2012 (ECM 3049470)
 - Attachment 2. Applicants Socio Economic Assessment (ECM 3050676)
 - Attachment 3. Applicant's Addendum Letter 15 April 2013 (ECM 3050686)
 - Attachment 4. Applicant Legal Advice on Permissibility 2 May 2013 (ECM 3051183)
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