

CONFIRMATION OF MINUTES

- 1 [CONMIN] Confirmation of the Minutes of the Ordinary and Confidential Council Meetings held Thursday 16 May 2013**

SUBMITTED BY: Corporate Governance



Civic Leadership

SUMMARY OF REPORT:

The Minutes of the Ordinary and Confidential Council Meetings held Thursday 16 May 2013 are attached for information and adoption by Council.

RECOMMENDATION:

That:

- 1. The Minutes of the Ordinary and Confidential Council Meetings held Thursday 16 May 2013 be adopted as a true and accurate record of proceedings of that meeting.**
- 2 ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
 - (f) matters affecting the security of the council, councillors, council staff or council property.**

REPORT:

As per Summary.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice Version 2.3.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
- 1.2.2.1 Priority decision making
- 1.2.2.1.1 Council decisions will be in accordance with the Community Strategic Plan

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

- 1. Attachment 1 Minutes of the Ordinary Council Meeting held Thursday 16 May 2013 (ECM 3053635).
 - 2. Confidential Attachment 2 Minutes of the Confidential Council Meeting held Thursday 16 May 2013 (ECM 3063542).
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2 [CONMIN] Minutes of the Extraordinary Council Meeting held Friday 31 May 2013

SUBMITTED BY: Corporate Governance



Civic Leadership

SUMMARY OF REPORT:

The Minutes of the Extraordinary Council Meeting held Friday 31 May 2013 are attached for information and adoption by Council.

RECOMMENDATION:

That the Minutes of the Extraordinary Council Meeting held Friday 31 May 2013 be adopted as a true and accurate record of proceedings of that meeting.

REPORT:

As per Summary.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice Version 2.3.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
- 1.2.2.1 Priority decision making
- 1.2.2.1.1 Council decisions will be in accordance with the Community Strategic Plan

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

- 1. Attach 1 Minutes of the Extraordinary Council Meeting held Friday 31 May 2013 (ECM 958889).
-

SCHEDULE OF OUTSTANDING RESOLUTIONS

3 [SOR] Schedule of Outstanding Resolutions



Civic Leadership

CODE OF MEETING PRACTICE:

Section 2.8 Outstanding Resolutions

No debate is to be allowed on Outstanding Resolutions. Any changes to or debate on Outstanding Resolutions should only be by way of a Notice of Motion or a report to Council.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making processes
- 1.2.2.1 Priority decision making
- 1.2.2.1.1 Council decisions will be in accordance with the Community Strategic Plan

26 June 2012

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

27 [CNR-CM] Management and Dedication of Environmental Lands at Kings Forest and Cobaki

364

Cr K Skinner
Cr W Polglase

RESOLVED that this item be deferred for a Workshop to include the proponent, Council officers and Councillors.

Current Status: A Workshop has been held and Council continues to negotiate with the proponent and the Department and a final report will be considered by Council in the forthcoming months.

Recent Part 3A approvals processes for both Kings Forest and Cobaki have determined a recommended approach to the management and dedication of environmental lands.

24 January 2013

ORDERS OF THE DAY

46 [NOM-Cr C Byrne] Operation of Library Services

NOTICE OF MOTION:

58

Cr C Byrne
Cr W Polglase

RESOLVED that a report be generated to demonstrate the viability of Tweed Shire Council being able to provide library services in its own capacity to all residents, and ratepayers of Tweed Shire, and to explore other partners for the provision of such services.

Current Status: Report to be prepared.

21 March 2013

ORDERS OF THE DAY

11 [NOM-Cr M Armstrong] Promotion of Sustainable Design

NOTICE OF MOTION:

123

Cr M Armstrong
Cr K Milne

RESOLVED that Council:

1. Hosts a Community Summit, prior to 30 October 2013, to engage with the community to develop policies to promote sustainable design, sustainable retrofitting of existing homes and sustainable community planning in the Tweed Shire.
2. Prepares a report to be brought forward to the December 2013 Council meeting encapsulating the findings of the Community Summit with a view to introducing policies to promote sustainable development throughout the Tweed Shire.

Current Status: Community Summit to be organised following Workshop discussion with Councillors.

12 [NOM-Cr K Milne] Establishing a Council Mediation Process

NOTICE OF MOTION:

124

Cr K Milne
Cr G Bagnall

RESOLVED that Council brings forward a report on establishing a formal mediation process within Council's organisation and the potential for appropriate training of staff.

Current Status: Report to be prepared.

14 [NOM-Cr P Youngblutt] Equal Access - Tweed Aquatic Centre

NOTICE OF MOTION:

126

Cr P Youngblutt
Cr W Polglase

RESOLVED that Council officers, in consultation with the Equal Access Advisory Committee, investigate and report back to Council on the provision of a subsidy to improve accessibility for Tweed Shire residents with permanent or temporary disability to the Tweed Aquatic Centres.

Current Status: Report to be prepared.

CONFIDENTIAL ITEMS

REPORTS FROM DIRECTOR ENGINEERING AND OPERATIONS IN COMMITTEE

4 [EO-CM] Bilambil Sports Club

REASON FOR CONFIDENTIALITY:

Privacy of the individual board members of the Bilambil Sports Club Ltd while the liquidation/bankruptcy process proceeds

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

C 12

Cr M Armstrong
Cr K Milne

RECOMMENDED that:

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- e. Bring forward a further report outlining available options with respect to the outstanding amount of \$63,028 owed to Council at a future meeting.

Current Status: Report to be prepared.

18 April 2013

ORDERS OF THE DAY

8 [NOM-Cr G Bagnall] Tweed River

NOTICE OF MOTION:

192

Cr G Bagnall
Cr M Armstrong

RESOLVED that the Council engineers bring forth a report that identifies areas of the Tweed River bank opposite Tumbulgum and the riverbank in Murwillumbah, between Condong Creek and the Riverview Hotel, that require revetments or an appropriate remediation and the estimated cost thereof.

Current Status: Report to be prepared.

10 [NOM-Cr G Bagnall] Tweed Urban and Employment Lands Release Strategy 2009

NOTICE OF MOTION:

194

**Cr G Bagnall
Cr M Armstrong**

RESOLVED that, in light of new census data, Council bring forward a report on the applicability of the currently adopted Tweed Urban and Employment Lands Release Strategy (2009) to the future growth of the Shire.

Current Status: Report to be prepared for the July Council meeting.

12 [NOM-Cr K Milne] Unnamed Creek, Harrys Road, Numinbah

NOTICE OF MOTION:

196

**Cr K Milne
Cr G Bagnall**

RESOLVED that Council brings forward a report on the state of the unnamed creek at Harrys Road, Numinbah and recommendations for remediation as soon as possible.

Current Status: Report to be prepared.

13 [NOM-Cr K Milne] Climate Change Priority

NOTICE OF MOTION:

197

**Cr K Milne
Cr G Bagnall**

RESOLVED that Council prioritises climate change as an urgent and high priority in all relevant areas of Council policy and operations, and brings forward to a future Workshop, policy options to implement this approach.

Current Status: Workshop scheduled for 11 July 2013.

17 [NOM-Cr K Milne] Development Control Plan (DCP) A11- Public Notification of Development Proposals

NOTICE OF MOTION:

201

**Cr K Milne
Cr G Bagnall**

RESOLVED that Council brings forward a report on DCP A11- Public Notification of Development Proposals in relation to enhancing opportunities for the community to be notified on these matters.

Current Status: Workshop scheduled for 4 July 2013.

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

35 [CNR-CM] Draft Northern Rivers Regional Affordable Housing Strategy

207

**Cr M Armstrong
Cr G Bagnall**

RESOLVED that Council:

...

3. Council holds a Workshop with Councillors to discuss the implications prior to a further report being submitted to Council.

Current Status: Workshop scheduled for 11 July 2013

16 MAY 2013

ORDERS OF THE DAY

4 [NOM-Cr G Bagnall] Collection and Recycling of Household Batteries

1

Cr G Bagnall

Cr K Milne

RESOLVED that Council Officers bring forward a report on the feasibility of establishing a business partnership model for the collection and recycling of household batteries within various commercial business districts.

Current Status: Report to be prepared.

6 [NOM-Cr G Bagnall] Assessment of Environmental Land

2

Cr G Bagnall

Cr K Milne

RESOLVED that Council undertakes a preliminary environmental assessment of the environmental land to the immediate north of the decommissioned Murwillumbah landfill to firstly determine the potential noise and dust impacts from the proposed development on this site and secondly, its ecological value, giving consideration to all fauna and flora on the site and the site's value in terms of the broader terrestrial environment, such as a nursery for endangered bats and bird species.

Current Status: Brief been issued for environmental assessment.

7 [NOM-Cr G Bagnall] Sportsground Naming Policy

3

Cr G Bagnall

Cr W Polglase

RESOLVED that the Naming of Council Public Parks Policy be reviewed with the view of naming sports fields after their geographic location. In order to help the public identify and locate sports fields easier, the geographical name or the currently used named be the preferred name.

Current Status: Report to be prepared.

8 [NOM-Cr G Bagnall] Policy - Animal Management Procedures

4
Cr G Bagnall
Cr K Milne

RESOLVED that a report be submitted to Council detailing Council's current Companion Animal Regulation functions, in order to determine the suitability of preparing a new Council Policy on animal management procedures, including a preferred process for handling barking dog complaints.

Current Status: Report to be prepared.

12 [NOM-Cr G Bagnall] Renewable Energy

5
Cr G Bagnall
Cr K Milne

RESOLVED that:

1. Council adopts the aspirational goal of becoming self sufficient in renewable energy and that, as a first step in achieving this goal, that it become an additional topic to be considered in the Sustainable Design Community Summit formally endorsed in the Council meeting of 21 March 2013; and
2. A report is prepared for Council consideration.

Current Status: Community Summit to be scheduled and Council report to be prepared.

16 [NOM-Cr K Milne] Lot 490

6
Cr B Longland
Cr W Polglase

RESOLVED that Council:

1. Arranges a workshop with Councillors on Lot 490 as soon as possible.
 2. Arranges a public meeting to include representatives from Residents/Progress Associations across the Shire and the communities of Kingscliff, Casuarina, Cudgen and Chinderah with the purpose of discussing possible future uses for Lot 490 at Kingscliff. The meeting to be promoted through the Tweed Link and should include an invitation to the Department of Lands.
 3. Prepares a report outlining the outcomes of both the workshop and public meeting regarding Lot 490.
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Current Status: Workshop scheduled for 1 August 2013.

17 [NOM-Cr M Armstrong] Assistance Animals Including Guide Dogs and Hearing Dogs

7

Cr M Armstrong
Cr K Milne

RESOLVED that Council:

1. As a matter of priority investigates the feasibility of providing off leash space for assistance animals including but not limited to guide dogs and hearing dogs within the upgrades to Arkinstall Park; and
2. Brings forth a report to outline ways in which greater provision can be made for off leash space for assistance animals including but not limited to guide dogs and hearing dogs both within existing infrastructure and within future large scale residential developments.

Current Status: Report to be prepared.

18 [NOM-Cr M Armstrong] Policy - Hire Fees

8

Cr M Armstrong
Cr K Milne

RESOLVED that Council develops a policy to provide support to Resident, Progress and Ratepayer organisations by:

1. Upon application providing a reduction in hire fees for Council properties in the amount of 50% of the community rate;
2. The period of reduction continues for a period of 12 months; and
3. The maximum number of hires to which the discounted hire fee applies during any 12 months period be fourteen.

Current Status: Report to be prepared.

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

54 [EO-CM] Local Preference Procurement Policy

9

Cr W Polglase

Cr P Youngblutt

RESOLVED that:

1. Council adopt Option 3 of this report being:
 - (a) Draft Version 1.5 of the Procurement Policy be placed on public exhibition for a period of 28 days and seeking public submissions for 42 days.
 - (b) Council concurrently seek advice and reports from the Audit Committee and the External Auditor on the likely implications of the draft policy on Council's finances and operations.
 - (c) Council obtains economic modelling on the likely impact of the draft policy on the local economy.
 - (d) Before compiling a final report on the amended policy, a Councillor workshop be conducted to consider outcomes of (b) and (c) above and submissions from the public and industry stakeholders.
2. An internal cross divisional "Sustainable Procurement Working Group" be established to:
 - (a) Develop and utilise systems to track and record sustainable purchases for the organisation to benchmark, record, and quantify progress.
 - (b) Work with suppliers to discuss and implement specific sustainability opportunities.

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Current Status: Draft Policy referred to Audit Committee and External Auditor for comment and is currently on Public Exhibition.

MAYORAL MINUTE

4 [MM-CM] Mayoral Minute for the period from 2 May to 3 June 2013

SUBMITTED BY: Cr B Longland, Mayor



Civic Leadership

Councillors

COMMITTEE MEETINGS

Attended by the Mayor

- 3 May 2013 - NOROC Meeting of Northern Rivers Mayors and General Managers - Ballina Council Chambers, Cherry St, Ballina
- 8 May 2013 - Tweed River Art Gallery (TRAG) Foundation Meeting - TRAG, Mistral Rd, Murwillumbah (also attended by Warren Polglase as Foundation president).
- 13 May 2013 - Tweed Education and Industry Forum - Kingscliff TAFE, Cudgen Road, Kingscliff (Cr Byrne also attended).
- 15 May 2013 - Destination Tweed Board meeting - Coolamon Cultural Centre, Tumbulgum Road, Murwillumbah.
- 16 May 2013 - Community Safety Precinct Committee Meeting for Tweed/Byron Local Area Command - Pottsville Environment Centre, Centennial Drive, Pottsville Beach (Cr Byrne also attended).
- 16 May 2013 - Tweed River Regional Museum Advisory Committee Meeting - Coolamon Cultural Centre, Tumbulgum Road, Murwillumbah.
- 17 May 2013 - Margaret Olley Art Centre Steering Committee - Marks Family Library, Tweed River Art Gallery (also attended by Warren Polglase as TRAG Foundation president).
- 29 May 2013 - Tweed Business Advisory Board Committee Meeting - Salt Bistro, Kingscliff.
- 30 May 2013 - Floodplain Management Conference Dinner, invited guest - Twin Towns, Wharf Street, Tweed Heads.
- 3 Apr 2013 - Murwillumbah Community Centre Management Committee - Murwillumbah Community Centre, Nullum Street, Murwillumbah (Cr Polglase also attended).

- 4 Apr 2013 - Local Traffic Committee Meeting - Murwillumbah Civic Centre, Tumbulgum Road, Murwillumbah
 - 12 Apr 2013 - Arts Northern Rivers Board Meeting and AGM - Arts Northern Rivers Offices, Old Tintenbar Chambers, 2/5 Bruxner Highway, Alstonville.
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INVITATIONS:

Attended by the Mayor

- 2 May 2013 - Opening of Local Government Customer Service Network Conference - Mantra at Salt, Kingscliff.
- 6 May 2013 - Opening of Rory Vaden's master class, Toastmasters District 69 Convention - Tweed Heads Civic Centre, Corner Brett & Wharf Streets, Tweed Heads.
- 6 May 2013 - Murwillumbah Rotary - Greenhills on Tweed, River Street, Murwillumbah.
- 8 May 2013 - Official Opening of the Coolangatta Senior Citizens Centre by Karen Andrews MP, Federal Member for McPherson - Coolangatta Senior Citizens Centre, 2 Gerrard Street, Coolangatta.
- 9 May 2013 - Meet and greet, Shadow Parliamentary Secretary for Roads - Maritime Museum, Kennedy Drive, Tweed Heads West.
- 11 May 2013 - Australian Navy Cadets Annual Inspection and Ceremonial Parade - TS Vampire, Dry Dock Road, South Tweed Heads.
- 11 May 2013 - The Naming of the Arthur Holmes OAM Memorial Garden - Murwillumbah Civic Centre, 3 Tumbulgum Road, Murwillumbah
- 13 May 2013 - Murwillumbah Rotary - Greenhills on Tweed, River Street, Murwillumbah.
- 14 May 2013 - Opening of Burringbar Mooball Sewerage Scheme - Burringbar Mooball Wastewater Treatment Plant.
- 14 May 2013 - Local Government Acts Taskforce Workshop for Stakeholders -Lennox Head Cultural and Community Centre, 1 Mackney Lane, Lennox Head.
- 17 May 2013 - Mt St Patrick's College Annual Debutante Ball - The Catholic Hall, 137-143 Murwillumbah Street, Murwillumbah.
- 18 May 2013 - Southern Cross University Graduation Ceremony - Tweed Heads Civic Centre, Brett Street, Tweed Heads.
- 21 May 2013 - Kingscliff Chamber Business Breakfast - Kingscliff Beach Bowls Club, Marine Parade, Kingscliff (Crs Polglase and Byrne also attended).

- 21 May 2013 - Turning of the first sod - Arkinstall Park with Minister Albanese and Justine Elliot - Netball Courts, Cunningham Street, Tweed Heads South.
- 22 May 2013 - Opening of Woolworths Store - 39-45 Tweed Coast Road, Cabarita Beach.
- 22 May 2013 - Twin Towns Friends Association, Volunteers Certificate of Appreciation Ceremony - Community Hall, Heffron St, South Tweed Heads.
- 23 May 2013 - Announcement of the Affordable Housing Grant by Justine Elliot MP - 100 Hills, Riveroak Drive, Murwillumbah.
- 23 May 2013 - Accessible Arts Creating Connections Community Forum - Banora Point Community Centre, Cnr Woodland and Leisure Drive, Banora Point (Cr Byrne also advised her attendance).
- 29 May 2013 - Official Opening of National Floodplain Management Conference - Twin Towns Resort, Tweed Heads.
- 31 May 2013 - Closing of National Floodplain Management Conference - Twin Towns Resort, Tweed Heads.
- 31 May 2013 - Cooly Rocks On Official VIP Launch, Skate Rattle and Roll - Swing City Marquee, beachside at Coolangatta.
- 1 June 2013 - Cycle for Motor Neurone Disease Fundraiser - Sugar Beat Cafe, Murwillumbah.
- 2 June 2013 - World Environment Day Festival hosted by the Caldera Environment Centre - Knox Park, Murwillumbah (Crs Bagnall and Byrne also advised their attendance).
- 2 June 2013 - Official launch of two environmental initiatives, Land for Wildlife and Koala Connections - Knox Park, Murwillumbah.
- 3 June 2013 - Southern Cross University (SCU) opening of Building B at the Gold Coast (GC) Campus - SCU, GC Campus, Southern Cross Drive, Bilinga.

Attended by other Councillor(s) on behalf of the Mayor

- 26 May 2013 - Tyalgum Classical Music Festival Friends' Concert - Tyalgum Hall, Coolman Street, Tyalgum (Cr Byrne advised her attendance).

Inability to Attend by or on behalf of the Mayor

- 2 May 2013 - Northern Rivers Social Development Council and Regional Development Australia Community Forum - Brunswick Memorial Hall, Fingal Street, Brunswick Heads.
- 3 May 2013 - Aboriginal Advisory Committee meeting - Minjungbal Museum and Cultural Centre, Cnr Kirkwood Road and Parry Street, Tweed Heads South.

- 23 May 2013 - Tweed Valley Banana Festival Official Sashing of entrants - Wollumbin Room, Murwillumbah Service Club, Wollumbin St, Murwillumbah.
 - 25 May 2013 - Cudgen Headland SLSC Annual Presentation of Awards and Trophies - Cudgen Headland SLSC, Marine Parade, Kingscliff
 - 26 May 2013 - Twin Towns and District Garden Club Inc - Cudgen Public School, 11 Collier Street, Cudgen.
 - 26 May 2013 - Belly to Big School and Beyond free family fun day hosted by Community and Early Childhood Services - Knox Park, Murwillumbah.
 - 30 May 2013 - Twin Towns Friends Association, Big Cuppa for Cancer - Community Hall, Tweed Heads South.
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REQUESTS FOR WORKSHOPS:

Date of Request	Requested by Councillor	Topic	Councillors For	Councillors Against	Proposed Workshop Date
05/05/13	Cr G Bagnall	Traffic Calming Devices.	Bagnall Milne Armstrong	4 Remaining Councillors	Not being scheduled.

CONFERENCES:

Conferences attended by the Mayor and/or Councillors

- 17-19 May 2013 National Koala Conference - Westport Conference Centre, Buller Street, Port Macquarie - Cr Milne attended.
- 24 May 2013 Financial Issues in Local Government training for Councillors - Lismore Council Chambers, 43 Oliver Ave, Goonellabah - Crs Milne and Longland attended.
- 28-31 May 2013 National Floodplain Management Conference - Twin Towns Clubs & Resorts, Tweed Heads, NSW - Cr Milne attended.
- 31 May 2013 North Coast Energy Forum - Italo Club, Barrow Lane, North Lismore - Crs Milne and Bagnall attended.

Information on Conferences to be held

- 26-29 Sep 2013 16th International River Symposium, "Linking water, energy, food" - Brisbane Convention & Exhibition Centre, Corner Merivale and Glenelg Streets - *The Symposium will explore the intricately linked pressures on rivers as our population grows and expands* - Earlybird Registration \$1100pp until 22 July, plus 3 nights accommodation \$450, no flights required - Refer www.riversymposium.com
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SIGNING OF DOCUMENTS BY THE MAYOR:

- 6 May 2013 - Deposited Plan - Land Acquisition - Marshall Street and Kyogle Road, Uki.
 - 7 May 2013 - Deed of Transfer - Easement - Essential Energy - Arkinstall Park.
 - 13 May 2013 - Acquisition of Land for Sewerage Infrastructure - Tweed valley Way Murwillumbah - Deposited Plan Administration Sheet.
 - 14 May 2013 - Request document - Acquisition of Land for Road Purposes - Kyogle Road, Terragon.
 - 23 May 2013 - Extinguishment of Restriction as to User Document - Lot 5 DP 830973 Kirkwood Road Tweed Heads.
 - 31 May 2013 - Transfer Granting Easement - Overall Drive Pottsville.
-

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice Version 2.2.

b. Budget/Long Term Financial Plan:

Appropriate expenditure is allowed for attendance by Councillors at nominated conferences, training sessions and workshops.

c. Legal:

Not applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
- 1.2.2.1 Priority decision making
- 1.2.2.1.1 Council decisions will be in accordance with the Community Strategic Plan

RECOMMENDATION:

That:-

1. The Mayoral Minute for the period from 2 May to 3 June 2013 be received and noted.
2. The attendance of Councillors at nominated Conferences be authorised.

UNDER SEPARATE COVER:

Nil.

ORDERS OF THE DAY



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making processes
- 1.2.2.1 Priority decision making
- 1.2.2.1.1 Council decisions will be in accordance with the Community Strategic Plan

5 [NOR-Crs M Armstrong, G Bagnall and W Polglase] [TCS-CM] Mayor and Councillors Annual Remuneration 2013/2014

NOTICE OF RESCISSION:

Councillor M Armstrong, G Bagnall and W Polglase move that the proposed motion at Item 57, Minute No 332 of the meeting held 16 May 2013 being:

... that the annual fees payable for the Mayor and Councillors for the 2013/2014 financial period be:

Mayor \$38,160

Councillors \$17,490

In accordance with the maximum fees as determined by the Local Government Remuneration Tribunal.

which was **lost**

be rescinded.

6 [NOM-Cr M Armstrong] Remuneration for Mayor and Councillors

NOTICE OF MOTION:

Councillor M Armstrong moves that the annual fees payable for the Mayor and Councillors for the 2013/14 financial period be:

Councillor: \$17,060

Mayor: \$37,230

in accordance with the range of fees as determined by the Local Government Remuneration Tribunal.

7 [NOM-Cr M Armstrong] Upgrade and Repair of Kennedy Drive, Tweed Heads West

NOTICE OF MOTION:

Councillor M Armstrong moves that Council prepares a report for the August meeting that:

1. outlines the maintenance, repair, and construction history of Kennedy Drive over the past four (4) years;
2. explains the current and historical financial capacity for ongoing repair, resurface, or reconstruction of Kennedy Drive;
3. outlines potential State Government and Local Council sources of funding for the repair, resurface, or reconstruction of Kennedy Drive to an appropriate standard reflecting the current and future population of Tweed Heads West, Bilambil, Bilambil Heights, Piggabeen, and Cobaki;
4. includes a cost benefit analysis for the repair, resurface, or reconstruction of Kennedy Drive socially to the current and future population of Tweed Heads West, Bilambil, Bilambil Heights, Piggabeen, and Cobaki and economically for the greater Tweed shire; and
5. outlines of expected timeframes for the appropriate repair, resurface, or reconstruction of Kennedy Drive to an appropriate standard reflecting the current and future population of Tweed Heads West, Bilambil, Bilambil Heights, Piggabeen and Cobaki.

8 [NOM-Cr M Armstrong] Provision of Community and Cultural Services

NOTICE OF MOTION:

Councillor M Armstrong moves that:

1. A report be prepared for the December 2013 meeting of Council investigating potential sites and/or locations that would be suitable for a:
 - (a) cultural precinct within Banora Point/Tweed Heads area to potentially include:
 - Professional theatre/performance facility for an audience of more than 350
 - Rehearsal/small performance spaces(s)
 - Museum
 - Exhibition space
 - Library
 - Multipurpose community meeting and activity spaces.

2. The report should provide details on:

- UNDER SEPARATE COVER:**

NOTICE OF MOTION:

10 [NOM-Cr W Polglase] Standard Contract Variation Clause

NOTICE OF MOTION:

Councillor W Polglase moves that the standard contract variation clause relating to Tenders awarded by Council be amended as follows:

The General Manager is given delegated authority to approve variations up to 10% of the initial contract sum and those variations be reported to Council following completion of the tender.

11 [NOM-Cr K Milne] Fingal Head Development Control Plan

NOTICE OF MOTION:

Councillor K Milne moves that Council commences a Development Control Plan for Fingal Head in the 2013/14 planning reforms agenda and begins discussion with the Fingal Head community to determine if there are opportunities for the community to assist Council in developing their plan.

12 [NOM-Cr K Milne] Divestment of Fossil Fuels

NOTICE OF MOTION:

Councillor K Milne moves that Council brings forward a report on whether Council has any funds indirectly invested in fossil fuel industries, and what legislative or other changes would be required to enable redirection of Council funds from such industries to institutions investing in renewable energy.

Note: Please refer to the link below for further information

http://www.huffingtonpost.com/jamie-henn/fossil-fuel-divestment_b_3394142.html

13 [NOM-Cr K Milne] Commercial Wakeboarding Operations

NOTICE OF MOTION:

Councillor K Milne moves that Council commences a planning proposal to prohibit commercial wakeboarding operations and wakeboarding events in the Tweed Shire.

14 [NOM-Cr K Milne] Urban Agriculture Policy

NOTICE OF MOTION:

Councillor K Milne moves that Council brings forward a report on developing an Urban Agriculture DCP and any land use changes that may be required to facilitate this in stage 2 of the LEP.

Note: Please refer to the link below for further information

<http://civileats.com/2011/04/14/san-francisco-passes-most-progressive-urban-agriculture-policy-in-u-s/>

15 [NOM-Cr K Milne] NSW Local Government Association Conference

NOTICE OF MOTION:

Councillor K Milne moves that:

1. Review of the NSW Planning Act - Ecological Sustainable Development

The NSW Local Government Association advocates for the retention of the requirement for Ecological Sustainable Development in the new Planning Act, and for a stronger focus on incorporating this provision at the forefront of infrastructure and development decisions.

2. Review of the NSW Planning Act - Community Consultation

The NSW Local Government Association advocates for the retention of the current levels of community consultation on development applications in the new Planning Act.

16 [NOM-Cr K Milne] Local Environmental Plan Stage 2 Community Working Group

NOTICE OF MOTION:

Councillor K Milne moves that Council engages a Community working group for stage two of the Local Environmental Plan.

17 [NOM-Cr K Milne] Fingal Head Local Environment Plan Two Storey Height Controls

NOTICE OF MOTION:

Councillor K Milne moves that:

1. Council amends Section A1 of the Tweed Development Control Plan to include interim development controls in relation to the height and density limit applicable to all land in Fingal Head, restricting height to two (2) storeys only with such provision being reviewed no later than 12 months from the date of adoption.
 2. The draft amendment be publicly exhibited in accordance with s.74E of the Environmental Planning Assessment Act 1979.
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QUESTIONS ON NOTICE

18 [QoN-Cr K Milne] Art Gallery Local Content

QUESTION ON NOTICE:

Councillor K Milne asked can Council advise what proportion of the Art Gallery exhibition program and space is dedicated to Tweed Shire artists compared to artists located outside the Shire, and whether there are any opportunities to provide more selling spaces for local artists?

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RECEIPT OF PETITIONS

19 [ROP] Receipt of Petitions

SUBMITTED BY: Corporate Governance



Civic Leadership

SUMMARY OF REPORT:

Under Section 1.5.4 Receipt of Petitions in the Code of Meeting Practice Version 2.3, *Petitions received by Councillors or forwarded to the (Acting) General Manager will be tabled as per the Order of Business, Item 11, Receipt of Petitions.*

Unless Council determines to consider it in conjunction with a report already listed on the agenda, no motion (other than a motion to receive the same) may be made on any petition until the next Ordinary Meeting after that at which it has been presented.

RECOMMENDATION:

That the following tabled Petition(s) be received and noted:

REPORT:

As per Summary.

OPTIONS:

That in accordance with Section 1.5.4 of the Code of Meeting Practice Version 2.3:

1. The tabled Petition(s) be considered in conjunction with an Item on the Agenda.
2. The tabled Petition(s) be received and noted.

CONCLUSION:

Any Petition tabled should be considered under Section 1.5.4 of the Code of Meeting Practice Version 2.3.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice Version 2.3.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
- 1.2.2.1 Priority decision making
- 1.2.2.1.1 Council decisions will be in accordance with the Community Strategic Plan

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

REPORTS THROUGH THE ACTING GENERAL MANAGER

REPORTS FROM THE ACTING GENERAL MANAGER

20 [GM-CM] Local Government Acts Taskforce - Response to April 2013 Discussion Paper

SUBMITTED BY: Acting General Manager

Valid



Civic Leadership

SUMMARY OF REPORT:

The Local Government Acts Taskforce, as part of its Stage 2 consultation process has released a Discussion Paper dated 4 April 2013. The Taskforce has invited submissions which close on 28 June 2013.

The purpose of the Discussion Paper is to outline the deliberations of the Taskforce on options and proposals for the principles of the new legislation. The Taskforce is proposing to develop a flexible, principles-based legislative framework where possible that avoids excessive prescription, is written in plain language, and in a logical form.

This report outlines Council's responses to the Discussion paper dated 4 April 2013.

RECOMMENDATION:

That the Council report and Attachment 2 be submitted to the Local Government Acts Taskforce in response to the Discussion Paper dated 4 April 2013.

REPORT:

The Local Government Acts Taskforce, as part of its Stage 2 consultation process has released a Discussion Paper dated 4 April 2013. The Taskforce has invited submissions which close on 28 June 2013.

The purpose of the Discussion Paper is to outline the deliberations of the Taskforce on options and proposals for the principles of the new legislation. The Taskforce is proposing to develop a flexible, principles-based legislative framework where possible that avoids excessive prescription, is written in plain language, and in a logical form.

The following diagram displays the timelines that the Local Government Acts Taskforce are utilising:



More details on the Taskforce can be found on [webpage](http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_LGAT.asp?mi=10&ml=2&SecHd=HOME&AreaIndex=TASKFORCE):

http://www.dlg.nsw.gov.au/dlg/dlghome/dlg_LGAT.asp?mi=10&ml=2&SecHd=HOME&AreaIndex=TASKFORCE

In conducting this review the Taskforce is required to consult widely. Part of this consultation included a workshop session conducted at Lennox Head on 14 May 2013, which was attended by the Mayor and five staff. Much of the proposals contained within this Discussion Paper have been framed on the feedback received from the Stage 1 consultation and it is worth noting that Council provided a submission to the Stage 1 Preliminary Ideas Paper in December 2012.

The Topics contained within this current Discussion Paper are:

Topic	Section
Elections	3.3.1
Meetings	3.3.2
Appointment and Management of Staff	3.3.3
Formation and involvement in Corporations and Other Entities	3.3.4
Protection from Liability	3.3.5
Code of Conduct	3.3.6
Pecuniary Interest	3.3.7
Delegations	3.3.8
Financial Management	3.3.9
Procurement	3.3.10
Capital Expenditure Framework	3.3.11
Public Private Partnerships	3.3.12
Acquisition of Land	3.3.13
Public Land	3.3.14
Approvals, Orders and Enforcement	3.3.15
Water Management	3.3.16
Tribunals and Commissions	3.3.17
Performance of Local Government	3.3.18

A copy of Council's draft submission in response to the Local Government Acts Taskforce 4 April 2013 Discussion Paper is attached.

OPTIONS:

1. Provide this report as a submission to the Local Government Acts Taskforce 4 April 2013 Discussion Paper.
2. Amend the draft submission in response to the Local Government Acts Taskforce 4 April 2013 Discussion Paper.
3. No submission is made in response to the Local Government Acts Taskforce 4 April 2013 Discussion Paper.

CONCLUSION:

Council comments and this report are submitted to the Local Government Acts Taskforce in response to the Discussion Paper dated 4 April 2013.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

Local Government Act

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Local Government Acts Taskforce - A New Local Government Act for NSW - Discussion Paper - 4 April 2013 (ECM 3079622)
 - Attachment 2. Council's draft submission in response to the Local Government Acts Taskforce Discussion Paper - 4 April 2013 (ECM 3082276)
-

21 [GM-CM] Business Investment Policy

SUBMITTED BY: Acting General Manager

Valid



Strengthening the Economy

SUMMARY OF REPORT:

Council at its meeting on Thursday 16 May 2013 resolved that it:

"Places the Draft Business Investment Policy, Version 1.0 on public exhibition and seek public submissions for 14 days."

The Draft Business Investment Policy was placed on exhibition on 21 May 2013, with submissions closing 5 June 2013.

Submissions received from the public, comments internal to the organisation and further legal advice has resulted in changes to the draft policy which is marked-up in Attachment 1.

This Policy will result in Tweed Shire Council taking proactive measures in accordance with the adopted Community Strategic Plan, Strengthening the Economy theme with a longer-term view of increasing economic activity and hence local jobs creation.

RECOMMENDATION:

That Council, in accordance with Section 161 of the Local Government Act 1993, adopts the Business Investment Policy Version 1.0 with amendments.

REPORT:

Global economic downturn and instability stemming from the 2007-2008 global financial crisis has had far reaching implications. With the downturn in economic activity and weaker stock markets most sectors of the business economy have been affected in some way, particularly at a time when consumer spending has shown a steady decline in response to uncertainty in domestic as well as international trade markets.

The net effects are widespread and Tweed Shire is not immune from these global phenomena. As with many Australian States and Territories there has been a significant decline in both the housing construction industry and in general business investment which has impacted on both jobs retention and new employment opportunities.

Due to the ever changing nature of the Tweed economy this Policy should be considered as a measure to assist business in a time of economic downturn. This Policy should be reviewed on a regular basis with reference to the current needs of the business community for economic growth. For this reason flexibility and recurrence are important elements in this policy and as a result Council reserves the right to amend this Policy from time to time.

Additionally, Council has agreed to undertake the development of an Economic Development Strategy. This process is currently under way and the outcomes of this Strategy could possibly identify changes to the Policy which may offer better outcomes and practices for business incentives.

For these reasons this Policy should not only be reviewed by Council in light of the adopted Economic Development Strategy later this year, but also reviewed on a regular and ongoing basis to confirm its relevance and validity.

This policy is being proposed now as there is a need to encourage and generate employment creating investment, and thereby increase both the workforce participation rate and the lower than state average disposable and household incomes in the Tweed area.

Policy:

The Draft Business Investment Policy (attached) provides investment incentives for new, relocating, or expanding businesses within the Tweed Shire.

The Policy defines:

- Investment attraction and its relevance to Council's *Community Strategic Plan* and *Delivery Program*.
- The circumstances in which investment attraction activities will be provided.
- The scope for investment attraction activities and the range of incentives that can be considered.
- The consultation, assessment (including the risk/security for Council), approval, reporting and monitoring arrangements to apply, to ensure the Policy administration occurs in a transparent and accountable manner.

In summary, the Draft Business Investment Policy provides two forms of incentives:

1. Discretionary

Assistance from Council will comprise a non-cash incentive package which allows for payment by instalments of developer contributions for water supply and/or sewer services infrastructure, pursuant to section 64 of the *Local Government Act 1993* (Infrastructure Charge).

2. Non-discretionary

1. Concessions and staged payment offered in relation to the contributions required under section 94 of the *Environmental Planning and Assessment Act 1979*, Developer Contributions Plan 4 - (there are exemptions to this assistance within the policy document); and
2. New development applications for building works, where there is a requirement for payment of Section 64 and Section 94 contributions, consent conditions for such payments will designate payment to be made prior to issue of Occupation Certificate as opposed to the earlier Construction Certificate stage.

The adoption of this Policy will result in Tweed Shire Council taking proactive measures in accordance with the adopted Community Strategic Plan, Strengthening the Economy theme with a longer-term view of increasing economic activity and hence local jobs creation.

OPTIONS:

1. Adopts the Draft Business Investment Policy, Version 1.0 with the amendments outlined in the attachment.
2. Adopts the Draft Business Investment Policy without amendment.
3. Not adopt the Draft Business Investment Policy.

CONCLUSION:

The Business Investment Policy seeks to encourage the development of a robust Tweed economy which is more resilient to fluctuations in the economic cycle, has a broader range of business activities and supports the growth and development of sustainable employment opportunities for Tweed Shire's population.

COUNCIL IMPLICATIONS:

a. Policy:

New policy for Council determination

b. Budget/Long Term Finance Plan:

Lost interest income due to deferral of Section 94 Developer charges and S64 Developer Services Charges.

c. Legal:

Legal advice has been received.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

3 Strengthening the Economy

3.4 Provide land and infrastructure to underpin economic development and employment

UNDER SEPARATE COVER:

Attachment 1. Business Investment Policy, Version 1.0 (ECM 3082315).

Attachment 2. Late Submission from Tweed Chamber of Commerce and Industry Incorporated (ECM 3084948).

22 [GM-CM] Applications for Financial Assistance 2012/2013 - Festivals and Events Policy

SUBMITTED BY: Communications and Marketing



Supporting Community Life



Strengthening the Economy

SUMMARY OF REPORT:

Council recognises the importance of festivals and events to the quality of life offered in the Tweed and their significant economic benefits to tourism and other industries.

Council's Events Strategy 2011-2016 provides a framework to assist the community and Council develop and support festivals and events in the Tweed. The Festival and Events Policy adopted in 2011 created one annual funding round with applications due on 1 May each year. Through the Tweed Link, Council invited applications for financial assistance from eligible organisations in accordance with its Festivals and Events Policy.

Applicants are able to apply for multi-year funding and the recommendation is to provide this. Funding in the subsequent year still requires annual reporting and updating of the business plan already received.

RECOMMENDATION:

That:

- Council allocates Festival and Events funding for 2013/2014 under the Festivals and Events Policy as follows:**

<u>Applicant</u>	<u>Amount</u>
(a) Tweed Heads Croquet Club Inc (Croquet Spring Festival)	\$1,000
(b) Twin Towns Services Club (NYE Fireworks 9pm)	\$4,000
(c) Cooly Rocks On	\$20,000
(d) Rotary Club of Murwillumbah Central Inc (Tweed Valley Banana Festival)	\$,7500
(e) Tweed Food Fest Inc (Tweed Foodie Fest)	\$5,000
(f) Chillingham Community Association Inc (Three Choirs Festival)	\$750

(g) The Family Centre (Superhero Saturday)	\$1,500
(h) Caba Creative (Caba Creative Carnivale)	\$1,150
(i) Crabbes Creek Community Film Society (CrabbesFest)	\$1,000
(j) St Joseph's Youth Services (Tweed Mental Health Awareness - Family Fun Day)	\$3,000
(k) Caldera Environment Centre (World Environment Day Festival)	\$4,000
(l) Tweed River Canine Club (Canine Spectacular)	\$1,500
(m) Coolangatta-Mt Warning Dragon Boat Club Inc (Tweed River Festival Regatta)	\$1,500
(n) Murwillumbah Festival of Performing Arts (Murwillumbah Festival of Performing Arts)	\$7,500
(o) Kids in Need Association (Kids in Need Dragon Boat Festival 2013)	\$1,500
(p) Murwillumbah Rowing Club (Head of the Tweed 2014)	\$1,500
(q) Cabaria Beach Pottsville Beach Lions Club Inc (Lions Charity Greenback Tailor Fishing Competition)	<u>\$1,500</u>
TOTAL:	\$63,900

2. Council has allocated multi-year funding in 2012/2013 for 2013/2014 and 2014/2015 under the Festivals and Events Policy as follows:

(a) Tweed River Agricultural Society (Murwillumbah Show)	\$7,500
(b) Island Style Promotions (Australian Longboard Surfing Festival)	\$5,000
(c) Tyalgum Festival Committee Inc (Tyalgum Festival of Classical Music and Community Spring Fair)	<u>\$6,000</u>
TOTAL per year:	\$18,500

3. Council allocates multi-year funding for 2014/2015 and 2015/2016 under the Festivals and Events Policy as follows:

(a) Rotary Club of Murwillumbah Central Inc (Tweed Valley Banana Festival)	\$7,500
(b) Tweed Food Fest Inc (Tweed Foodie Fest)	\$5,000
(c) Murwillumbah Festival of Performing Arts	\$7,500
(d) Cabarita Beach Pottsville Beach Lions Club Inc (Lions Charity Greenback Tailor Fishing Competition)	<u>\$1,500</u>
TOTAL per year:	\$21,500

4. ATTACHMENT A is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information of a confidential nature that would, if disclosed:-

(a) personnel matters concerning particular individuals (other than councillors).

REPORT:

List of applicants:

Applicant	Amount Requested	Festival
Tweed Heads Croquet Club Inc	\$1,500	Croquet Spring Festival 30 August to 2 Sept 2013
Twin Towns Services Club	\$25,000	NYE Fireworks 31 December 2013
Cooly Rocks On	\$30,000	Cooly Rocks On 30 May to 9 June 2014
Rotary Club of Murwillumbah Central Inc	\$10,000	Tweed Valley Banana Festival 31 August 2013
Tweed Food Fest Inc	\$20,000	Tweed Foodie Fest 29 Nov to 1 Dec 2013
Chillingham Community Association Inc	\$750	Three Choirs Festival 20 July 2013
The Family Centre	\$3,500	Superhero Saturday 7 September 2013
Caba Creative	\$1,500	Caba Creative Carnivale 28 September 2013
Crabbes Creek Community Film Society	\$1,000	CrabbesFest 2013 13 September 2013
St Joseph's Youth Services	\$10,000	Tweed Mental Health Awareness - Family Fun Day and Youth Festival 4 October 2013
Caldera Environment Centre	\$4,000	World Environment Day Festival 1 June 2014
Tweed River Canine Club	\$1,500	Canine Spectacular 14 March to 16 March 2014
Coolangatta-Mt Warning Dragon Boat Club Inc	\$2,000	Tweed River Festival Regatta 1 September 2013
Murwillumbah Festival of Performing Arts	\$15,000	Murwillumbah Festival of Performing Arts 11 July 2013
Kids in Need Association	\$1,500	Kids in Need Dragon Boat Festival 2013 10 November 2013
Murwillumbah Rowing Club	\$1,500	Head of the Tweed 2014 15 June 2014
Cabarita Beach Pottsville Beach Lions Club Inc	\$5,000	Lions Charity Greenback Tailor Fishing Competition 8 June 2014

Total applied for \$133,750

OPTIONS:

As well as the annual allocation of financial assistance, there is an option to allocate multi-year funding for those four applicants who have requested it and provided adequate financial and event management plan for the three year period.

CONCLUSION:

Funding be allocated to festivals and events within the 2013/2014 budget of \$82,400; which includes an amount of \$18,500 in multi-year funding for 2013/2014 allocated in the previous year 2012/2013.

COUNCIL IMPLICATIONS:

a. Policy:

Festivals and Events Policy Version 1.0.

b. Budget/Long Term Financial Plan:

1. An amount of \$82,400 is available in the budget and recommended for distribution in 2013/2014;
2. A total amount of \$40,000 is recommended for multi-year funding for 2014/2015 and 2015/2016 which will come from the allocated budgets for those future years.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.3 Provide opportunities for residents to enjoy access to the arts, festivals, sporting activities, recreation, community and cultural facilities
 - 2.1.3.9 Develop the Tweed as a community with great festivals and events
 - 2.1.3.9.6 Administer funding assistance in accordance with Festivals Policy to support small to medium festivals and events
- 3 Strengthening the Economy
 - 3.1 Expand employment, tourism and education opportunities
 - 3.1.2 Attract major events to the Tweed
 - 3.1.2.1 Provide assistance and support for potential sports tourism and major events
 - 3.1.2.1.1 Provide assistance and support to Communications and Marketing Coordinator for potential sports tourism and major events

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. **Confidential Attachment** - Assessment - Festivals and Events Funding 2013/2014 (ECM 3079633)
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23 [GM-CM] Destination Tweed Quarterly Performance Report - January to March 2013

SUBMITTED BY: Business and Economic Development

Valid



Strengthening the Economy

SUMMARY OF REPORT:

As required by the current funding and performance agreement with Destination Tweed, a quarterly performance report and summary financial statement are to be provided for Council's review. This report provides Destination Tweed's quarterly reports for the quarter 1 January to 31 March 2013.

This report recommends that Council endorses the January to March 2013 quarterly report from Destination Tweed.

RECOMMENDATION:

That Council endorses Destination Tweed's Quarterly Report for the quarter January to March 2013.

REPORT:



Quarterly Report to Council March 2013

1. TOURISM MARKETING & PROMOTION

Marketing the region with a limited budget requires a balanced approach taking in the need to both penetrate target markets and influence their behaviour. Criticism has been levied over time at DT about not having a presence at the Gold Coast Airport or marketing on the Gold Coast. DT Tweed review target markets quarterly and define them in a tiered structure based on their ability to deliver a higher economic return to the region. This marketing budget is then factored into the equation and the activity determined that will deliver the best results.

For example outdoor billboards at Gold Coast Airport cost \$20-25k / month, this advertising space targets people leaving the airport. It is not sound to market the region to travellers who, outside of backpackers or a few independent travellers, have already purchased their holiday and know where they are going when they leave the airport. DT is investing \$6k for 12 months double page advertising in Gold Coast and Northern NSW hotel room compendiums where we can promote the region's experiences and products. These build destination awareness in an environment where they can read and absorb as opposed to a momentary glimpse of a billboard.

It is our preference to market in mediums and channels that provide the opportunity to reach our markets where we can influence them before they travel (i.e. not after they arrive at an airport). The marketing messages used are identified present as relevant to each market segment and aim to introduce the region as well as presenting product offers and experiences that stimulate overnight visitation. Packaging and developing experiences based on events and activities has the broadest appeal, in the case of the domestic markets below, it allows us to gain and increase repeat visitation.

Market Snap Shots:

The domestic market data below is sourced from Tourism Research Australia's National Visitor Survey (NVS).

Brisbane Overnight Visitation

Trip volume of 2.2m trips for the YE 2012 is up 1.6% compared to the YE 2011. This positive shift is the first since the YE March 2011 and, in conjunction with recent results, suggests a return towards higher volumes of pre 2011.

Sydney Overnight Visitation

Ex-Sydney Visitor volume of 3.6m trips for the YE June 2012 represents a fall of 4.8% compared to the YE June 2011. This is a very modest improvement compared to the previous result however it is too early to tell if this will continue.

Gold Coast Overnight Visitation

Ex-Gold Coast Visitor volume of almost 475,000 trips for the YE 2012 is 25% above YE 2011 however YE '11 was an unusually low year. The upward movement provides encouragement that the market is 'healthy'.

Northern Rivers Overnight Visitation

Estimated Visitor volume of around 320,000 is very close to the average over recent years. There has been little fluctuation in volume since 2008 and, in combination with the proximity of the market, is a source that we continue to massage.

Mid North Coast Overnight Visitation

The estimated +10% change in visitor volume compared to the same period last year represents another positive shift. Visitor volume for YE June 2012 of around 450,000 is very similar to the majority of results since YE Sept 2010. This is a stable source market that DT continue to market in.

The International market data below is sourced from Tourism Research Australia's International Visitor Survey (IVS). The data is a snap shot of Australia's top four international inbound markets. It is important to note that the data below is a representation of National statistics. The market segments below differ in importance and relevance to the Tweed region in terms of the product and experience our region offers.

New Zealand Visitation

NZ continues to be Australia's largest inbound market for visitor arrivals, fourth for total expenditure and third for visitor nights. Australia saw 1.2m NZ visitors in 2012 (up 2.4% on 2011). This international market spent a total of 15.7m nights (up 2%), 6.9m dispersed nights outside gateway cities (down 10%) and represented \$2.3bn total spend (up 5%).

Chinese Visitation

China is Australia's second largest inbound market for visitor arrivals and the largest market for total expenditure and visitor nights. 626,400 Chinese visitors arrived in 2012 (up 15.6% on 2011). This market spent a total of 27.8m nights (up 7%), 5.3m dispersed nights outside gateway cities (up 4%) and saw a total spend of \$4.2bn (up 13%).

United Kingdom Visitation

The UK is Australia's third largest inbound market for visitor arrivals and second largest for total expenditure and visitor nights. 593,600 UK visitors arrived in 2012 (down 2.4 on 2011). This market spent a total of 22.5m nights (up 7%), 8.7m dispersed nights outside gateway cities (up 3%) and represented a total spend of \$2.9bn (up 1%).

USA Visitation

The USA is Australia's fourth largest inbound market for visitor arrivals, the third largest market for total expenditure and fifth for visitor nights. 478,900 American visitors arrived in 2012 (up 5% on 2011). This market spent a total of 10.4m nights (up 4%), 4.2m dispersed nights outside gateway cities (no change on 2011) and represented a total spend of \$2.4bn (up 8%).

Identify Product / Experience / Infrastructure Gaps

DT continues to work with tourism operators to further develop and expand their business to meet the needs of the market.

Print Advertising

DT continues to undertake print advertising and marketing activities in conjunction with strategic marketing campaigns and cooperative opportunities. This type of marketing is about developing the region's destination profile and the experiences contained within to the various target markets outlined above:

- Holidays with Kids (magazine)
- Holidays for Couples (magazine)
- The Legendary Pacific Coast (touring guide)
- The Legendary Pacific Coast (trails & itineraries brochures)
- Byron Bay and Beyond (brochure)
- Australian Traveller (magazine)
- Backpacker Essentials (magazine)
- Make Tracks (magazine)
- Time to Roam (magazine)
- Great Destination Weddings (magazine)

Develop and Produce Relevant Brochures

DT has collated much of the content for the Tweed Touring Guides which includes experiences such as food, art, history and scenic trails into a series of brochure.

Social Media

This continues to be an area that DT leverages off to market tourism products and destination experiences. These platforms encourage social interaction and two-way communication with consumers via the sharing of digital media content. As with all digital mediums, constant changes are required to keep content relevant, fresh and interesting. Current social media channels being utilised by DT will be refreshed in the coming months and plans for greater integration with other digital marketing activities and channels are in the works. Social media channels are used to promote the region's community events, local markets, activities, networking opportunities, business chamber functions, local news and tourism products and experiences.

Tweed Tourism Website Analytics

Tweed Tourism website analytics for the January February, March quarter:

Site Usage	January	February	March	Total / Average
Number of visits	5049	3547	4486	13,082 total
Unique visits	3843	2521	3460	9,824 total
Time spent per visit	3.23	3.08	2.56	2.95 average
Page views per visit	3.98	3.47	3.61	3.68
Bounce rate	43.14%	45.14%	44.67%	44.31% average
New visits	74.23%	67.75%	73.09%	71.69% average

Media Activities

Significant major metro and national television exposure was achieved for the Tweed region via:

- 3 minute segment on Channel 9's Getaway travel show;
- 2 page travel feature in the Sydney Sun-Herald and Melbourne Age (plus online at Brisbane Times);
- 1 page travel feature in APN regional newspapers, including Sunshine Coast Daily and Morning Bulletin (Rockhampton);
- Multi-page feature in Ocean Road Magazine highlighting Tweed food producers and food trails (coming up in their next issue).
- Sydney Weekender segments aired in April;
- Sydney Morning Herald faml in April

The following tables list the media coverage achieved through the various PR initiatives carried out on behalf of Destination Tweed from July 2012 – March 2013. Calculations of value are based on the cost of taking out an advertisement of similar size to the published or broadcast editorial (advertising value), multiplied by 3 to estimate editorial value. Appendix 1 lists activities and associated values.

	Advertising Value	Editorial Value
Print Media	\$ 206,271	\$ 618,814
Television	\$ 78,400	\$ 235,200
Radio	\$ 54,200	\$ 162,600
Local Media	\$ 319,631	\$ 958,893
TOTAL	\$658,502	\$1,975,507

2. BUSINESS ATTRACTION

Engage with Local Business

DT has attend local Business Chamber meetings and engaged in networking with local businesses. As well, DT now sits on a number of local committees and is actively engaging with the business community.

It was identified that there was a clear need for a more formalised approach of collective communication with Council from Tweed industry, DT facilitated the start-up of the Tweed Business Advisory Board (TBAB) and provided the secretariat services for TBAB. It was envisaged that TBAB would be a-political and broadly provide advice and insights to TSC on industry trends and hurdles. DT as secretariat has seen little actions being taken from the few meeting held to date. It is unclear if the concept of TBAB is working as envisaged.

With the development of the Economic Development Strategy it would be sensible to look at reforming the concept of TBAB with some of the members that make up the broader reference group (with inclusion by representatives of TSC councillors and staff). The function of this group would be to assist in providing feedback on the implementation of the EDS.

This concept has a number of merits;

- It is not a formal board, but one that is invited with quarterly meetings
- The members have been involved in the development of the EDS
- Ensures that the EDS is a living document
- Provides TSC with a conduit to industry for feedback on the implementation of the EDS
- This group is outside of a direct council controlled group, something clearly articulated by industry as being important

Assist Local Business Explore NBN Opportunities

DT has been involved with Council regarding the NBN and the opportunities that the roll out presents to local business.

Raise the Profile of Destination Tweed

DT continues to promote the region as a place of business, growth and opportunity through state government bodies, Destination NSW, RDA and other local organisations. This is a continual process with DT securing a place in the NSW trade and investment prospectus. This is the key marketing tool that State Government uses in promoting NSW to overseas and national investors.

Develop and Maintain Marketing Material & Develop Customised Marketing Packages

DT are currently working on stage two the business tourism website, this will see a collection of resources for business to access and utilise. DT does not propose to be a repository of this content, but link to current and relevant tools and information on credible third party sites.

From the EDS new industry segments will be identified, DT will update industry specific collateral accordingly and develop new content where necessary. This is important to ensure that content is relevant, the offer clear and the brands integrity is developed.

Produce Annual Update on Tweed Economy

Now that all census data has been completed DT are working with ID solutions to provide an update for the Tweed Shire. This data will be used in the upcoming EDS and will be made available to Council upon completion.

Meet with Media from Trade Publications

This is an ongoing process to facilitate the promotion of the region as a place to do business.

Identify and Engage with Potential Investors

DT has approached existing business within and outside of the region to set up and invest in expanding their operations to include the Tweed or to base their operations in the Tweed.

DT assists business in their application process for grant funding, and where appropriate will review grant funding applications. DT also assists in referring business to the NSW Government for relocation assistance packages and other business grants. However, since the closure of the NSW Trade & Investment office in Tweed Heads this partnership has slowed.

Provide Customised Information to Investors

DT continues to work with individuals and businesses interested in investing in the region or developing their existing business. Individuals are provided information based on their needs and requirements.

3. OPERATE VISITOR INFORMATION CENTRES

Visitor Information Centres (VICs) are important resources for the dissemination of local information to visitors and provides tools for encouraging visitors to spend longer amounts of time in the region. Both of these are well researched and documented facts, something that DT is very aware of in our business planning. DT, as previously informed, recognises the need for a VIC to be located in Kingscliff and had been working towards a solution that unfortunately did not eventuate.

The need for a VIC in Kingscliff has been expressed by many individuals, business owners and Chamber of Commerce, all of whom have looked towards DT as the provider of such services. DT currently run and operate two VICs under contract to TSC, the value of that contract reflect the costs to do just that function. In order to open a VIC in Kingscliff DT would need to either look towards TSC for further funding or open a VIC as commercially viable business in order to support and cover its own operating costs. The latter is the preferred option by DT as this would provide a more sustainable solution in the long run.

To that end, DT have been looking at the various options available to achieve this objective and are close to finalising a business plan to open a VIC in Kingscliff. DT are very conscious of ensuring that this is done in an economically sustainable manner in order to meet the longer term requirements of servicing a tourist town.

Staff Training

DT staff recently undertook a merchandising course run through TAFE. This course provided the opportunity for up-skilling of some team members and a refresher for others in current best practice in inventory management, ordering and merchandising displays. The course provided new insights in shop fit out; we are currently reviewing the internal and external layout for the VIC's. Changes to the internal elements will be made, technologies incorporated in to the way that information is disseminated, new brochure racks to display operator's brochures; all of which will provide a more contemporary approach to visitor servicing and provide both consistent and quality experiences.

This also includes the goods sold through the VIC, with a focus now on products that showcase our region or can only be purchased in the Tweed. The shops will also provide a place for local producers, artists, etc. to promote and sell their goods through. We believe that this is in keeping with the expectations of the region and promotes our strengths.

MOVEMENT IN VISITOR NUMBERS

2012-2013

	2012/13	2011/12	Variance	2012/13	2011/12	Variance
	WHRC			Tweed Heads		
Sept Qtr	6493	7238	-10.29%	10717	8721	22.89%
Dec Qtr	5765	5442	5.94%	8710	7507	16.03%
Mar Qtr	5844	5003	16.81%	7652	7142	7.14%
Total	18,102	17,683		24,079	23,370	

- Murwillumbah had an increase in visitor numbers this quarter in comparison to same quarter last year by 16.81% and an increase of 1.37% compared to last quarter.
- Tweed Heads had an increase in visitor numbers by 7.14% in comparison to the same quarter last year and a decrease of 12.15% compared to last quarter.

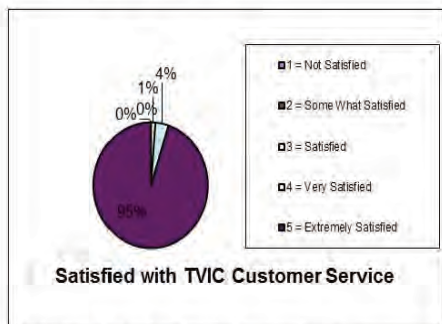
Visitor Number Comparisons for March Quarter 2013 over same period 2012

MURWILLUMBAH	Quarter 2013	Quarter 2012	TWEED	Quarter 2013	Quarter 2012
LOCAL	1248	849	LOCAL	763	818
INTERSTATE			INTERSTATE		
NSW	1316	1102	NSW	1587	1516
QLD	1715	1472	QLD	1034	1159
VIC	249	330	VIC	868	780
ACT	32	19	ACT	50	28
WA	91	93	WA	141	119
TAS	11	25	TAS	51	62
SA	66	74	SA	182	156
NT	23	23	NT	12	14
INTERNATIONAL			INTERNATIONAL		
US/Canada	139	112	US/Canada	414	372
NZ	43	65	NZ	224	226
UK	215	189	UK	520	530
Europe	584	566	Europe	1391	1001
Africa	6	9	Africa	29	17
Japan/Asia	92	63	Japan/Asia	335	302
Other	12	12	Other	51	42
TOTALS	5844	5003	TOTALS	7652	7142

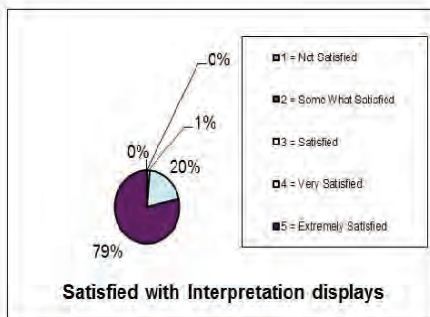
Note: It is important to note the visitor numbers listed are taken from only two areas of the Shire and register only those that come into the VIC. These figures should not be used to judge or compare effectiveness of marketing; they are a snap shot of a section of the market that travel to the region. Statistically sound data can be drawn from the NVS, IVS and room occupancy.

Quality of Service at Visitor Information Centres

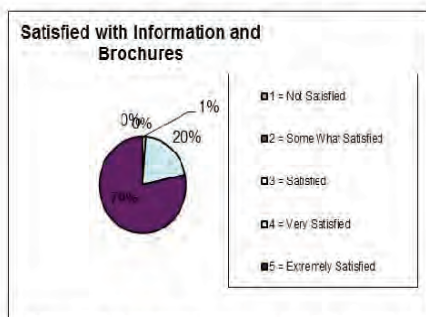
Surveys for the last quarter, results show that 95% of visitors to the VICs were extremely satisfied, 4% very satisfied and 1% satisfied with the quality of customer service received. The majority of visitors surveyed were happy with the range of brochures and information provided as well as the interpretative displays.



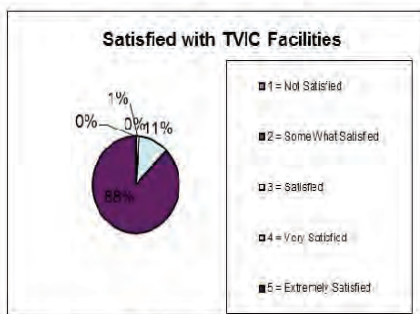
Visitors satisfied with customer service.



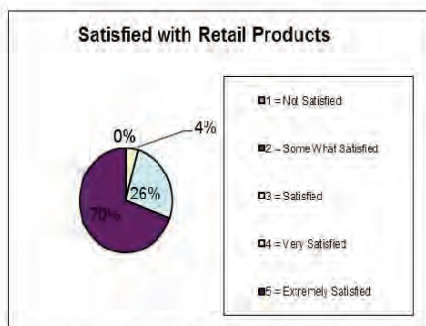
Visitors satisfied with displays.



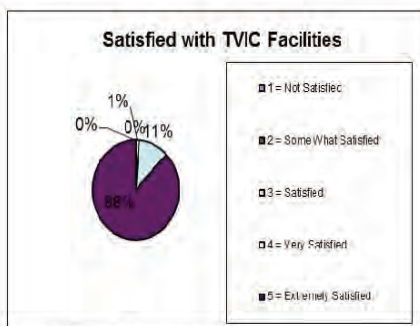
Visitors satisfied with the range of information.



Visitors satisfied with facilities.



Visitors satisfied with quality of retail products.



Main reason for visiting TVIC.

Prepare and Submit Monthly VIC Accreditation Reports

Reports sent to Aurora each month include walk in stats and number of phone calls & email enquiries.

Prepare and Submit Annual VIC Accreditation Reports

The renewal for the Murwillumbah accreditation was sent to Aurora in May 2012.

Deliver In-House Staff Training Via Weekly 5MOT Modules

Staff training modules were delivered to staff and volunteers in the last quarter.

Provide Online Booking Service & Promote Tourism Operator Services through the VIC's

Achieved.

APPENDIX 1: DESTINATION TWEED PR PROGRAM

Editorial Valuation – July 2012 to March 2013

PRINT MEDIA – DESTINATION FEATURES

DATE	PUBLICATION	TITLE	MEMBERS FEATURED	SIZE	UNIT COST (incl GST)	ADVERT. VALUE	EDITORIAL VALUE *
18 Aug 12	Sunshine Coast Daily	On the Art & Music Trail	Caldera Art Gallery Tweed River Art Gallery	7 col x 25cm = 175 col cm	\$21.21 / col cm	\$3,712	\$11,136
18 Aug 12	The Morning Bulletin	On the Southern Trail	Studio 9 & Uki galleries Hearts Aflame Productions Tyalgum Festival Old Butcher Shop Gallery	7 col x 20cm = 140 col cm	\$18.45 / col cm	\$2,583	\$7,749
15 Sep 12	The Age – Melbourne	The Coast Really Rocks	Twin Towns Services Club Jack Evans Boat Harbour Café D'Bar	4 x 6 modules = 24 modules	\$910.08 per module	\$21,842	\$65,526
16 Sep 12	Sun-Herald – Sydney		Babalou Watersports Guru		\$1,225.34 per module	\$29,408	\$88,224
16 Sep 12	Brisbane Times		Salt Village / Piccolo Gelato Kingscliff Coolangatta Whale Watch Outrigger Twin Towns Resort		N/A		
23 Sep 12	Sunday Mail – Escape	Feasting on Local Harvest	Peppers & various food producers	7 col x 38cm = 266 col cm	\$35,486.23 pp	\$35,486	\$106,458
23 Sep 12	Sunday Telegraph – Escape	Feasting on Harvest in Kingscliff			\$197.14 /col cm	\$52,439	\$157,317
23 Sep 12	Herald Sun – Escape	Feasting on Harvest in Kingscliff			\$137.40 /col cm	\$36,548	\$109,645
22 Sep 12	Adelaide Now	Feasting on Harvest in Kingscliff			\$59.07 / col cm	\$15,712	\$47,136
20 Jan 12	Bild-am Sonntag (Germany)	I'm a Reporter ... Get me out of here!	General Tweed attractions & TFW				N/A
13 Jan, 12	Sun Herald – Travel	Views on tap	Kingscliff Beach Hotel	4 modules	\$4901.38	\$4,901	\$14,703
13 Jan, 12	The Age – Travel	Views on tap	Kingscliff Beach Hotel		\$3,640.33	\$3,640	\$10,920
TOTAL						\$206,271	\$618,814

TELEVISION MEDIA

DATE	PROGRAM	TITLE	MEMBERS FEATURED	DURATION	UNIT COST (incl GST)	ADVERT. VALUE	EDITORIAL VALUE *
29 Sep 12	Getaway	Silk Pavilions	Silk Pavilions	3 mins	Estimate based on Ch7 base rate for national broadcast \$12,000 per 30 sec spot	\$72,000	\$216,000
18 Oct, 12	NBN News	Turtle release launches environmental action group	MACS Launch	3 mins	Est: \$400 per 30 sec spot	\$2,400	\$7,200
18 Oct, 12	Nine Gold Coast News			3 mins	Est: \$400 per 30 sec spot	\$2,400	\$7,200
13 Feb, 13	Nine Gold Coast News	DT urges locals to support tourism operators	Destination Tweed	1 min	Est: \$400 per 30 sec spot	\$800	\$2,400
13 Feb, 13	NBN News			1 min	Est: \$400 per 30 sec spot	\$800	\$2,400
TOTAL						\$78,400	\$235,200

RADIO MEDIA

DATE	PROGRAM	TITLE	MEMBERS FEATURED	DURATION	UNIT COST (incl GST)	ADVERT. VALUE	EDITORIAL VALUE *
15 July, 12	Hot Tomato – Paul Burt	Karen Ransome interview	Various	2 mins	\$400 per 30 sec live read (est)	\$1,600	\$4,800
20 July, 12	ABC North Coast – Joanne Dodgson	Tim Draxl Interview	Tyalgum – Flutterbies	10 mins	\$400 per 30 sec live read (est)	\$8,000	\$24,000
16 July, 12	ABC North Coast – News	Bill Tatchell Interview	Destination Tweed	3 mins	\$400 per 30 sec live read (est)	\$2,400	\$7,200
Aug, 12	ABC Classic FM	David Pereira Interview	Tyalgum Festival	10 mins	\$400 per 30 sec live read (est)	\$8,000	\$24,000
13 Oct, 12	ABC Gold Coast	Simon Grigalius Interview	Tweed food – producers & trails	5 mins	\$400 per 30 sec live read (est)	\$4,000	\$12,000
6 Nov, 12	ABC North Coast	Dancer interview	Tyalgum Dance Spectacular	5 mins	\$400 per 30 sec live read (est)	\$4,000	\$12,000
13 Nov, 12	2CH – Bob Rogers	Sheridan Rogers segment	Cheeses Loves You	5 mins	\$600 per 30 sec	\$6,000	\$18,000

			Tweed Foodie Fest		live read (est)		
24 Nov, 12	Hot Tomato – Outdoors	Karen Ransome interview	Tweed Foodie Fest	2 mins	\$400 per 30 sec live read (est)	\$1,600	\$4,800
1 Dec, 12	ABC Coast FM	Kerry Turner interview	Tweed Foodie Fest	10 mins	\$400 per 30 sec live read (est)	\$8,000	\$24,000
5 Dec, 12	Rabbit Radio	Art Reporter	Green Cauldron Panorama	1 mins	\$100 per 30 sec live read (est)	\$ 200	\$ 600
8 Dec, 12	ABC Coast FM	Andy Reimanis interview		5 mins	\$400 per 30 sec live read (est)	\$4,000	\$12,000
16 Feb, 13	Hot Tomato – Outdoors	Bill Tatchell interview	DT urges locals to support tourism industry	3 mins	\$400 per 30 sec live read (est)	\$2,400	\$7,200
18 Feb, 13	ABC North Coast Radio			5 mins	\$400 per 30 sec live read (est)	\$4,000	\$12,000
TOTAL						\$54,200	\$162,600

DESTINATION TWEED & MEMBERS – LOCAL MEDIA

Due to the difficulty of sourcing clippings, I have averaged out the advertising and editorial values for each publication, based on previous coverage and current rates

DATE	PUBLICATION	TITLE	MEMBERS FEATURED	SIZE	UNIT COST (incl GST)	ADVERT. VALUE	EDITORIAL VALUE *
11 July, 12	Gold Coast Bulletin: BITE section	Gold Coast's Best Desserts – Flutterbie Cakes included in top 10 and featured on front cover of lift-out	Flutterbies Cottage Café	Full page inside listing	\$19.25 /col cm: Est. 38cm x 7 col for full page plus 6cm x 2 col for listing	\$5,351	\$16,053
30 July, 12	Daily News	Turtle rescued after bag swallow	Watersports Guru	Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
5 July, 12	Tweed Sun	Tyalgum woos cabaret star for one-off concert	Tyalgum – Flutterbies	Estimate based on 9 module average		\$1,387	\$4,161
5 July, 12	Tweed Valley Weekly	Tim Draxl at Tyalgum		Estimate		\$350	\$1,050
14 July, 12	Gold Coast Bulletin	Longland touts Tweed's natural attractions	Destination Tweed	Estimate based on 28cm x 5 col avg		\$5,111	\$15,333
16 July, 12	Gold Coast Bulletin	Coast planning to welcome world's largest cruise liners		Estimate based on 28cm x 5 col avg		\$5,111	\$15,333
20 July, 12	Daily News	Group seeks surf safety funds		Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
26 July, 12	Tweed Sun	Connect with public online		Estimate based on 9 module average		\$1,387	\$4,161
2 July, 12	Daily News	50 ideas to beat holiday boredom	General operators	Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
12 July, 12	Tweed Sun	Repertoire to cover a musical journey	Tyalgum Festival	Estimate based on 9 module average		\$1,387	\$4,161
26 July, 12	Tweed Coast Weekly	Journey through time at Tyalgum		Estimate based on 15cm x 3 col avg		\$600	\$1,800
1 Aug, 12	Daily News	Classical Star Headlines Festival		Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
2 Aug, 12	Tweed Coast Weekly	Contest Winner Opens Festival		Estimate based on 15cm x 3 col avg		\$600	\$1,800
9 Aug, 12	Tweed Sun	Drama & Merriment as life imitates Mozart		Estimate based on 9 module average		\$1,387	\$4,161
13 Aug, 12	Limelight Magazine	Tyalgum Festival of Classical Music 2012		Estimate – half page		\$2,520	\$7,560
21 Aug, 12	Daily News	Festivals join forces to promote art		Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
23 Aug, 12	Daily News	Theatre Piece Stars in Festival		Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
23 Aug, 12	Tweed Sun	Festival keys in master pianist		Estimate based on 9 module average		\$1,387	\$4,161
23 Aug, 12	Tweed Coast Weekly	Youth Lead the way at Tyalgum Festival		Estimate based on 15cm x 3 col avg		\$600	\$1,800
29 Aug, 12	Northern Rivers Echo	Volcanic Festival a Classical hit	Tyalgum Festival	Estimate based on 28cm x 5 col avg		\$1,834	\$5,502
30 Aug, 12	Tweed Coast Weekly	Listen back through time with Pastance		Estimate based on 15cm x 3 col avg		\$600	\$1,800
30 Aug, 12	Tweed Sun	Talented duo have strings attached		Estimate based on 9 module average		\$1,387	\$4,161
5 Sep, 12	Daily News	School fair to ring in spring		Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
6 Sep, 12	Tweed Sun	Fair springs to life with something for all the family		Estimate based on 9 module average		\$1,387	\$4,161
6 Sep, 12	Tweed Valley Weekly	Uki bright spark to light up local music festival		Estimate		\$350	\$1,050
6 Sep, 12	Daily News	Kids put twist on Shakespeare		Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
6 Sep, 12	Northern Rivers Echo	Canadian pianist at Tyalgum		Estimate based on 28cm x 5 col avg		\$1,834	\$5,502
6 Sep, 12	Tweed Coast Weekly	Festival is a classic		Estimate based on 15cm x 3 col avg		\$600	\$1,800
8 Sep, 12	Daily News	Avon Yu opens music festival		Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
10 Sep, 12	Daily News	Classic moment as festival draws 1000	Destination Tweed	Estimate based on 28cm x 5 col avg		\$1,386	\$4,158
13 Sep, 12	Tweed Valley Weekly	Festival just keeps getting better		Estimate		\$350	\$1,050
12 July, 12	Tweed Valley Weekly	New head appointed to Destination Tweed		Estimate		\$350	\$1,050

19 July, 12	Tweed Coast Weekly	New chair for Tweed tourism		Estimate based on 15cm x 3 col avg	\$600	\$1,800
26 July, 12	Daily News	New head for tourism table		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
26 July, 12	Tweed Sun	Duke elected to top role		Estimate based on 9 module average	\$1,387	\$4,161
2 July, 12	Daily News	50 ways to beat holiday boredom	Various operators	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
19 July, 12	Tweed Coast Weekly	July events in the Tweed		Estimate based on 15cm x 3 col avg	\$600	\$1,800
10 July, 12	Daily News	Curtain drawn on M'Bah Festival	M'Bah Festival of Performing Arts	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
1 Aug, 12	Tweed Valley Weekly	Initiative targets Tweed fresh food		Estimate	\$350	\$1,050
3 Aug, 12	Daily News	Fresh food from paddock to plate	Destination Tweed: Tweed Fresh	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
2 Aug, 12	Tweed Sun	Tweed gets fresh with locals		Estimate based on 9 module average	\$1,387	\$4,161
9 Aug, 12	Tweed Valley Weekly	Fresh idea for the Tweed		Estimate	\$350	\$1,050
9 Aug, 12	Tweed Valley Weekly	The Social Scene		Estimate	\$350	\$1,050
2 Aug, 12	Tweed Coast Weekly	August events in the Tweed	Various events	Estimate based on 15cm x 3 col avg	\$600	\$1,800
9 Aug, 12	Tweed Sun	Survey results will help businesses plot their future	Destination Tweed: Murwillumbah BRE	Estimate based on 9 module average	\$1,387	\$4,161
16 Aug, 12	Tweed Valley Weekly	Survey seeks to measure health of local economy		Estimate	\$350	\$1,050
10 Aug, 12	Daily News	Tweed Company Brews top cup of tea		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
15 Aug, 12	Daily News	Madura has good taste to a tea	Madura Tea award	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
16 Aug, 12	Tweed Coast Weekly	Tweed's top tea		Estimate based on 15cm x 3 col avg plus 100% loading for front page	\$1,200	\$3,600
14 Aug, 12	Daily News	New flights open airport to world	Destination Tweed	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
14 Aug, 12	Daily News	TIC Volunteers go on tour	Destination Tweed: Völlie families	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
16 Aug, 12	Tweed Valley Weekly	Antique fair is a blast from region's past	Antique Fair	Estimate	\$350	\$1,050
16 Aug, 12	Tweed Coast Weekly	Prepare to burlesque with bubbles	Babalou	Estimate based on 15cm x 3 col avg	\$600	\$1,800
20 Aug, 12	Daily News	Arts café delights the senses	Art Co-op Café, Tyalgum	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
9 Aug, 12	Gold Coast Bulletin	New board to advise on Tweed business		Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
9 Aug, 12	Tweed Sun	Shire gets down to business	Destination Tweed: TBAB	Estimate based on 9 module average	\$1,387	\$4,161
9 Aug, 12	Tweed Sun	New board to help steer shire through hard times		Estimate based on 9 module average	\$1,387	\$4,161
29 Aug, 12	Daily News	Tweed business unites under TBAB		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
30 Aug, 12	Tweed Coast Weekly	New united voice		Estimate based on 15cm x 3 col avg	\$600	\$1,800
30 Aug, 12	Tweed Coast Weekly	September Events in the Tweed	Various events	Estimate based on 15cm x 3 col avg	\$600	\$1,800
31 Aug, 12	Daily News	Mavis' Kitchen cooks up crafts	Mavis' Kitchen: Mavis' Store	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
6 Sep, 12	Tweed Sun	Tourism Concert over new scheme	Destination Tweed	Estimate based on 9 module average	\$1,387	\$4,161
6 Sep, 12	Tweed Valley Weekly	Mumz & Bubz are Abuzz	Babalou	Estimate	\$350	\$1,050
13 Sep, 12	Tweed Coast Weekly	Tourism Centre	Destination Tweed: Kingscliff VIC	Estimate based on 15cm x 3 col avg plus 100% loading for front page	\$1,200	\$3,600
19 Sep, 12	Gold Coast Bulletin	New Board aims to help economy		Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
20 Sep, 12	Daily News	Industry groups form business board		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
20 Sep, 12	Tweed Coast Weekly	New Tweed Business Board	TBAB Board announced	Estimate based on 15cm x 3 col avg	\$600	\$1,800
24 Sep, 12	Daily News	New Chairwoman for advisory board		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
27 Sep, 12	Tweed Valley Weekly	Taking care of business		Estimate	\$350	\$1,050
20 Sep, 12	Tweed Valley Weekly	The Nature of Art		Estimate	\$350	\$1,050
27 Sep, 12	Daily News	Caldera Festival Getting Closer	Caldera Art Festival	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
1 Oct, 12	Daily News	Festival Celebrates green art		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
27 Sep, 12	Tweed Valley Weekly	Market News	Burringbar Cooking Classes	Estimate	\$350	\$1,050
4 Oct, 12	Gold Coast Bulletin	Push for Green and Gold Coasts	Destination Tweed	Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
11 Oct, 12	Daily News	Dancers set to sizzle at spectacular		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
11 Oct, 12	Tweed Coast Weekly	Burn the floor at Tyalgum		Estimate based on 15cm x 3 col avg	\$600	\$1,800
11 Oct, 12	Byron Shire News	Dancers set to sizzle at Spectacular		Estimate based on 15cm x 3 col avg	\$410	\$1,230
18 Oct, 12	Tweed Valley Weekly	Dancers to Shine		Estimate	\$350	\$1,050
18 Oct, 12	Tweed Border Mail	Dance floor will be firing	Tyalgum Dance Spectacular	Estimate based on 15cm x 3 col avg	\$440	\$1,320
25 Oct, 12	Tweed Sun	Dancers take their marks		Estimate based on 9 module average	\$1,387	\$4,161
31 Oct, 12	Gold Coast Sun	Champions to dance up a storm		Estimate based on 9 module average	\$1,227	\$3,681
5 Nov, 12	Daily News	Champs to take the stage in Tyalgum Spectacular		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
5 Nov, 12	Echonet Daily	Having a whirl at Tyalgum		Estimate	\$ 100	\$ 300
5 Nov, 12	Northern Rivers Echo	Champs take to the stage in Tyalgum Spectacular		Estimate based on 28cm x 5 col avg	\$1,834	\$5,502

12 Oct, 12	Daily News	Destination Tweed seeking Board members	Destination Tweed	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
19 Oct, 12	Echonet Daily	Marine Conservation Group takes the plunge	MACS Launch	Estimate	\$ 100	\$ 300
20 Oct, 12	Daily News	Recovered turtle gets special release		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
25 Oct, 12	Tweed Sun	Young eco rangers hold key		Estimate based on 9 module average	\$1,387	\$4,161
25 Oct, 12	Tweed Sun	Rotarians duck out to raise funds	Rotary Duck Race	Estimate based on 9 module average	\$1,387	\$4,161
25 Oct, 12	Tweed Coast Weekly	Duck Season		Estimate based on 15cm x 3 col avg	\$600	\$1,800
1 Nov, 12	Tweed Valley Weekly	Ducks Down the River		Estimate	\$350	\$1,050
1 Nov, 12	Tweed Valley Weekly	Social pics		Estimate	\$350	\$1,050
1 Nov, 12	Tweed Coast Weekly	Crowds flock to duck race		Estimate based on 15cm x 3 col avg	\$600	\$1,800
1 Nov, 12	Tweed Coast Weekly	Social pics		Estimate based on 15cm x 3 col avg	\$600	\$1,800
29 Oct, 12	Daily News	Destination Tweed pounces on Qantas' return	Destination Tweed	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
18 Oct, 12	Tweed Valley Weekly	A Chocolate Workshop	Flutterbies	Estimate	\$350	\$1,050
1 Nov, 12	Tweed Sun	Enthusiasm growing for agricultural show	Murwillumbah Show	Estimate based on 9 module average	\$1,387	\$4,161
1 Nov, 12	Tweed Valley Weekly	Racing to the show		Estimate	\$350	\$1,050
1 Nov, 12	Tweed Valley Weekly	Local cup day a sure thing		Estimate	\$350	\$1,050
1 Nov, 12	Tweed Valley Weekly	Show honours year of the farmer		Estimate	\$350	\$1,050
3 Nov, 12	Gold Coast Bulletin	Show gives Tweed plenty to crow about		Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
5 Nov, 12	Daily News	Having a whirl at Tyalgum		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
6 Nov, 12	Daily News	Murwillumbah Show goes back to its roots	Kingscliff Swim Run	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
6 Nov, 12	Gold Coast Bulletin	Fun for all at Murwillumbah Show		Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
6 Nov, 12	Daily News	Swim Run event to raise funds for Cudgen		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
7 Nov, 12	Gold Coast Bulletin	False start a warm-up	DT/ Challenge Carnival	Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
1 Nov, 12	Daily News	Netball carnival to score more tourists for Tweed		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
5 Nov, 12	Echonet Daily	Tweed wins right to host Old carnival		Estimate	\$ 100	\$ 300
8 Nov, 12	Tweed Valley Weekly	Netball coup for Tweed		Estimate	\$350	\$1,050
8 Nov, 12	Tweed Sun	Net profit: Challenge event to pay dividends		Estimate based on 9 module average	\$1,387	\$4,161
15 Nov, 12	Tweed Coast Weekly	Tweed hosts netball cup		Estimate based on 15cm x 3 col avg	\$600	\$1,800
1 Nov, 12	Tweed Coast Weekly	November Events in the Tweed	Various events: D'Bar art exhibition River Festival Melbourne Cup Day Superheroes Saturday Kids in Need Dragonboat Kingscliff Triathlon Caldera Art Awards Cooking Classes DoubleMask Drama NSO International Disability Week events	Estimate based on 15cm x 3 col avg	\$600	\$1,800
8 Nov, 12	Daily News	Abstract Art Unearthed		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
8 Nov, 12	Tweed Sun	River to light up festival		Estimate based on 9 module average	\$1,387	\$4,161
8 Nov, 12	Tweed Sun	Crowds race in the Cup fun day		Estimate based on 9 module average	\$1,387	\$4,161
8 Nov, 12	Tweed Coast Weekly	Swim takes to the water		Estimate based on 15cm x 3 col avg	\$600	\$1,800
1 Nov, 12	Tweed Coast Weekly	Superheroes fly into Tweed		Estimate based on 15cm x 3 col avg	\$600	\$1,800
12 Nov, 12	Daily News	Burringbar says bonjour to French cooking class		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
13 Nov, 12	Daily News	Caldera artists encapsulate the beauty of Murwillumbah		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
14 Nov, 12	Daily News	Magic of theatre brings Don Quixote to life		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
15 Nov, 12	Tweed Sun	Holidaying for a triathlon		Estimate based on 9 module average	\$1,387	\$4,161
15 Nov, 12	Tweed Coast Weekly	Into the dragon's lair		Estimate based on 15cm x 3 col avg	\$600	\$1,800
15 Nov, 12	Tweed Coast Weekly	Kingscliff triathlon a week away		Estimate based on 15cm x 3 col avg	\$600	\$1,800
16 Nov, 12	Daily News	Dragon boat race to raise \$30,000 for kids in need		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
16 Nov, 12	Daily News	Jennifer ensures orchestra is always in good taste		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
16 Nov, 12	Gold Coast Bulletin	Multisport weekend offers something for everyone		Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
17 Nov, 12	Tweed Sun	Triathlon a hit with businesses on the street		Estimate based on 9 module average	\$1,387	\$4,161
22 Nov, 12	Daily News	Triathlon to run full cycle at Kingscliff on weekend		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
22 Nov, 12	Tweed Coast Weekly	River fest lights up the Tweed		Estimate based on 15cm x 3 col avg	\$600	\$1,800
22 Nov, 12	Tweed Coast Weekly	Paullina finds herself on the road to Kingscliff		Estimate based on 15cm x 3 col avg	\$600	\$1,800
22 Nov, 12	Tweed Valley Weekly	King lights up		Estimate	\$350	\$1,050
26 Nov, 12	Daily News	Samuel Betton overcomes pain to win Kingy tri		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
29 Nov, 12	Tweed Sun	Men of L'Mur'bah		Estimate based on 9 module average	\$1,387	\$4,161
29 Nov, 12	Tweed Sun	Laughs all part of script		Estimate based on 9 module average	\$1,387	\$4,161
29 Nov, 12	Tweed Sun	International Day of People with Disability		Estimate based on 9 module average	\$1,387	\$4,161
29 Nov, 12	Tweed Valley Weekly	Tweed celebrates disability week		Estimate	\$350	\$1,050
29 Nov, 12	Tweed Valley Weekly	Don Quixote rides on		Estimate	\$350	\$1,050

29 Nov, 12	Tweed Valley Weekly	<i>Stokers Siding pre-Christmas craft market</i>		Estimate	\$350	\$1,050
8 Nov, 12	Gold Coast Bulletin	<i>Party conservatives rank on TV appearance</i>	I'm a Celebrity	Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
15 Nov, 12	Gold Coast Bulletin	<i>British MP explains Australian jungle trip</i>		Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
10 Nov, 12	Daily News	<i>Final touches put on Dance Spectacular at Tyalgum</i>	Tyalgum Dance Spectacular	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
8 Nov, 12	Daily News	<i>Norries Head receiving international acclaim as 'best beach'</i>	101 Best Beaches – Cabarita Beach profiled in media	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
15 Nov, 12	Tweed Sun	<i>Norries Headland ticks all boxes as top 10 beach</i>		Estimate based on 9 module average	\$1,387	\$4,161
22 Nov, 12	Tweed Coast Weekly	<i>Cabarita Beach makes the beach book</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
15 Nov, 12	Tweed Valley Weekly	<i>Caba is tops</i>		Estimate	\$350	\$1,050
29 Nov, 12	Tweed Coast Weekly	<i>Foodie Fest launches</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
14 Nov, 12	Gold Coast Bulletin	<i>What's On</i>	Tweed Foodie Fest	Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
4 Dec, 12	Daily News	<i>M'Bah goes gourmet</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
4 Dec, 12	Daily News	<i>Foodie Friday Fest judged a hit</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
4 Dec, 12	Echonet Daily	<i>The Taste of success</i>		Estimate	\$ 100	\$ 300
29 Nov, 12	Tweed Coast Weekly	<i>December Events in the Tweed</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
22 Nov, 12	Tweed Coast Weekly	<i>Celebrity fundraiser returns to Salt</i>	4ASD Kids Weekend	Estimate based on 15cm x 3 col avg	\$600	\$1,800
6 Dec, 12	Daily News	<i>Celebrities flock to Kingscliff for fundraiser</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
18 Dec, 12	Daily News	<i>Megan Gale pops into the Tweed for charity event</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
30 Nov, 12	Daily News	<i>Awesome artwork is a labour of love</i>	Green Cauldron Panorama	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
30 Nov, 12	Echonet Daily	<i>Green Cauldron panorama finally finished</i>		Estimate	\$ 100	\$ 300
5 Dec, 12	Northern Rivers Echo	<i>Mural draws hundreds as a major tourist attraction</i>		Estimate based on 28cm x 5 col avg	\$1,834	\$5,502
6 Dec, 12	Daily News	<i>Mural draws hundreds as a major tourist attraction</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
6 Dec, 12	Tweed Valley Weekly	<i>Enjoying the view</i>		Estimate	\$350	\$1,050
6 Dec, 12	Tweed Valley Weekly	<i>Panorama artists complete year-long labour of love</i>		Estimate	\$350	\$1,050
6 Dec, 12	Tweed Sun	<i>Good weather prayer for Kingscliff carols</i>	Christmas Carols	Estimate based on 9 module average	\$1,387	\$4,161
6 Dec, 12	Tweed Coast Weekly	<i>Deck the halls</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
6 Dec, 12	Tweed Coast Weekly	<i>Annual Christmas Carols start this week</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
28 Dec, 12	Daily News	<i>Tweed Coast has come alive this Christmas holidays</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
13 Dec, 12	Tweed Valley Weekly	<i>Carolling at Salt</i>		Estimate	\$350	\$1,050
13 Dec, 12	Tweed Coast Weekly	<i>Local businesses rescue Salt carols</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
13 Dec, 12	Tweed Sun	<i>Santa's joining the festival in the park</i>		Estimate based on 9 module average	\$1,387	\$4,161
13 Dec, 12	Tweed Sun	<i>Double Act paves way for Chinese</i>	General tourism issues	Estimate based on 9 module average	\$1,387	\$4,161
5 Dec, 12	Daily News	<i>Murwillumbah cinema to host opera</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
28 Dec, 12	Daily News	<i>Discover the spirit way of painting at art gallery</i>	Café D'Bar exhibition	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
30 Dec, 12	Daily News	<i>JAG program getting kids out into the water</i>	Watersports Guru summer program	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
3 Jan, 13	Tweed Sun	<i>Austren's back to lead you astray, Liana</i>	Salt Bar	Estimate based on 9 module average	\$1,387	\$4,161
3 Jan, 13	Gold Coast Sun - Central			Estimate based on 9 module average	\$1,761	\$5,283
10 Jan, 13	Gold Coast Bulletin	<i>Get Your slice of Australiana</i>		Estimate based on 28cm x 5 col avg	\$5,111	\$15,333
8 Jan, 13	Daily News	<i>Rooms scarce as Tweed overflows with holidaymakers</i>	Destination Tweed – General tourism issues	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
9 Jan, 13	Daily News	<i>Tourism board throws support behind Big Day Out Tweed</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
10 Jan, 13	Tweed Sun	<i>Tweed's happy campers</i>		Estimate based on 9 module average	\$1,387	\$4,161
11 Jan, 13	Daily News	<i>Beer and soft drink can collectors bubble into Tweed</i>	Events - various	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
10 Jan, 13	Tweed Coast Weekly	<i>New panorama of Green Cauldron proves to be an attraction</i>	Green Cauldron Panorama	Estimate based on 15cm x 3 col avg	\$600	\$1,800
15 Jan, 13	Daily News	<i>What's on in Tweed this Australia Day</i>	Events - various	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
17 Jan, 13	Tweed Coast Weekly	<i>A Tangled World</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
24 Jan, 13	Tweed Sun	<i>Fun brewing at Canfest</i>		Estimate based on 9 module average	\$1,387	\$4,161
24 Jan, 13	Tweed Coast Weekly	<i>Australia Day set to shine on the Tweed</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
24 Jan, 13	Tweed Sun	<i>Tweed set to get patriotic</i>		Estimate based on 9 module average	\$1,387	\$4,161

25 Jan, 13	Daily News	<i>Australian Day offers lots of activities around the Tweed</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
24 Jan, 13	Daily News	<i>Tyalgum is on the menu for Australia Day high tea</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
25 Jan, 13	Daily News	<i>Bush poet thinks Australia is the best place in the world</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
26 Jan, 13	Daily News	<i>Soggy & baggy turns to rasy and cosy at Tyalgum</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
26 Jan, 13	Daily News	<i>Local hoarder to feature on Australian Pickers TV Show</i>	General interest	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
6 Feb, 13	Daily News	<i>Synergies formed between Council and DT</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
7 Feb, 13	Tweed Coast Weekly	<i>Preparing to Sustain Tweed</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
21 Feb, 13	Tweed Sun	<i>Tourism Counts on Locals</i>		Estimate based on 9 module average	\$1,387	\$4,161
21 Feb, 13	Tweed Coast Weekly	<i>State Titles for Tweed Coast</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
21 Feb, 13	Tweed Valley Weekly	<i>Hollywood comes to the Mountain</i>	Destination Tweed – General tourism issues	Estimate	\$350	\$1,050
21 Feb, 13	Tweed Valley Weekly	<i>Production to boost local economy</i>		Estimate	\$350	\$1,050
28 Feb, 13	Tweed Valley Weekly	<i>Woolumbin Track closed for months</i>		Estimate	\$350	\$1,050
1 Mar, 13	Daily News	<i>Senior Citizens Week will be jam-packed</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
4 Mar, 13	Daily News	<i>Kingscliff Triathlon is on the grow</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
5 Mar, 13	Daily News	<i>Beautiful handcrafts on sale in historic hall</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
5 Mar, 13	Daily News	<i>Triathlon Olympic distance attracts athletes</i>	Events - various	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
5 Mar, 13	Daily News	<i>Cats given a second chance through adoption day</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
7 Mar, 13	Tweed Valley Weekly	<i>Little Shop of Fun</i>		Estimate	\$350	\$1,050
7 Mar, 13	Tweed Sun	<i>Hundreds expected for Kingscliff Triathlon</i>		Estimate based on 9 module average	\$1,387	\$4,161
9 Mar, 13	Daily News	<i>Relay for Life team eat chocolate to prepare for event</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
11 Mar, 13	Daily News	<i>Olympic medalist braves the rain at Kingscliff Tri</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
10 Mar, 13	Daily News	<i>Hundreds roll in to compete in Triathlon</i>	Events - various	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
14 Mar, 13	Tweed Coast Weekly	<i>Seniors' Week launches</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
14 Mar, 13	Tweed Coast Weekly	<i>Crackpot under wraps for Seniors</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
14 Mar, 13	Tweed Coast Weekly	<i>Lining up for the Relay</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
14 Mar, 13	Tweed Coast Weekly	<i>Tweed on Sour prepare for Relay</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
14 Mar, 13	Tweed Coast Weekly	<i>Pottsville Band enters the Battle</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
14 Mar, 13	Tweed Coast Weekly	<i>Seniors Week Program – 4 pages Aliens land in Murwillumbah</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
14 Mar, 13	Tweed Coast Weekly	<i>Dazzling Classics</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
14 Mar, 13	Tweed Sun	<i>Harrowing tale reveals women's wartime strength</i>		Estimate based on 9 module average	\$1,387	\$4,161
14 Mar, 13	Tweed Sun	<i>Get out of the garage and hit the workshop</i>		Estimate based on 9 module average	\$1,387	\$4,161
14 Mar, 13	Tweed Sun	<i>Classical concert to enchant you</i>		Estimate based on 9 module average	\$1,387	\$4,161
14 Mar, 13	Tweed Sun	<i>Longboarders converge on Kingscliff for Open</i>		Estimate based on 9 module average	\$1,387	\$4,161
13 Mar, 13	Gold Coast Sun – Central	<i>Harrowing tale reveals women's wartime strength</i>		Estimate based on 9 module average	\$1,761	\$5,283
13 Mar, 13	Gold Coast Sun – Central	<i>Classical concert to enchant you</i>		Estimate based on 9 module average	\$1,761	\$5,283
18 Mar, 13	Daily News	<i>Heels kicked up to launch Seniors Week</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
20 Mar, 13	Daily News	<i>Longboard surfing opens with sunny skies but small swell</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
21 Mar, 13	Tweed Coast Weekly	<i>Ready for the Relay</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
21 Mar, 13	Tweed Coast Weekly	<i>Surf's up for Longboarders</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
21 Mar, 13	Tweed Coast Weekly	<i>Sell-out Sairee for Mum's Buzz</i>		Estimate based on 15cm x 3 col avg	\$600	\$1,800
21 Mar, 13	Tweed Sun	<i>Entire street plays role in quirky tale of horror</i>		Estimate based on 9 module average	\$1,387	\$4,161
21 Mar, 13	Tweed Valley Weekly	<i>Longboards at Kingy</i>		Estimate	\$350	\$1,050
21 Mar, 13	Daily News	<i>Exhibition remembers those who served in war</i>	Events - various	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
28 Mar, 13	Tweed Valley Weekly	<i>Big winners at Longboard Open</i>		Estimate	\$350	\$1,050
27 Mar, 13	Daily News	<i>Secret Bridesmaids Business promises strong performance</i>		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158

28 Mar, 13	Tweed Coast Weekly	Events in the Tweed		Estimate based on 15cm x 3 col avg	\$600	\$1,800
28 Mar, 13	Tweed Coast Weekly	Coastal Tones at D'Bar		Estimate based on 15cm x 3 col avg	\$600	\$1,800
28 Mar, 13	Tweed Coast Weekly	Shh! Secrets are about to be revealed		Estimate based on 15cm x 3 col avg	\$600	\$1,800
28 Mar, 13	Tweed Coast Weekly	Let the Battle Begin		Estimate based on 15cm x 3 col avg	\$600	\$1,800
28 Mar, 13	Tweed Valley Weekly	Uki Cabaret Call		Estimate	\$350	\$1,050
28 Mar, 13	Daily News	Cyclists prepare to battle for the border		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
3 Apr, 13	Gold Coast Sun – Central	Secret and funny business on stage		Estimate based on 9 module average	\$1,761	\$5,283
4 Apr, 13	Tweed Coast Weekly	Battle heats up		Estimate based on 15cm x 3 col avg	\$600	\$1,800
4 Apr, 13	Tweed Coast Weekly	Mt Warning Wedding Expo on this weekend		Estimate based on 15cm x 3 col avg	\$600	\$1,800
4 Apr, 13	Daily News	Mumz & Bubz Soiree Proves a Big Hit		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
4 Apr, 13	Tweed Sun	Play lifts veil of secrecy		Estimate based on 9 module average	\$1,387	\$4,161
4 Apr, 13	Tweed Sun	Funny business on cue		Estimate based on 9 module average	\$1,387	\$4,161
21 Mar, 13	Daily News	Showcasing all the Tweed has to offer tourists	Destination Tweed – NCDN Workshop	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
21 Mar, 13	Tweed Sun	Tweed on touring route map		Estimate based on 9 module average	\$1,387	\$4,161
21 Mar, 13	Tweed Valley Weekly	Friends of Hall bring community together		Estimate	\$350	\$1,050
28 Mar, 13	Tweed Coast Weekly	New Health Festival for the Tweed		Estimate based on 15cm x 3 col avg	\$600	\$1,800
28 Mar, 13	Tweed Sun	Time to find some inner peace	Heart of the Caldera Wellness Festival	Estimate based on 9 module average	\$1,387	\$4,161
1 Apr, 13	Daily News	Caldera Wellness Festival is Well on Track		Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
3 Apr, 13	Border Mail			Estimate based on 28cm x 5 col avg	\$1,246	\$3,738
6 Apr, 13	Daily News			Two-page feature: Estimate based on 2 x 28cm x 5 col avg	\$2,772	\$8,316
21 Mar, 13	Tweed Coast Weekly	Shakespeare rings a bell in Tyalgum		Estimate based on 15cm x 3 col avg	\$600	\$1,800
25 Mar, 13	Gold Coast Bulletin	Shakespeare hits Tyalgum		Estimate based on 10cm x 3 col avg	\$665	\$1,995
29 Mar, 13	Daily News	Romeo & Juliet to be performed by Bell Shakespeare	Tyalgum – Bell Shakespeare	Estimate based on 28cm x 5 col avg	\$1,386	\$4,158
3 Apr, 13	Border Mail			Estimate based on 28cm x 5 col avg	\$1,246	\$3,738
4 Apr, 13	Tweed Sun	Theatre finds a new stage		Estimate based on 9 module average	\$1,387	\$4,161
TOTAL					\$319,631	\$958,893

WEBSITE COVERAGE

DATE	WEBSITE	STORY	LINK
Aug 12	Essential Kids	Coasting on Tweed Time	www.essentialkids.com.au/family-life/family-travel/coasting-on-tweed-time-20120806-23pgl.html
Nov 12	Cynthia Dammerer blog	Doggie-Styleish Holidays - Mavis' Kitchen	http://www.dammerer-nicholas.com/blog/2012/11/19/DOGGIE-STYLISH-HOLIDAYS.aspx?alt_id=56J4Q-81A12-0N3&ts=1353302747224
Nov 12	Sheridan Rogers blog	Tweed Foodie Fest Cheeses Loves You	www.sheridanrogers.com.au

* EDITORIAL VALUE is estimated based on the PRIA multiplier of x3

OPTIONS:

This report to Council presents the quarterly report from Destination Tweed which is required as part of their contract. The successful submission of this report in an appropriate format will endorse payment of their quarterly contract instalment for the next quarter in line with their contract.

1. **Endorse this Quarterly Report** - By endorsing Destination Tweed's Quarterly Report Council acknowledge and endorse the progress Destination Tweed have made to achieving the milestones outlined in their funding contract and the agreed Business Attraction Marketing Strategy and the Tourism Marketing Strategy; or
2. **Postpone Endorsement of this Quarterly Report** - If Council is not satisfied with the progress Destination Tweed has made in achieving the milestones identified in their funding contract and the agreed Business Attraction Marketing Strategy and the Tourism Marketing Strategy then it would be prudent to postpone the endorsement and commence discussions with the Board of Destination Tweed regarding the project.

CONCLUSION:

It is recommended that Council endorses this quarterly report from Destination Tweed.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable. This report fulfils Destination Tweed's reporting requirement under its current funding agreement.

b. Budget/Long Term Financial Plan:

This report is submitted by Destination Tweed along with their quarterly invoice for payment under the current funding agreement.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 Strengthening the Economy
 - 3.1 Expand employment, tourism and education opportunities
 - 3.1.4 Market the Tweed as a destination for business and tourism
 - 3.1.4.2 Facilitate the development of the Strategic Plan and Operational Plan for tourism promotion and economic development
 - 3.1.4.3 Operate Visitor Information Centres at Murwillumbah and Tweed Heads
 - 3.1.4.4 Establish a website to promote the Tweed as a destination and to attract visitors
 - 3.1.4.6 Facilitate economic promotion and tourism development within the Tweed
 - 3.1.4.7 Increase visitors to the Tweed

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

24 [GM-CM] Expanding the Tweed Link

SUBMITTED BY: Communications and Customer Services



Civic Leadership

SUMMARY OF REPORT:

Council resolved at the April 2013 meeting that, *"in light of the recognition the Tweed Link has received over the years, Council brings forward a report on the costs of expanding the Tweed Link to six pages and how items on the Council agenda and reports of Council meetings could be included."*

The Tweed Link has been informing the Tweed community for 17 years and recently celebrated its 800th issue, with the first issue sent to the Tweed community on Tuesday 12 November 1996.

The Tweed Link is currently a regular four (4) page newspaper, with the ability to go to six (6) and eight (8) pages on demand and within budget. The Tweed Link is printed by a local business, on 100 per cent recycled stock using soy based inks.

The Tweed Link operates like a business and like any other newspaper relies on advertising income to supplement the publication. Decisions on going to a six (6) page Tweed Link are entirely operational and budget driven to ensure the Tweed Link does not run at a loss. The Editor also has a requirement to achieve a balance between editorial and advertising and ensuring editorial is based on newsworthy principles.

To move the Tweed Link to a permanent six (6) page newspaper without guarantee of advertising income would require an additional annual budget commitment of **\$87,661** for printing alone and would also require additional staff resourcing.

It is also very clear in the Tweed Link Policy that *"Editorial must be factual, unbiased, timely, relevant to residents of the Tweed Shire, wide ranging, free of political influence, unhindered by group or individual pressure, observant of confidentiality as determined by Council, fair, honest and frank and available to all members of the Tweed community free of charge."* Making the Tweed Link a regular 6 page edition will not result in greater coverage of certain topics.

Council business papers are already a regular source of Tweed Link stories and Council's Communication Officer - Media attends these meetings and covers editorial based on newsworthy principles. Articles such as 'Meeting in a Minute' summarise what occurs at a Council meeting with newsworthy topics expanded upon where more detail is required.

The Tweed Link in its current form meets the organisation and community needs as a traditional communication channel and has the flexibility to grow in size, as and when required and within budget.

It is recommended that the Tweed Link remains a standard four page issue, with the ability to be a six or eight page issue based on operational need, demand, budget and balancing editorial and advertising requirements at the discretion of the Editor.

It is recognised that Council can improve its communication efforts with the community and Council could consider, budget permitting, on focusing additional resources on providing sustainable, non-traditional, new and improved low cost communication channels including online (website), applications, social and digital media and e-newsletters to complement and support the already strong and established traditional communication channels.

RECOMMENDATION:

That:

- 1. The Tweed Link remains a standard four page issue, with the ability to be a six (6) or eight (8) page issue based on operational need, demand, budget and balancing editorial and advertising requirements at the discretion of the Editor.**
- 2. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(c) of the Local Government Act 1993, because it contains:**
 - (c) *information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.***

REPORT:

The Tweed Link has been informing the Tweed community for 17 years and recently celebrated its 800th issue, with the first issue sent to the Tweed community on Tuesday 12 November 1996.

Tweed Link Snapshot

Population/Area:	85,000+ people and businesses – 1303km ²
Circulation:	40,000 per week – delivered Tuesday/Wednesday
Published:	Weekly, 49 weeks of the year
Readership:	78% weekly – 62,400 residents
Format:	4-6pages, A4 100% recycled stock and soy based inks. Printed in black and white and available in full-colour online.
Distribution:	Delivered by Australia Post to every household and PO Box in the Tweed. Electronic subscriptions are also available.
Cost:	FREE to residents and e-subscriptions. Hard copy subscriptions \$15 for 6 months, \$30 per year.

Summary of Tweed Link 4 - 6 pages over last 5 years

	2012	2011	2010	2009	2008
4 pages	38	41	42	34	29
6 pages	11	7	6	14	20
8 pages	0	1	1	1	0
TOTAL ISSUES	49	49	49	49	49

Tweed Link Policy

Council unanimously adopted the Tweed Link Policy on 16 June 2009, setting clear guidelines on editorial content and the types of advertising that would be accepted.

Making the Tweed Link a 6 page edition will not result in greater coverage of certain topics, there is still a requirement to balance editorial and advertising ratios. It is also very clear in the Tweed Link Policy that editorial must be linked to Council business and based on newsworthy principles, not on pre-determined topics or promotions by third parties.

Editorial must be factual, unbiased, timely, relevant to residents of the Tweed Shire, wide ranging, free of political influence, unhindered by group or individual pressure, observant of confidentiality as determined by Council, fair, honest and frank and available to all members of the Tweed community free of charge.

OPTIONS:

a) The Tweed Link remains a standard four page issue, with the ability to be a six or eight page issue based on demand, budget and balancing editorial and advertising requirements at the discretion of the Editor.

b) The Tweed Link becomes a six page weekly edition and an additional budget of approximately \$88,000 and staff resources to assist in preparing additional editorial is allocated in the 2013/14 budget.

CONCLUSION:

It is recommended that if additional resources were to be applied to enhance Council's communications, rather than broadening the Tweed Link, Council could consider focusing on providing sustainable, non-traditional, new and improved low cost communication channels including online (website), applications, social and digital media and e-newsletters to support the already strong and established traditional communication channels.

COUNCIL IMPLICATIONS:

a. Policy:

Tweed Link Version 1.0.

b. Budget/Long Term Financial Plan:

Budget allocation for printing of the Tweed Link would need to be increased on an annual and recurring basis by almost \$88,000 under the existing tender. Additional staffing resources would need to be considered to support the increased editorial requirements to fill six pages, whilst keeping each edition commercially viable.

c. Legal:

Local Government Act, 1993: Section 707

Local Government (General) Regulation 2005 Clause 77

Environmental Planning and Assessment Regulation 2000

Tweed Local Environment Plan and Development Control Plans define "Advertising" as the placement of public notice in a newspaper or publication circulating at least once a week in the locality.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1.2.5 - Effective Communication between Council and Community Groups.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Budget and Impact of Tweed Link becoming 6 pages (ECM 3060778)

25 [GM-CM] AC2013-059 Printing of Tweed Link

SUBMITTED BY: Communication and Customer Services

Valid



Civic Leadership

SUMMARY OF REPORT:

The Tweed Link is one of Council's primary forms of communication with the community. For over 15 years it has been produced by Tweed Shire Council and printed by an external provider.

Tenders for the printing of the Tweed Link (two year period with a two year renewable option at Council's discretion) were called and closed on 10 April 2013 with tenders being received from:

1. Summit Press
2. Style Print
3. Virid

A Tender Evaluation Panel was convened and evaluations took place on 22 and 23 May 2013.

RECOMMENDATION:

That:

1. In relation to AC2013-059 Printing of Tweed Link, Council award the Tweed Link print tender to Summit Press for a:
 - a. four page edition price of \$3,000;
 - b. six page edition price of \$4,730; and
 - c. eight page edition price of \$6,367.35.for an initial period of two years, with a two year option.
2. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret.

REPORT:

Background

The Tweed Link is Council's weekly newspaper. Council is fully responsible for managing content, advertising, printing and distribution of the Tweed Link. Its current format is black and white, A4 in size folded to DL (which is a requirement under the contract with Australia Post) and it is printed on 100 per cent recycled stock using soy based inks.

It is recognised as a newspaper, with a registered International Standard Serial Number (ISSN) 1327-8630, to meet a range of Council legislative requirements for statutory advertising as well as providing a medium to receive factual and unbiased information about the business of Council including however not limited to: development applications, items on exhibition, positions vacant, commencement of works projects and other Council services, programs and events.

The Tweed Link is a free newspaper with 40,100 copies printed and distributed weekly (via registered post by Australia Post), 49 weeks of the year and ranges from a four to six page edition depending on editorial and advertising requirements.

Tender for printing

Tenders for the printing of the Tweed Link (two year period with a two year renewable option at Council's discretion) were called and closed on 10 April 2013 with tenders being received from:

1. Summit Press
2. Style Print
3. Virid

A Tender Evaluation Panel of Council officers comprising of Communications Officer - Publications; Customer Contact Centre Team Leader and Engineering Assistant Supervisor evaluated the tenders on 22 and 23 May 2013 using the following selection criteria:

- Price and competitiveness in regards to itemised costs against Tender Schedule A.
- Commitment to use of environmentally friendly resources and practices.
- Provision of proposed stock samples.
- Experience and demonstrated examples of quality of large scale print jobs similar to the Tweed Link.
- Commitment to, ability and capacity to perform the work within the strict and definitive deadlines.
- Extent to which sub contractors may be used.

OPTIONS:

1. Awards the tender as recommended by the Tender Evaluation Panel.
2. Declines all tenders in accordance with Clause 178(1)(b) of the Local Government (General) Regulations 2005.

CONCLUSION:

In terms of proven ability to handle large print jobs such as the Tweed Link, ability to meet tight deadlines and price, it is recommended Summit Press should be awarded the Tweed Link print tender AC2013-059.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Version 1.4.

b. Budget/Long Term Financial Plan:

No impact - already budgeted for in Long Term Financial Plan.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.5 Effective communication between Council and Community groups
- 1.2.5.6 Use communication channels and develop new tools for engaging with the broad Tweed community
- 1.2.5.6.1 Produce editions of Council's newspaper the Tweed Link

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Tweed Link Evaluation Tender (ECM 3080205)

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REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C 79C Evaluation

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

Note: See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

- (2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:
- (a) is not entitled to take those standards into further consideration in determining the development application, and
 - (b) must not refuse the application on the ground that the development does not comply with those standards, and
 - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
 - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note: The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
 - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes that for May 2013 there are no variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

No-Legal advice has not been received.

Attachment of Legal Advice-Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

27 [PR-CM] Section 82 Appeal - Palm Lake Resort, Banora Point

SUBMITTED BY: Building and Environmental Health

Valid



Caring for the Environment

SUMMARY OF REPORT:

An appeal under Section 82 of the Local Government Act, 1993 has been received from the Palm Lake Resort, Tweed River. The appeal seeks a modification to the existing Section 68 Approval to Operate the caravan park and has been made against the provisions of Clause 135(1) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 which requires that:

"A relocatable home must not be installed on a dwelling site unless each major section of the home has been constructed and assembled at, and transported to the caravan park from, a place of manufacture outside the caravan park."

Sound reasons have been provided which demonstrate the requirements of Clause 135 to be 'unreasonable or unnecessary' in this case. Council is requested to support the requested objection. The objection can then be forwarded to the Department of Planning for the concurrence of the Director-General.

RECOMMENDATION:

That:

- 1. Council supports the Section 82 appeal against Clause 135(1) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 and allows erection of relocatable homes on site within the caravan park, and**
- 2. The appeal be forwarded to the Department of Planning and Infrastructure for concurrence of the Director-General, in accordance with Section 82(3) of the Local Government Act 1993.**

REPORT:

Legislation

An appeal under Section 82 of the Local Government Act, 1993 has been received from the Palm Lake Resort, Tweed River. The Resort operator seeks to erect relocatable homes on site within the caravan park. Section 82 states:

"82 Objections to application of regulations and local policies

- (1) An applicant for an approval may lodge with the council an objection:
 - (a) that the regulations or a local policy adopted under Part 3 by the council relating to the activity for which approval is sought do not make appropriate provision with respect to that activity, or*
 - (b) that compliance with any provision of those regulations or such a policy is unreasonable or unnecessary in the particular circumstances of the case.**
- (2) The applicant must specify the grounds of the objection.*
- (3) If the objection relates to the regulations and the council is satisfied that the objection is well founded, it may, with the concurrence of the Director-General, in determining the application, direct that:
 - (a) such provisions of any regulation relating to that activity as are specified in the direction:
 - (i) are not to apply, or*
 - (ii) are to apply with such modifications as are specified in the direction, in respect of the carrying out of that activity, or**
 - (b) such requirements as are specified in the direction are to apply to the carrying out of that activity, or give directions under both paragraphs (a) and (b).**
- (3A) If the objection relates to a local policy adopted under Part 3 by the council and the council is satisfied that the objection is well founded, it may, in determining the application, direct that:
 - (a) such provisions of any local policy relating to that activity as are specified in the direction:
 - (i) are not to apply, or*
 - (ii) are to apply with such modifications as are specified in the direction, in respect of the carrying out of that activity, or**
 - (b) such requirements as are specified in the direction are to apply to the carrying out of that activity, or give directions under both paragraphs (a) and (b) and the council must give the reasons for its direction or directions.**
- (3B) An objection is well founded for the purposes of subsection (3A) only if the council is satisfied that no person or the public interest will be adversely affected by the variation and that any variation is consistent with the principles of ecologically sustainable development.*

- (4) *Any direction given by the council under subsection (3) or (3A), if the council's approval to the application concerned is granted, has effect according to its tenor and, in the case of a direction referred to in subsection (3) (a) (ii) or (b) or subsection (3A) (a) (ii) or (b), is a condition of that approval.*

The appeal seeks a modification to the existing Section 68 Approval to Operate the caravan park and has been made against the provisions of Clause 135(1) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 which requires that:

"A relocatable home must not be installed on a dwelling site unless each major section of the home has been constructed and assembled at, and transported to the caravan park from, a place of manufacture outside the caravan park."

Clause 124(1)(b) of the Regulation further states that a caravan park must not be used for:

'the manufacture, construction or reconstruction of moveable dwellings.'

Amenity

These legislative restrictions are believed to be imposed to protect the amenity of existing residents in an established caravan park or manufactured home estate, where construction activities are likely to unreasonably impact amenity. The Palm Lake Resort development is a caravan park which is being completely re-developed, where the installation of 141 new relocatable homes will be permissible upon completion of the final stage. The submission states:

"If this objection to Clause 135 was accepted and Palmlake Works were allowed to build on-site, the ability for the relocatable homes to be transported in the future will not be lost. All homes will still be required to be certified as relocatable homes and the structural engineer will certify that homes are designed to be suitable for transportation."

In regards to the amenity impact for the future residents that reside in the approved caravan park during the construction phase it is considered that these residents would be made aware of the construction works taking place across the site. As in any new residential estate, residents would buy a home knowing that construction on nearby sites is to be expected.

It is noted that the Caravan Park is intended to be developed across several stages, starting from the most northern end. Therefore residents in a certain location of the park would only be immediately affected by construction for a short time frame and not the entire 2 year construction phase.

The timber frames etc for these homes are prefabricated off site, saving build time, noise etc on site.

It is in our best interest to keep the residents of Tweed Shire and Palm Lake Resort happy and comfortable and our construction methods are reflected with this intent."

A condition could also be applied to the amended approval requiring the submission of a construction management plan for the site to minimise disturbances.

The subject site is well buffered by a combination of the Motorway, Tweed River, distance and vegetation from dwellings outside the park and no unreasonable impact on these dwellings is considered likely.

Stated Grounds of Objection

The submission is provided in full as an attachment to this report. However, the submission nominates the following as the formal 'grounds of objection':

1. Project Scale - The transport process is highly logistical and time, money and labour intensive involving the transportation of over 300 modules over 1 to 2 years. It involves transport permits, cranes and pilots, traffic inconveniences and costs approximately \$20,000 per home.
2. Motorway Road Conditions – The travel path along the Banora Point Pacific Motorway (M1) is difficult, requires RTA permits and involves manoeuvring around roundabouts and underpasses. On site erection of structures will remove traffic delays and safety issues.
3. Structural Integrity – The structural integrity of each home is at risk when transporting the major sections.
4. Precedent at Other Sites – The submission indicates that on site erection of homes has previously been approved at other developments at Port Stephens, Liverpool, Clarence Valley and Hastings Shire.

Existing Section 68 Approval

If the request for relocatable homes to be erected on site is to proceed several conditions of the existing Section 68 Approval to Operate dated 19 September 2012 (as amended) will require modification. The Building and Environment Unit will modify the existing approval if the concurrence of the Director-General is received.

OPTIONS:

1. Approve the Section 82 objection and allow the relocatable homes to be erected progressively within the caravan park; or
2. Refuse the objection and require the relocatable homes to be constructed off site and transported to the caravan park.

Council officers recommend Option 1.

CONCLUSION:

Sound reasons have been provided which demonstrate the requirements of Clause 135 to be 'unreasonable or unnecessary' in this case. Indirectly the Section 82 Appeal would also apply to the provisions of Clause 124 (1) (b). Council is requested to support the objection and thus permit the on-site erection of relocatable homes. The objection can then be forwarded to the Department of Planning and Infrastructure for the concurrence of the Director-General.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
- 4.1 Protect the environment and natural beauty of the Tweed
- 4.1.3 Manage and regulate the natural and built environments
- 4.1.3.7 Regulate the operation of caravan parks

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Submission from Palm Lake Works dated 22 April 2013 (ECM 3058759)

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28 [PR-CM] Council Submission on "A New Planning System for NSW" White Paper and Two Exposure Bills

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

On 16 April 2013, the NSW Government released the White Paper on planning reform in NSW, 'A New Planning System for NSW', and two Exposure Bills, the Planning Bill 2013 and the Planning Administration Bill 2013.

The White Paper proposes five main areas of reform:

- 1) Changes to planning and delivery culture;
- 2) Community participation;
- 3) Strategic planning;
- 4) Development assessment; and
- 5) Infrastructure.

Other refinements to building regulation and certification and NSW Land and Environment Court processes are proposed.

An inter-disciplinary team of Council officers have reviewed the White Paper and the draft legislation and made comment through this report as the basis of a Council submission to the NSW Department of Planning and Infrastructure. Feedback has also been received through four public meetings and Councillor briefings and workshops.

The emerging reforms are considered to be an important step in producing a more contemporary and best practice planning system for NSW. The State Government is to be commended for the extensive consultation and research of inter-state and international planning systems conducted in the lead up to the release of both the Green and White Papers.

The White Paper contains a number of positive reforms, including an increased emphasis on up-front, evidence-based, well-consulted strategic planning at State, regional and local levels; expansion of more streamlined assessment processes (exempt and complying and code assessable) for less impacting developments; requirements for stronger linkages between land use and infrastructure planning; stronger regulation of building compliance; and more efficient Land and Environment Court processes for smaller development disputes.

However, there are a number of concerns that have been identified through the officers' review of the exhibited material, the most significant being: a lack of detail in terms of the resourcing, sequencing, decision making and administration of the proposed strategic planning processes and the related regional planning boards; a lack of confidence in the

continuation and expansion of the existing, the one-size-fits-all Codes SEPP; the lack of clarity regarding what the State Government is seeking in terms of a new planning and delivery culture; the lack of clarity and unrealistic timeframes for the proposed cross-over of Code Assessable to Merit based development assessments; the unrealistic timeframes for the proposed three year delivery of new infrastructure relating to new developments and contribution charges.

In terms of Councillor and community feedback, there appears to be major concerns for the loss of opportunity for public comment on certain developments; the timeframe and disconnect between the proposed new strategic planning processes and new developments occurring; uncertainty about the transition of existing, community supported Development Control Plans into the “Guidelines” of the new Local Plan format; the loss of representation on the planning and development at a regional and sub-regional level; and the potential loss of local Councillor decision making on new developments.

RECOMMENDATION:

That Council endorses this report and that it forms the basis for a submission to the NSW Department of Planning and Infrastructure on the White Paper on planning reform in NSW, ‘A New Planning System for NSW’, and the two Exposure Bills, the Planning Bill 2013 and the Planning Administration Bill 2013.

REPORT:

ANALYSIS OF WHITE PAPER/DRAFT EXPOSURE BILLS - ISSUES AND RECOMMENDATIONS FOR A COUNCIL SUBMISSION

An inter-disciplinary team of Council officers have reviewed the White Paper and the draft legislation and made comment with this report as the basis of a Council submission to the NSW Department of Planning and Infrastructure. Feedback has also been received through four public meetings (please refer to a summary of issues from the meetings in Attachment 1 of this report) and Councillor briefings and workshops.

The analysis and review of the exhibited documents has been provided under the main reform headings of the White Paper.

DELIVERY CULTURE (CHAPTER 3 OF WHITE PAPER)

White Paper Proposal/Changes from Current Planning System/Legislation

- The establishment of a culture change action group to design and oversee the implementation of a range of culture change actions across the industry, in conjunction with the implementation of the new planning system;
- A series of training sessions for practitioners and stakeholders in all areas of the new planning system, including details of how the system will work and ways to improve our culture;
- The restructure and other associated changes to the Department of Planning and Infrastructure to emphasise strategic planning and community participation the appointment of a senior executive to enhance relationships between the Department of Planning and Infrastructure and planners within other sectors and to share with local government methods and ideas to effectively improve planning culture;
- Monitoring and reporting on the actions for culture change and lessons learnt on an annual basis, to provide a report card on the health of the culture of the NSW planning system; and
- The preparation of a Performance Monitoring Guideline that will provide the methodology and performance indicators for monitoring the planning system.

Issues for Consideration

In terms of the initial address of the planning culture issue through the Green Paper, concerns were raised from planning professionals in the local government sector that there was a lack of balance in the presentation of the full range of influences that impact upon the functioning of the NSW Planning System, given that there are such wide range of other stakeholders and interests. It was evident in the initial consultation feedback that led to the Green Paper that some stakeholders believed that local and state government planners and other related professions had become typically risk adverse and re-active, rather than being a facilitator of development and economic activity.

From the perspective of the local government sector, whilst there is strong support for an updated set of professional standards to be introduced as part of the NSW Planning System, it is considered that the Government have yet to consult with the full range of participants in the System on what the new planning culture should entail.

It is considered that in any closer examination of a new planning culture, there also needs be a corresponding recognition of ethical standards, for which local government has received mixed messages from the State Government in recent years.

Over the last two to three decades, the NSW Planning system and the role of state and local government and the interaction of public servants and elected officials with the development sector has been the subject of intense scrutiny and regular investigations by the NSW Independent Commission Against Corruption (ICAC). These investigations have generally resulted in recommendations for very specific and systematic changes to the administrative and probity aspects of planning and development practices for state and local government. These recommendations have had a strong risk management and risk adverse focus, which have been reinforced by various ICAC publications and training.

It is therefore currently difficult to reconcile ICAC's consistently strong risk management and risk adverse recommendations with the emerging "can do" cultural change proposed through the Green and White Papers, which suggests that public sector officials should be more facilitative of development proponents, with little reference to dealings with other stakeholders in planning and development processes.

It is considered reasonable that local councils and state government agencies should be striving towards continuous improvement in their customer service and professional standards in implementing the planning system. Like any good business or organisation, this should be a priority.

However, in terms of decision making and the dealings with stakeholders, the multi-layered objectives and controls of the current NSW Planning Act, and corresponding probity checks, make it inappropriate and a major risk for Councils to deliberately favour one participant in the planning system over another, whether they be a large developer, a small time applicant, an objecting neighbour, or a community interest group.

There is a legal imperative for Council to reconcile and be accountable to a balanced assessment under the Act. This is reinforced through quite stringent Council Codes of Conduct.

There is also a common misconception that council staff have a pre-determined decision making culture, either anti or pro development. This simply is not the case. Council staff are trained to make a balanced assessment against the relevant legislative requirements.

A more facilitative, "can do" planning culture is possible, but there needs to be clearly defined legislative direction provided from the State Government that is consistently implemented among all stakeholders in planning and development assessment processes, not just Council officers.

It can't be left open to discretion.

There needs to be a greater transparency for the public to understand how the planning system operates, and how decisions are made.

Recommended Submission

That the State Government provide a clearer expectation of what they are seeking to achieve through a change in planning and delivery in the NSW Planning system, and provide local government planners with a clearer basis of legislative and policy support to protect their ethical and professional standards.

COMMUNITY PARTICIPATION (CHAPTER 4 OF WHITE PAPER)

White Paper Proposal/Changes from Current Planning System/Legislation

Chapter 4 of the White Paper proposes changes in community participation through:

- The preparation of a Community Participation Charter that will form part of the new planning legislation. All planning authorities will be required to act consistently with this when undertaking strategic planning and development assessment;
- A high level of community participation will be required, in particular for the development of Regional Growth Plans and Subregional Plans, to help set where growth and infrastructure will occur; and
- ePlanning will reshape the planning system by transforming paper based development application and assessment processes and traditional methods of consultation into an online environment. Consultation will build on traditional methods for engagement and include 3D interactive models and development guides to enable the community to have their say.



Engagement Activity	Strategic Planning	Regional Growth Plan	Subregional Plan	Local Development Plan	Development Applications
Community Consultation	Yes	Yes	Yes	Yes	Yes
Public Consultation	Yes	Yes	Yes	Yes	Yes
Stakeholder Consultation	Yes	Yes	Yes	Yes	Yes
Online Consultation	Yes	Yes	Yes	Yes	Yes
3D Interactive Models	Yes	Yes	Yes	Yes	Yes
Development Guides	Yes	Yes	Yes	Yes	Yes

As stated in the draft Planning Bill 2013 - *for the purposes of the Community Participation Charter and the proposed Act, community participation in strategic planning, planning decisions and other planning matters is defined as the process of engaging the community (including industry, businesses, residents, interest groups and organisations) in those planning matters.*

The key legislation requirements for community participation are:

- A Community Participation Charter that will impose a duty on planning authorities to act consistently with the principles of the Charter when undertaking strategic planning and development assessment; and
- Planning authorities to prepare a Community Participation Plan, which establishes a planning culture and practical methods of engagement and partnership setting out how and when planning authorities will provide the community with opportunities to participate in the preparation of policies and strategic plans and development decisions.

Issues for Consideration

Community Participation Plan

Councils who already have an existing Community Engagement Strategy under Section 402 (4) of the Local Government Act 1993 are not required to prepare a separate Community Participation Plan.

Note: *The draft Planning Administration Bill 2013 states Section 402 (4) of the current Local Government Act will be amended to replace the term 'community engagement strategy' with 'community participation plan'.*

Council has an adopted Community Engagement Strategy, which is based on industry best practice from the Industry Association for Public Participation (IAP2) stages of engagement and social justice principles. It was originally adopted in 2009, and revised and adopted in 2012.

Council's existing Community Engagement Strategy clearly identifies **Tweed audiences and stakeholders, methods** and **tools** of engagement to be used, and **categorises projects for engagement**, including existing planning functions. It identifies the use of social media and provides a mix of traditional and web technologies, providing the best spread of engagement to involve communities, particularly at a strategic level. Council as a whole needs to embrace these tools and invest in its communication and engagement to proactively expand into online and social media.

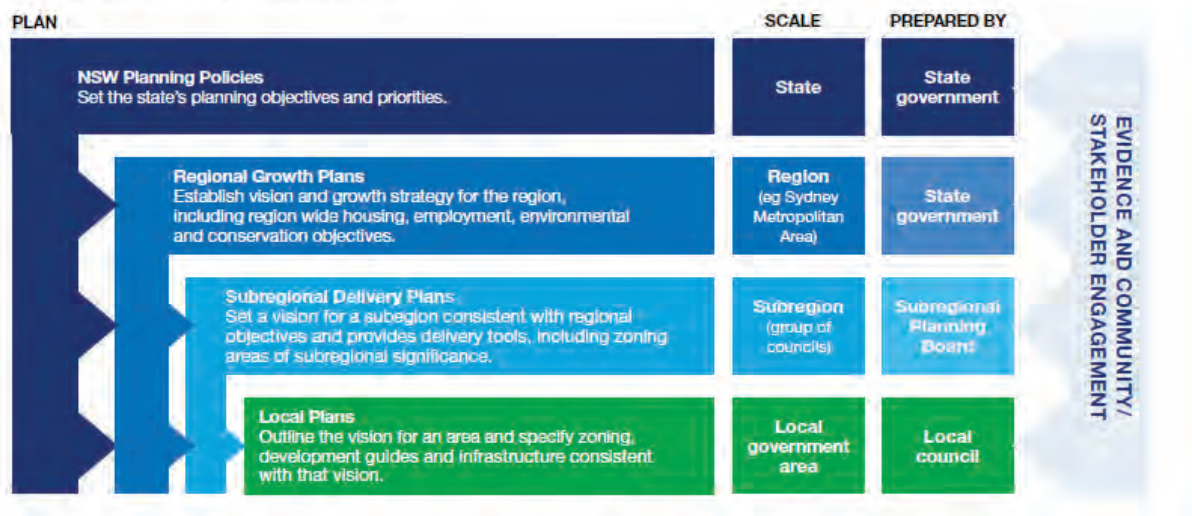
The White Paper mentions the use of specific social media channels such as YouTube. Council feels these should not be specified by the State, and that Council's may elect to host videos on their own website or alternative video sharing site than YouTube. It also specifically mentions the use 3D modelling technologies which are a capacity issue the organisation will need to address.

Council and its planning functions currently use various forms of social media, including online community forums and surveys. Recent examples of this are the Rural Land Strategy and e-Housing Code.

Another area the community participation charter aims to address is the use of information technology to deliver planning services. Tweed is also a leader in this area having already established e-planning tools for the eHousing Code and a sophisticated DA tracker on its website and Smartphone application.

Within the White Paper hierarchy of documents, the categories where the Tweed community should have significant input are **Subregional Delivery Plans**, with neighbouring Councils and their communities and **Local Plans**, visions for our local areas and the responsibility of Tweed Shire Council.

FIGURE 9 STRATEGIC PLANNING HIERARCHY



Page 51 of the White Paper specifies the stage of engagement for the development of Subregional Delivery Plans as 'collaboration'. The proposed changes from the White Paper could be categorised as:

Shire-wide/High Impact - Regional Growth Plans, Subregional Delivery Plans and Local Plans

Locality Based / High Impact - Local Plans

Locality Based/Low Impact - Development Application - merit assessment

The draft Planning Bill 2013 legislation leaves Council's no option but to incorporate its planning activities into a broader Community Participation Plan:

Section 2.2 Planning authorities and functions to which the Charter applies

(2) The Community Participation Charter applies to the exercise of the following planning functions:

- (a) functions under section 2.4 (Community participation plans),
- (b) strategic planning functions under Part 3,
- (c) development consent functions under Part 4,
- (d) environmental impact assessment functions under Division 5.1 of Part 5 if an environmental or species impact statement is required,
- (e) State infrastructure approval functions under Division 5.2 of Part 5,
- (f) infrastructure plan functions under Part 7.

Section 2.4 Community Participation Plan

(3) A community participation plan:

- (a) is to incorporate the mandatory community participation requirements under section 2.6, and
- (b) is to set out how and when the planning authority will provide other forms of discretionary community participation when exercising planning functions.

Section 2.6 Mandatory community participation requirements states

Part 1 of Schedule 2 sets out the mandatory requirements for community participation by planning authorities with respect to the exercise of planning functions to which the Community Participation Charter applies.

For example, some of these requirements exist in Tweed Development Control Plan A11 - which would be encompassed into the new requirements within the Community Participation Plan. There will be a further need to strengthen the existing corporate Community Participation Plan to be far more comprehensive and widely used across the organisation.

Conclusion

With the White Paper and draft Planning Bill 2013, Tweed is in a position to significantly strengthen the minimum engagement standards, and support planning staff in the shift from legislative compliance to engagement.

Suggested Areas of improvement for Tweed:

- An enhanced Customer Focused website for planning functions incorporating existing e-planning initiatives;
- Use of Social Media tools as engagement tools;
- Culture change to increase use of and awareness and use of a Community Participation Plan in day to day planning functions rather than legislation only;
- Develop and build capacity for in-house skills in 3D modelling, communications and community engagement; and
- Training and awareness of IAP2 principles.

Fundamentally the issue for many councils, including Tweed, is one of capacity not capability. Changing a culture from legislative compliance to engagement and the provision of enhanced community engagement support including social media and 3D modelling will need to be addressed.

As a result, from a Policy point of view, Tweed is in a position to have a Community Participation Plan that meets the needs of the White Paper and associated legislation within a suitable timeframe.

Note: *It is noted that the relevant planning authority, in their Community Participation Charters are to set a commitment to review timeframes of the strategic planning, which Council feels is vital to gain community trust and provide an expectation and timeframes for the strategic review.*

Participation at Strategic Level v Development Assessment Stage

Possibly one of the most controversial parts of the White Paper is the removal of notifications, submissions and engagement for Code Assessable developments, and relying more on the up-front Strategic Planning stage for more significant community participation, and to resolve major planning issues.

The theory behind this approach is sound in terms of its intent to make development assessment more efficient. However, citizens in NSW have traditionally had input to the application processes for the majority of developments, enshrining a right to be informed and participate in those planning decisions which affect them at the time they are being made. The discussion that the White Paper has generated is the degree of confidence that the community has ensuring that they will have more effective input at the earlier planning stages.

There are big challenges to get a community involved at a strategic level when they may not have to deal with the consequences right here and now. For the community to digest the complexity of the layers of planning and provide informed input will take significant effort and resources and a commitment to adhere to the Community Participation Charter.

The White Paper aims for a 'get it right at the start' approach focusing on the Strategic Planning, and that within 5 years of the new legislation beginning, 80% of all development approvals to be complying or code assessment, compared to the current 20%. Fundamentally making it easier for households, families and developers with comply or code Development Applications to be processed in a shorter timeframe.

TABLE 5
DEVELOPMENT TRACKS

Track	Strategic alignment	Impacts	Assessment against	Assessment by
Exempt	Full	Minor	Local Plan	Self
Complying	Full	Low	Local Plan	Certifier (council or private)
Code	Full	Managed by the plan	Local Plan	Council
Merit	Partial to full	Medium to significant	Local Plan + impacts + strategies + community views + public interest	Council
Prohibited	None	High	Not applicable	Not applicable

There is no argument that engaging on strategic plans can be hard to get community buy-in at the time a Council needs it, however it is not impossible and has been done before at Tweed Shire Council, very successfully.

A changing in planning and organisation culture to one of engagement, not just compliance, will return great benefits. However, this comes with a greater need to support and resource planning staff to deliver the strategic outcomes and balance community expectations.

Until the regulations and draft Community Participation Charters from the Department are available a direct comparison between current and proposed legislation is minimal.

DA - Current Situation

DAU Development Applications - Subdivisions, multi-dwelling housing, commercial and industrial development

BEH Development Applications - Dwelling Houses, Pools, Outbuildings (Class 1 and Class 10 buildings under BCA)

	Notify Adjoining Neighbours	Advertise in local newspaper	Number of times to be displayed in a newspaper	Exhibition Period
DA - Designated Development	Yes	Yes	2	28 days as per EP&A Act and Regs
DA - Nominated Integrated Development	Yes	Yes	1	30 days as per EP&A Act and Regs
DA - Integrated Development	Maybe depending on type	Maybe depending on type	1	14 days as per Tweed DCP A11
DA - General	If required by Tweed DCP A11	If required by Tweed DCP A11	1	14 days as per Tweed DCP A11
DA - Section 96 Modifications (1)	No	No	NA	No as per Tweed DCP A11
DA - Section 96 Modifications (1a)	No	No	NA	No as per Tweed DCP A11
DA - Section 96 Modification (2)	Yes	Maybe if required by Tweed DCP A11	1	14 days
Complying Development Certificates	No	No	NA	NA
Part V Applications (infrastructure)				

DA - White Paper - need more information from Regulations

	Notify Adjoining Neighbours	Advertise in local newspaper	Number of times to be displayed in a newspaper	Exhibition Period
State Significant Development	No			28 days as per Schedule 2 of Planning Bill 2013 Exposure Draft
Environmental Impact Statement Development	No			28 days as per Schedule 2 of Planning Bill 2013 Exposure Draft
Merit Assessment				14 days as per Schedule 2 of Planning Bill 2013 Exposure Draft
Code Assessment				As per Participation Plan but not less than 14 days as per Schedule 2 of Planning Bill 2013 Exposure Draft
Development Consents made in reliance on a Strategic Compatibility Certificate				28 days as per Schedule 2 of Planning Bill 2013 Exposure Draft
Complying Development	No	No	NA	NA
Modifications of Development Consents that were subject to merit assessment				As per Community Participation Plan

Modified Developments that were subject to code assessment where modified development does not meet the standard				As per Community Participation Plan
Infrastructure and Environmental Impact Assessment				

Strategic - Current Situation

	Notify Adjoining Neighbours	Advertise in local newspaper	Number of times to be displayed in a newspaper	Exhibition Period
Local Environmental Plan (LEP)	No	Yes	1	28 days as required by the Act
Strategies	No	Yes	1	28 days as required by the Act
Development Control Plans (Locality Plans) DCP	No	Yes	1	28 days as required by the Act
Planning Proposals (rezoning)	Maybe	Yes	1	28 days as required by the Act

Strategic - White Paper Proposed Legislation

	Notify Adjoining Neighbours	Advertise in local newspaper	Number of times to be displayed in a newspaper	Exhibition Period
Strategic Plans	No			28 days as per Schedule 2 of Planning Bill 2013 Exposure Draft
Infrastructure Plans	No			28 days as per Schedule 2 of Planning Bill 2013 Exposure Draft
Community Participation Plans	No			28 days as per Schedule 2 of Planning Bill 2013 Exposure Draft
Planning Proposals				28 days as per Schedule 2 of Planning Bill 2013 Exposure Draft

Recommended Submission

That the State Government provide greater detail on how they anticipate that the new requirements on up-front strategic planning will be adequately resourced by both councils and State agencies.

STRATEGIC PLANNING (CHAPTER 5 OF WHITE PAPER)

White Paper Proposal/Changes from Current Planning System/Legislation

A New Strategic Framework

The White Paper proposes a major shift toward evidence planning, which is to be underpinned by community and stakeholder engagement during plan preparation. The purpose is to improve what is termed 'upfront planning', which is seen as a "key tool for better facilitating the delivery of housing and jobs in the right locations".

The underlying premise is that government agencies and key stakeholders will be brought together in a collaborative way when preparing regional and subregional plans so that commitments on important and often critical elements concerning physical infrastructure, service delivery and the distributive allocation and responsibility for funding or providing it, is linked to the land-use planning aspect.

Decisions about the location, character and types of land-uses are then said to be rationalised and agreed with local communities as part of the up-front community participation engagement.

Community participation and the community participation charter are discussed in the previous section of this report.

The concept entails a two pronged approach. Providing certainty to the development industry about location, cost and servicing on the one hand so that investment is made more secure and providing communities with a say on the look and feel of how those identified areas will grow so that localised disputes about development are minimised. This is said to occur because of the greater certainty about the kind and form of development known or agreed to by those communities.

Broadening the use of complying and code assessable developments is then said to be more readily achievable, without the need for further public comment on those developments that meet the prescribed standards; a streamlined approvals process.

Collectively, these strategies focus more so on strategic planning for achieving efficiencies in the delivery and standards of new development, than has been the reliance in the past on development control and assessment, by strengthening the decision making relationship to agreed community outcomes in the strategic plans.

New strategic planning will demonstrate "a clear line of sight" through a successive layering of plans from the State down to the local level, through which each plan will give effect to the policies, principles and agreed outcomes of the higher order plan. This is essential for achieving the overriding principles focused on strategic planning outcomes. The Planning Bill 2013 sets out the ten strategic planning principles:

3.3 The strategic planning principles

The strategic planning principles that are to guide the preparation of strategic plans are as follows:

- Principle 1:** Strategic plans should promote the State's economy and productivity through facilitating housing, retail, commercial and industrial development and other forms of economic activity, having regard to environmental and social considerations.
- Principle 2:** Strategic plans are to be integrated with the provision of infrastructure.
- Principle 3:** Strategic plans are to guide all decisions made by planning authorities and allow for streamlined development assessment.
- Principle 4:** Strategic planning is to provide opportunities for early community participation.
- Principle 5:** Planning authorities and State agencies are to co-operate constructively in the preparation and implementation of strategic plans.
- Principle 6:** Strategic plans should reflect agreed planning outcomes in setting the planning vision for an area.

- Principle 7:** Strategic plans are to be standardised, easy to use and available online.
- Principle 8:** There should be monitoring and reporting of strategic planning outcomes.
- Principle 9:** Strategic plans are to be based on evidence, set realistically deliverable targets and take account of economic, environmental and social considerations.
- Principle 10:** Local plans should facilitate development that is consistent with agreed strategic planning outcomes and should not contain overly complex or onerous controls that may adversely impact on the financial viability of proposed development.

The key changes proposed for strategic planning are summarised in the table below:

- | | |
|--|---|
| <ul style="list-style-type: none">• a shift to upfront evidence based strategic planning, with a focus on achieving sustainable development outcomes | <ul style="list-style-type: none">• a shift in focus to subregional planning jointly prepared by councils and the state, where there will be direct rezoning and supporting development guides for major precincts of state or regional significance |
| <ul style="list-style-type: none">• infrastructure that is integrated with land use so that the community has confidence that areas of growth and change will be supported by transport, infrastructure and services | <ul style="list-style-type: none">• an innovative new approach to Local Plans focussed on outcomes not development controls in isolation |
| <ul style="list-style-type: none">• a partnership between the state, the community, local councils, agencies and the private sector to develop a shared vision for regions, subregions and local government areas | <ul style="list-style-type: none">• clearly structured and transparent plans, with all development controls and zones accessible to the community and business in Local Plans |
| <ul style="list-style-type: none">• whole of government requirements in strategic plans to improve planning outcomes and reduce the number of development applications that require multi agency concurrence, referral or approval | <ul style="list-style-type: none">• strong performance monitoring and reporting to ensure that plans deliver on agreed objectives• the transition of the relevant aspects of existing strategic plans and planning instruments to the new planning system. |

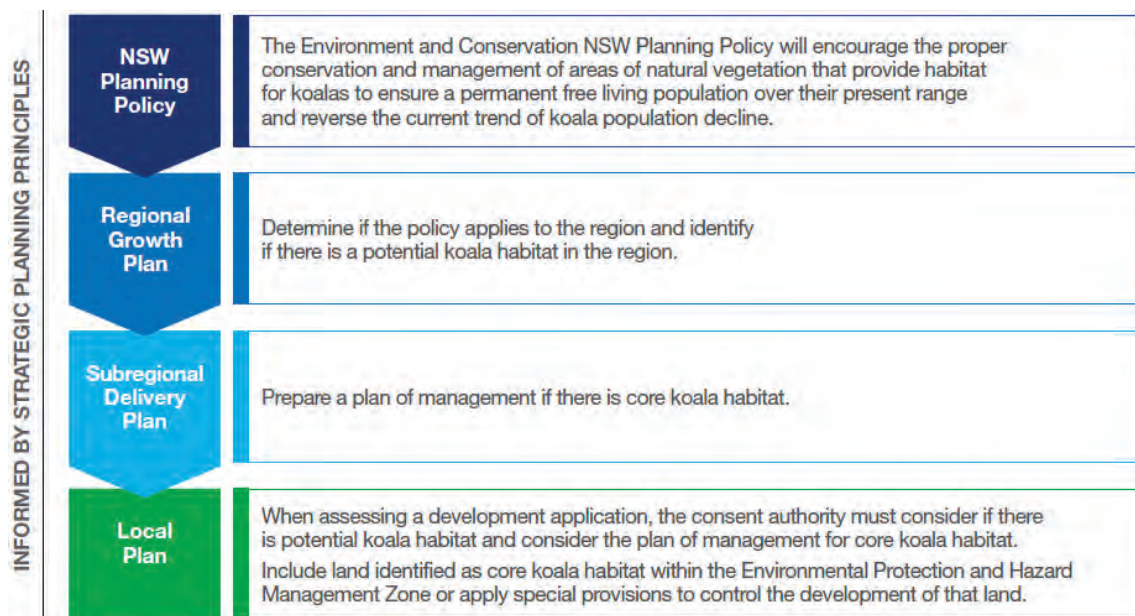
A Hierarchy of Strategic Plans

The hierarchy and relationship of plans is illustrated in diagram below:



The vertical hierarchy discussed above can be seen flowing down from the State Plan through regional and into a local plan. Each of these Plans is discussed in more detail below.

For now it is important to recognise both that there is a logical structure for the implementation of the state's broad economic and sustainable policies but also that there is opportunity within this framework to pick-up or incorporate other critical policies. As the example below, taken from page 71, illustrates in relation to Koala habitat protection:



A further example of housing supply and affordability is provided on p70 of the White Paper and these are relevant to the discussion on the NSW Planning Policies.

NSW Planning Policies

These policies will be prepared by the Department of Planning and Infrastructure, overseen by a new Chief Executive Officer's Group, and made by the Minister for Planning and Infrastructure following endorsement for them by the whole of government.

Their preparation is to occur in consultation with state agencies, local councils and underpinned by evidence and research. The Planning Bill 2013 mandates that draft strategic plans must be publicly exhibited for a minimum of 28 days. The Community Participation Charter and Community Participation Plan (CPP) under Part 2 of the Planning Bill applies to the preparation of NSW planning policies. The CPP will detail the level and method of engaging the community and stakeholders in their preparation.

The legislation is designed to recognise NSW Planning Policies, which are said to be new 'transformative' documents. These policies will be prepared for a small number of core planning issues of significance to the State. They will focus on addressing fundamental drivers of change such as population growth, demographic trends and structural shifts in the economy and will:

- Articulate the government's planning policy framework relating to land-use and development
- Provide succinct descriptions of the objectives, policy direction and delivery obligations for when preparing Regional and Subregional policies
- Where relevant incorporate applicable and relevant existing strategic policies, such as s 117 Directions and SEPPs.

The structure of these policies will maintain a similarity with other policy documents with their legibility arising through a common structure, plain English and clearly stated policy objective, targets and deliverables.

An example of the potential planning policies is identified as including:

- Housing supply and affordability, and housing choice
- Employment and economic growth
- Environment and conservation
- Retail development and tourism
- Agricultural and rural resources

Officers' comment:

On a broader view this seems to be a good initiative.

It is well documented that policy and legislative control has been widely criticised as ineffective or absent on many State-wide issues including; affordable housing and housing supply, identification and protection of rural farming, the right to farm, recognition of farm productive lands as a National natural resource asset, protection ecological biodiversity and natural areas for promoting and sustaining the health of productive farm land, as well as other important State and regional issues.

One of the causes of ineffective land-use management has been the absence of legislative recognition of key policy instruments. In effect, the Planning Bill 2013 is a recalibration of the approach to land-use management generally. With all good management there must be a strong platform for decision making. That platform has for many years tilted toward a command and control strategy comprising the direct regulation of land-use through legislation aimed at prescribing what is and what is not permitted.

A fundamental criticism of that strategy is the adversary based nature of disputes that typically arise and which often divide neighbours and communities alike. Without the checks and balances strategic planning can bring through participant engagement at all levels, command and control strategies when too heavily relied on or left unchecked for too long can harbor a disconnect between communities, government and business. Community attitude, expectation and tolerance changes overtime, as does that of government policy and the needs of business but not always with a common objective or mutual outcome.

The new Planning Bill seeks to tilt the platform back toward to a reconciliatory or negotiated point where government, business and communities can collaboratively engage in planning the future and shape of the State.

Recognising the critical role strategic planning can have in setting out the goals and targets to be achieved by the State and how that can be delivered with certainty, efficiency and on agreed terms with local communities is a legislated format adopted by the new Planning Bill. This isn't to suggest that what is being proposed will ultimately return what many may consider is a true sense of balance between, for example, conservation and development, but it may be seen as shift or realignment in the power imbalance that has occurred between the developer/government and local residents as a result of what the current command and control legislation has fostered. Nor should it veil the level of power still vesting in the Minister administering the planning legislation to take possession of key projects and bypass certain decision making functions, as they are arguably broader than the circumstances would likely demand of them.

Significant work is required at all levels of government and community to bring about meaningful change and an environment of certainty. Whilst this is not likely to happen quickly the reforms proposed do at least provide the catalyst and stage for partnerships, collaboration and ultimately that change.

This marks a new era in the approach to land-use management, advantaging local communities with greater say on how their region and community may grow. It should not however be at the expense of the invaluable body of public consultation that currently occurs at the development assessment level on major projects and those with clear and evident impact upon their neighbours and communities.

Whilst increase community participation is a welcomed addition it must be borne in mind at all times that communities change, sometimes whole communities, and removing the ability for public consultation altogether at later stages of planning and development will likely only serve to undermine any confidence regained upfront.

Change cannot be achieved through the continual modification of the current planning system and as such the new Planning Bill 2013 proposes positive benefits for strategic planning of the Far North Coast Region.

Regional Growth Plans

The purpose of these plans is to provide the broader regional strategic planning direction that will inform and guide the development of subregional delivery plans and local plans. They will not zone land or regulate development. Through broad community and stakeholder participation and evidence based analysis they will identify solutions and outline competing interests for community consideration.

There will be collaboration on alternatives and selecting preferred solutions for growth and change.

Prepared and endorsed by the NSW Government through the Department of Planning and Infrastructure, with assistance from the Chief Executive Officer's Group, the new plan will be similar to the current Far North Coast Regional Strategy with some welcomed additions. These would likely include a clearer indication of the physical infrastructure required to service many of the new areas, clearer housing targets and benchmarks for achieving more sustainable urban environments, environmental targets for water and air, as well as clearer objectives for environmental management and conservation.

Importantly, the new plan will establish a monitor and report program and culture for benchmarking and assessing the deliverables of the plan. This performance audit will occur quarterly and be made publicly available. Accountability for the State government's performance in not only setting targets but demonstrating the commitment, through sound policy and funding, and ability to deliver on sustainable development, a cleaner environment and stronger economy is overdue. These new measures should bring the State into closer conformity with the performance benchmarking and reporting that has for many years held local government accountable for their land-use management decisions.

In keeping with the principles of strategic planning these plans will have a strong evidence base and will take account of the regions defining characteristics, current housing and employment trends and long term population growth scenarios. It will be outward looking beyond its borders for linkages and opportunities over other regions and the State.

To ensure that the principles are attained and that a new regional growth plan is consistent with the objects of the Act, all new plans will need to be certified by the Director-General of the Department of Planning and Infrastructure that they comply.

The content of regional growth plans is prescribed by the new Act:

3.5 Preparation and content of regional growth plans

- (1) The Director-General may prepare a draft regional growth plan for any region in the State.
- (2) A draft regional growth plan is to identify the following:
 - (a) The basis for strategic planning in the region,
 - (b) Existing and proposed transport and other infrastructure for the region (including any priority infrastructure),
 - (c) Regionally significant areas,
 - (d) Targets for achieving the planning outcomes for the region (including housing, employment and environmental targets),
 - (e) Actions required to be undertaken by planning authorities to achieve those targets,
 - (f) The basis on which planning authorities are to monitor and report on performance against those targets,
 - (g) The kind of development on any particular land in the region for which biodiversity offset contributions are proposed (unless identified in subregional delivery plans),
 - (h) Any other matters the Director-General considers relevant to planning for the region.
- (3) If there is no subregional delivery plan for any part of the region, the draft regional growth plan may identify for that part of the region matters that may be identified in a subregional delivery plan (until there is a subregional delivery plan).

Officers' comment:

The current regional strategy, the Far North Coast Regional Strategy, has served the north coast region well. Since 2006 it has proved valuable in guiding local decisions on many aspects of environmental management and planning for new and expanding communities. It also curtailed the proliferation of new Greenfield land release along the eastern coast that were expanding rapidly into a conurbation of dormitory suburbs, expensive to service, lacking critical community infrastructure, economically and socially dislocated from major centres.

Amongst the many benefits the Strategy delivered arguably its greatest weakness was its omission in dealing with land-use planning in an integrated and holistic way. It proceeded to look at planning in isolation of the infrastructure needs for new and existing urban areas, in particular roads and public transport, and essentially ignored the role State Government has in not only planning for infrastructure but delivering it also.

Environmental protection, social and economic and other important issues that are intertwined with land-use planning lacked any true sense of priority, commitment or mechanisms that were capable of elevating those issues so that they could compete on level pegging with decisions concerning 'planning'. Consequently, new areas were being identified and zoned without the broader consideration or commitment to actually facilitate the change sought.

This was all occurring at a time when the State government was reducing local councils' ability to raise revenue through s 94 levies on the one hand and the cost of providing those services was increasing on the other. There was no sense of urgency at a State level about whom or how those services would be provided in the longer term. The short-term objective was to keep building construction going but as evidenced in many areas, including Tweed, the omission to deal with the broader infrastructure and to a lesser extent the environmental issues left many projects no farther advanced than a change in zoning.

The new Planning Bill 2013 recognising the critical importance not only of community engagement but of the need for a holistic evidenced based approach to planning more likely has the potential to meet the objectives of delivering housing, employment, education and recreation in areas where it is both needed and capable of being delivered.

The redefinition of and expansion on the current regional strategy in the form of a new Regional Growth Plan marks a turning point for regional and catchment based land-use planning on the north coast. This is a welcome change.

Subregional Delivery Plans

These plans will translate the aims and objectives of NSW Planning Policies and visions of the relevant Regional Growth Plans. A clear distinction between those former plans and the subregional delivery plans is the ability of these to zone land directly and to set detailed development parameters for the areas identified, whether that is a new suburb, locality, region or a mixed composite. Zoning and mandatory development parameters established under a subregional plan will be set-out in the Local Plan and cannot be overridden by councils.

Described as the new transformative delivery tool for affecting land-use change, they are prepared by new Subregional Planning Boards collaborating with local councils, state agencies and subregional communities.

The Subregional Planning Board composition is discussed in more detail on page 83 of the White Paper document. In summary, they are a new planning body created under the legislation with the function of preparing the subregional delivery plans, assisting councils preparing Local Plans, and it is likely that they will partner the Department of Planning and Infrastructure in preparing Growth Infrastructure Plans.

The Planning Boards will comprise a representative from each council in the subregion (a subregion may constitute more than one council area or part of a council area) up to four state representatives and an independent Chair, each with a term of four years.

The plans are intended to be a visual document and written in plain English. They will, by way of example, graphically represent the key areas within the subregion targeted by the Plan and depict the extent of the new areas, their service function and the key infrastructure.

In addition they will use the broad housing supply targets established in the Regional Growth Plans and through detailed analysis of the subregion will filter out precisely how and where those targets can be delivered. This will guide decisions about the type of development required (houses, multi-dwelling, residential flat building etc) and ultimately the density, height and zoning.

The content of subregional delivery plans is prescribed by the new Act:

3.6 Preparation and content of subregional delivery plans

- (1) A subregional planning board may prepare a draft subregional delivery plan for the subregion for which it has been established.
- (2) A draft subregional delivery plan is to identify the following:
 - (a) Existing and proposed transport and other infrastructure for the subregion (including any priority infrastructure),
 - (b) Significant areas in the subregion,
 - (c) How the housing, employment and environmental targets in the relevant regional growth plan are to be achieved in the subregion,
 - (d) Proposed growth areas in the subregion and the proposed planning controls that should apply in those growth areas or the strategic planning process that should be undertaken by planning authorities to establish those planning controls,
 - (e) Proposed exempt or complying development or development proposed for code assessment in the subregion,
 - (f) The kind of development on any particular land in the subregion for which biodiversity offset contributions are proposed,
 - (g) Any other matters the subregional planning board considers relevant to planning for the subregion.
- (3) If there is no regional growth plan for any part of the subregion, the draft subregional delivery plan may identify for that part of the subregion matters that may be identified in a regional growth plan (until there is a regional growth plan).

Officers' comment:

Critical for councils and communities alike will be open and two-way engagement in the preparation of these plans. They undeniably provide the policy document with the greatest potential for transformative change, which is how they are intended to function. Ensuring that communities truly do have a say and that councils can properly advocate and champion on their behalf it is essential that the community engagement strategy of the Regional Planning Board does provide due access to the process.

The subregional delivery plans have the genetics to make new development happen, to rejuvenate and transform existing areas, and to elevate the sustainability of urban development throughout the State. They also possess the greatest threat to existing communities, to fragile and scenic natural and urban environments.

How the unique characteristics of existing towns and villages can and will be preserved or enhanced through these Plans is unclear. What is, is that without a genuine discourse with local communities and councils and a right of those communities to shape the future of their subregions the subregional delivery plans will be seen as no more than a new breed of planning instrument designed to dis-empower local councils' and their communities.

The continual shift toward increasing exempt, complying and code assessable development and the corresponding reduction in public participation during these latter stages makes it all the more imperative that new strategic planning is underpinned by robust community engagement.

Local Plans

Local Plans are the legal mechanism for the delivery 'on-ground' of NSW Planning Policies, Regional Growth Plans and Subregional Delivery Plans.

Local Plans will be prepared by local councils, possibly assisted by the Subregional Planning Board and made by the Minister for Planning and Infrastructure. The plans require early and effective community participation. It is envisaged that the four year review period of the Local Plan will dovetail and operate in conjunction with the consultation occurring with Council's Community Strategic Plan.

Notably the new Act deals with the general purpose provisions of the local plan and its 'planning control provisions' separately. This is a procedural necessity for enabling the standardisation of planning controls across the State in such a way that they can be systematically: amended, added or removed, by the Minister (or their delegate) without the need for individual planning proposals and without affecting the general context provisions of those local plans.

For example planning control provisions would include standardised:

- Zones
- Prescribed land-uses and prohibitions within certain zones
- Definitions
- Mandatory provisions for subdivision, exempt & complying development, acquisition and the like.
- May also include provisions for additional development standards and contributions

The content of local plans is prescribed by the new Act:

3.11 Composition of local plans

A local plan established under this Division comprises the following:

Part 1 - Strategic context:

An explanation of how NSW planning policies, regional growth plans and subregional delivery plans are given effect to in the area concerned (having regard to any applicable community strategic plan under section 402 of the *Local Government Act 1993*).

Part 2 - Planning controls:

Containing spatial and other provisions for the area concerned relating to land use zoning, the categories of development and other matters for which planning control provisions may be made under this or any other Act.

Part 3 - Development guides:

Containing guides with respect to development in the area concerned to give effect to the aims of planning control provisions and the objectives of land use zones, and to facilitate permissible development.

Part 4 - Contributions:

Containing provisions relating to the amount of local and regional infrastructure contributions, or biodiversity offset contributions, payable in respect of particular kinds of development in the area concerned.

The 'transformative' elements of the new format are aimed at positing all statutory controls in a single policy, which make for easier use and access on-line. Establishing a nexus to the higher order regional and subregional plans will also ensure that agreed targets and goals established through those processes with the participation of communities and business will flow through to the local plan, which is the tool for implementing them.

Combined with performance measures and the need for certifying their compatibility local plans should provide greater certainty and clarity about their strategic objective.

The machinery of how the new Plans will look and feel remains unclear. Guidelines and practice notes are yet to be published and many of the finer statutory provisions will occur through regulations which are also unavailable.

Early indications are that there will be a reduction in the number of zones, with zones of likeness compressed or grouped into a single overarching zone. The precept, described as one based on "today's economy", is that there are fewer activities "that are genuinely incompatible" and a central assumption of a performance based system is one that recognises that land-use impact is a result of intensity not of the land-uses themselves.

An example of how the new zone groupings may occur appears on page 103 of the White Paper. The final list of new zones is said to be subject to further consultation before being incorporated into the new legislation.

Local Plans will contain 'Suburban Character Areas'. These will apply to urban areas where there is a proven urban character, amenity or pattern. Precisely how areas of significance and variety will be adequately protected and maintained remains very unclear. In addition, the development guides in Part 3 of the local plan lack sufficient clarity about how they will operate effectively to provide the same level of protection as currently exists with the use of development control plans and locality place based plans.

One objective is for the new development guides to incorporate 3D block modelling, which has been around for quite some time.

The initiative to introduce 3Dimensional 'building envelopes' as a more detailed form of 'development guide' under the restructured local plan format has the potential to improve the certainty and quality of urban environments. Given the availability of improved planning and building design modelling tools and the ability to test different design solutions to a given site or context, the progression of planning instruments into the 3D realm is therefore a logical one.

Utilising 3D building envelope controls may provide more certainty to neighbours and communities, particularly regarding the general bulk and scale that they might expect to see on a given block.

The modelling tools can to a certain extent also test some rudimentary building form considerations relating to building envelope, height and townscaping. This enables the testing of various heights across different sites, and to a lesser extent building scale, form, massing, amenity impacts including overshadowing, overlooking and privacy.

The benefits are said to also include:

- Guiding three dimensional form of an area;
- Informing decisions about appropriate density;
- Testing design parameters; and
- Visually communicating potential mass, scale and distribution of new developments.

Whilst this new initiative has a number of clear benefits, in part liberation of the two dimensional planning controls into a more visually instructive 3D format, and the opportunity for more site specific building form design, it does not provide a one-stop solution.

There are several other considerations that need to be taken into account if one of goals of the new legislation truly is to move toward sustainable development. Appreciating local character and heritage, climatic considerations, site configuration and building to site design all require interrogation on a site by site basis. Without those additional considerations compatibility of new development with surrounding built form and climatic context cannot be assured.

It needs to be acknowledged also that a building envelope is not a building, but a 3 dimensional space in which a building may be built. As such, the more detailed design aspects including building siting, form, composition and articulation, which arguably have more relevance in the consideration of a 'good contextual fit', are outside the realm of a building envelope. It is these elements which more directly define streetscape and therefore locality character. It is the ability of a design to consider context, streetscape, climate and public expectation which adds value to a development rather than the ability to 'fit' within an envelope.

The White Paper defers these matters to 'design excellence' guidelines and review panels and insufficient information is provided to assess whether this will be an effective outcome or a detrimental result.

In the context of increasing types of development which are code assessable, it is important that contextual and design considerations be embedded within the vision and objectives for an area. This will ensure a strong relation between built form, climate and place. The issue that then arises lies with the uncertainty about the operation and effectiveness of the Suburban Character Areas within the local plan.

Officers' comment:

Local environmental plans are far from a perfect tool for regulating, encouraging and protecting land and places in modern times. Improving how they relate strategically to the needs of growing communities, environmental pressures and changing economy through a clear nexus that links its purpose and goals to the context within its borders is an inevitable demand and a change destined to occur. And whilst few would doubt the need for change in the Statute itself it is arguable that the changes proposed in the local plans have gone too far too quickly.

While communities struggle to comprehend the new changes and additions to the State/regional strategic policy hierarchy and the latest round of amendments to LEPs brought about by their standardisation, they are arguably presented with the greatest challenge in the last two decades of planning; the loss of development control plans and placed based planning strategies and the compression of land-use zones.

It is equally true that few would argue that the planning pendulum has swung too far and too often in favour of command and control based regulation strategies for managing land use through development control rather through strategic direction. In what at first appears to be a swing back toward strategic planning and upfront community engagement it is possible that what is potentially gained upfront will only be wiped away as the ability to truly govern the protection, form and character of urban environments is eroded by the loss of qualitative based planning controls.

The White Paper states that *“strategic plans should promote the state’s economy and productivity through facilitating the delivery of housing, retail, commercial and industrial development and other forms of economic activity, by way of sustainable development”*. It is agreed that planning plays an important role in promoting the State’s economy however it is essential that this objective is not prioritised over the needs of local communities and the desire to protect unique landscapes and heritage.

Simplifying zones to a few broad land-use groups would undoubtedly remove many of the unnecessary barriers to development observed throughout the operation of the Tweed LEP 2000. However, without detailed place based development codes with statutory force and in the face of continuing rights to merit appeals and the permissibility of applicant's to seek non-conforming development there should be little preference for that model.

Open zones with minimal regulation in a framework that purports performance based outcomes but that will remain heavily dependent on the legal system and Courts for adjudication does not bare the hallmarks of a functioning system, but one that invites subversion of the aspirations and agreements in the Strategic Planning Policies.

Open zones arguably require higher levels of compliance and attainment and there should be no need for recourse to the Courts, except in exceptional circumstances. The very fact this remains serves a clear indication confidence in the system, despite the early and upfront community engagement, is absent. This is likely fuelled by the lack of any substantial and instructive information about how the design control elements of the new local plans will actually work.

Having reviewed the proposed new system under the Planning Bill 2013 it is clear that there are many positive elements to it. The fact remains that the biggest change for local communities is not however with the broader strategic policies but with the local plan. Many changes are proposed and many remain unclear as to how they will operate. In a new legislative scheme that squarely focuses upon economic activity both councils and the community should remain vigilant about how the local plans, and in particular the zonings, progress in the near future.

Additional External Commentary

In addition to the officers' review of the "Strategic Planning" elements of the White Paper, one of Council's legal providers, Lindsay Taylor Lawyers (Megan Hawley, 4 June 2013), has recently published the following commentary on their review of these elements on their web site:

"The 'clear line of sight'

*The Planning Bill requires each type of strategic plan to **give effect to** the policies and principles in the strategic plans higher in the hierarchy.*

This is more than a requirement for consistency between the different strategic plans. The words give effect to suggest that the provisions of each strategic plan must not only not offend the provisions of the higher level plans, but must also contain provisions to implement the principles and policies in the higher level plan.

There is nothing in the Planning Bill to the effect that a strategic plan will have no effect to the extent it does not 'give effect to' the higher level plans. However, all strategic plans are made by the Minister, so presumably a plan which does not give effect to higher level plans would not be made.

Also, the strategic context provisions in the local plan must explain how the plan gives effect to higher level plans, and the consistency of a development with that strategic context will be a relevant matter for consideration in the development assessment process.

The intention is that once the Planning Bill becomes law, Schedule 12 and the associated regulations will provide that existing local environmental plans will continue in force as part of the local plan for the relevant area. Clearly, whilst existing plans remain in force, it is unlikely that they will 'give effect to' any new, higher level strategic plans which might be made.

Even if it is accepted that the new strategic planning system will ultimately result in 'a clear line of sight between each successive layer of planning' as the White Paper suggests, that can surely only be achieved after many years once all local plans are reviewed and brought into line with higher level strategic plans, once made.

*To prepare all higher level strategic plans for the state involves a significant commitment of time and resources. The process of updating local plans to give effect to those higher level plans would also be lengthy. It is noted that the process of standardising local environmental plans under the existing Environmental Planning & Assessment Act 1979 (**EPA Act**) commenced in 2006, and is still not complete. The achievement of consistency in the hierarchy of plans is therefore likely to be some way off.*

Transitional Issues

In the interim, there will be some issues for consent authorities in determining development applications. For example, it is difficult to see how consideration can be given to a developments consistency with the 'strategic context' provisions of the local plan, before the local plan is reviewed in light of higher level plans. The transitional provisions may shed some light on this issue.

The Planning Bill does provide for strategic compatibility certificates which address some transitional issues.

A site compatibility certificate can be issued by the Director-General to make development which is prohibited under a local plan permissible if the local plan has not yet been amended to give effect to a regional growth plan or subregional delivery plan, and the development is consistent with that higher level plan.

Such certificates could represent a significant opportunity for developers whose proposals comply with regional or subregional plans to obtain a consent before detailed controls are introduced in respect of such development in the local plan. The certificate operates in some ways as an in principle approval, as development consent cannot be refused on grounds and conditions cannot be imposed which relate to matters dealt with in the certificate.

Development guides

The requirement for strategic plans to give effect to higher level plans is mirrored in the requirement that the development control provisions of a local plan are to 'give effect' to the planning control provisions and facilitate permissible development.

The Planning Bill also provides that to the extent that development guide provisions are inconsistent or incompatible with the planning control provisions of the local plan, they will have no effect. This is consistent with the modifications made to the EPA Act earlier this year in respect of development control plans.

It is not clear whether existing development control plans will be saved under the proposed transitional arrangements, so that they will become part of the 'development guide' provisions of the local plans. Many existing development control plans are unlikely to conform to the requirements for development guides in the Planning Bill.

The status of the development guide provisions of a local plan, once the Planning Bill is enacted, is also unclear.

Whilst the White Paper states that all provisions of a local plan are to be considered in a merit assessment of a development application, s4.19 of the Planning Bill only requires consideration of the development guide provisions of the local plan to the extent that they contain 'development assessment codes'.

'Development assessment codes' are codes for development set out in the development guide provisions of a local plan. Such codes are to describe performance outcomes for development and identify acceptable solutions for achieving those outcomes. It is not clear from the Planning Bill that all development guide provisions must take the form of development assessment codes, although that would seem to be the intention from the White Paper. Any development guide provisions which are not 'development assessment codes' are not relevant to a merit assessment of a development application.

If there are savings provisions in respect of existing DCPs, many may have little effect in the development assessment process if they do not already take the form of a development assessment code."

Recommended Submission

That the State Government provide clarification on the transition of existing community supported Development Control Plans into the "Guidelines" of the new Local Plan format.

Environmental Issues

Council's NRM Unit has provided the following input to the White Paper review:

Ecologically Sustainable Development

The White Paper and draft Planning Bill remove all references to Ecologically Sustainable Development (ESD) which includes the following:

- The precautionary principle;
- Inter-generational equity;
- Conservation of biological diversity and ecological integrity; and
- Improved valuation, pricing and incentive mechanisms, including the polluter pays principle.

From an environmental point of view this is concerning as ESD has long been established in Australian and international law. Instead, the new Planning Bill includes an objective to promote *economic growth and environmental and social well-being through sustainable development* (draft Bill Part 1, 1.3). While the meaning of this is not entirely clear it is noted that the White Paper refers to the “integration” of economic, social and environmental factors and consideration of “present and future needs” but does not mention the precautionary principle, the conservation of biological diversity and ecological integrity as fundamental considerations or the need for improved valuation, pricing and incentive mechanisms including the polluter pays principle.

Evidence Based Planning

Whilst the use of the best available evidence to support strategic planning is supported, it is equally important to deal effectively with uncertainty (lack of evidence) within any new strategic planning framework. Under the principles of ESD this issue is captured by the precautionary principle which states:

“..that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

- (i) Careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (ii) An assessment of the risk-weighted consequences of various options.*

The move away from the principles of ESD brings into question the way in which evidence is weighted and whether or not the presumption in favour of environmental protection will be maintained under the new planning system.

Strategic Planning Principles

The White Paper’s strategic planning principles do not deal with improving or maintaining environmental outcomes, assessing cumulative impacts or preparing for climate change or urban sustainability. A number of the principles appear to prioritise economic growth considerations at the expense of social and environmental outcomes. There are also issues relating to wording which are likely to dilute the consideration of environmental and social issues for example, Strategic Planning Principle 9 states that: *Strategic plans are to be based on evidence, set realistically deliverable targets and take account of social, economic and environmental considerations regard to environmental and social considerations.* Rather than simply having regard for environmental and social issues, it is suggested that it would be clearer if outcomes-based environmental and social objectives were adopted (for example, maintain and improve water quality and catchment health to identify and protect environmentally sensitive areas).

NSW Planning Policies

The commitment to translate existing environmental protections (SEPPs, s117 directions, Regional Strategies etc) into NSW Planning Policies is supported however as many of the provisions of the existing protections are to be moved to lower level plans it will be important to ensure that Council ensures that such provisions are not diluted in the process these plans.

Regional Plans

Regional plans are not explicitly required to incorporate aims and targets of environmental policies, including native vegetation targets, biodiversity strategies, greenhouse gas and other pollution limits. Effective strategic planning needs to integrate state Natural Resource Commission targets; regional Catchment Action Plans; and councils' biodiversity and NRM strategies.

Environmental Protection Zones

The White Paper proposes to reduce the number of zones available for land use planning, including removing important environmental protection zones. Under the White Paper proposal (p95) it is proposed to absorb the existing environmental zones as follows:

- Environment Protection and Hazard Management (incorporating E1 National Parks and Nature Reserves, E2 Environmental Conservation and W1 Natural Waterways)
- Rural (incorporating RU2 Rural Landscape, RU6 Transition and E3 Environmental Management)
- Residential (incorporating R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R5 Large Lot Residential, RU5 Village and E4 Environmental Living)

Identifying and managing environmental values through land use planning is vital for the proper conservation and management of biodiversity and natural resources. Identifying highly constrained land up-front and explicitly excluding inappropriate land uses in such areas provides greater certainty to applicants and the community. Under the model proposed in the White Paper it would appear that it will be very difficult for Council to effectively integrate environmental protection and rural land management despite numbers of Threatened species, Endangered Ecological Communities and World Heritage National Parks. As the final list of zones and uses have not been finalised it is important that Council takes all opportunities to ensure that current environmental protection measures are included in the new planning system.

Strategic Compatibility Certificates

Strategic compatibility certificates will allow developers to apply to the Director General for a certificate which will authorise a particular development despite any prohibition for the carrying out of the development under the planning control provisions of the local plan (Division 4.7, Planning Bill). Although this proposal is intended to be an interim measure it has the potential to be used to override existing environmental planning instruments particularly during the preparation of subregional and local land use plans.

Environmental Assessment Consultants

The White Paper and legislation do not mandate accreditation of environmental assessment consultants at this stage, though the proposal has strong community support. Part 10 of the Planning Bill 2013 appears to severely curtail the public's ability to challenge legal errors of decision makers in the Land and Environment Court – in fundamental areas such as community participation, strategic plans and state significant development approvals.

Appeal Rights

Although third party appeal rights and an open standing provision are included in the Planning Bill (see sections 9.8 and 10.9 respectively), section 10.12 of the Planning Bill substantially limits these rights by seeking to exclude third party legal proceedings with respect to (a) the making or amending of local plans and strategic plans; (b) approval of State significant development and State significant infrastructure; and (c) implementation of the Public Participation Charter. Further, the Planning Bill continues to restrict appeal rights against decisions that have been made after a public hearing by the Planning Assessment Commission (section 9.6(3), Planning Bill). Such a restriction seeks to override judicial oversight of planning decisions, and reduces the transparency and accountability of decisions of the Planning Assessment Commission.

Recommended Submission

That Ecologically Sustainable Development should be an overarching object of the new Planning Act;

That the strategic planning principles in the draft Planning Bill (cl. 3.3) should establish clear outcomes-based objectives for achieving environmental and social outcomes;

That provision should be made to ensure that regional plans recognise and are consistent with other State or locally adopted NRM strategies;

That Council takes all opportunities to ensure that current environmental protection measures are included in the new planning system; and

That Council takes all opportunities to ensure that the community is properly consulted in relation to strategic planning and development control and that the scope of current appeal rights and judicial oversight is carried over into the new planning system.

Further Information

EDO 2013. NSW Government Planning Review – White Paper. EDO NSW Preliminary Briefing Note and Key Issues Summary May 2013-06-04.

NCC 2013 NSW Planning System Review - White Paper and Submission Guide. Nature Conservation Council of NSW and Total Environment Centre.

DEVELOPMENT ASSESSMENT (CHAPTER 6 OF WHITE PAPER)

White Paper Proposal/Changes from Current Planning System/Legislation

- Eighty per cent of all developments will be complying or code assessment within the next five years, with reduced timeframes and documentation requirements;
- An expanded range of residential, commercial, retail and industrial developments will be complying or code assessment;
- Low cost appeal rights will mean greater access to existing appeal rights for applicants which will mean fairer assessments and reduced costs;
- Promoting independent expert decision making with the use of the Planning Assessment Commission, Regional Planning Panels and Independent Hearing and Assessment Panels; and
- New merit assessment processes where applications that are consistent with performance outcomes will be subject to less delay and uncertainty, with greater confidence for investment.

Issues for Consideration

Types of development eg. code assessable, 80% complying & code assessable, performance based development guidelines

The proposed development assessment system is based around five assessment categories or tracks:

- Exempt
- Complying Development
- Code Assessable
- Merit
- Prohibited

Code assessable development is the only new category. Code assessable development is development that has a predetermined set of performance objectives with acceptable solutions to meet the performance objectives. Alternative solutions can also be proposed to meet the performance objective. The application is assessed against those standards and if the standards are complied with the application cannot be refused. Public consultation is also removed as it is proposed the consultation will have been undertaken for the code in developing the standards. However consultation may occur if the proposal is relying on alternate solutions to meet the performance objective. It is proposed that Councils must have code assessable guides adopted 18 months after the legislation begins.

It is also proposed to have hybrid complying development and code assessable development. If a minor variation to complying development is required it can still remain as complying development with the variation assessed by Council and not accredited certifiers. For code assessable development where a variation to the acceptable solution is proposed an assessment can be undertaken against the performance criteria and remain in the code assessment track however community consultation may need to be undertaken. Also an aspect of a proposal may not comply with the performance criteria so this aspect of the development will be merit assessed, with the balance of the proposal remaining as code assessable. Construction certificates will be required for code assessable development.

The Government is proposal a target in 5 years time that complying development and code assessable development will be 80% of the assessment track and 20% will be merit.

The broader criteria for merit assessment is proposed to be:

- *Whether the development is consistent with the strategy component of the Local Plan and the objectives of the zone;*
- *Any submissions from the community (if those submissions are sought);*
- *The likely impacts of the development, including impacts on the natural and built environments and social and economic impacts in the locality; and*
- *The public interest (in particular whether any public benefit outweighs any adverse impact of the development).*

State and Regionally Significant development remain with determination roles for the Planning Assessment Commission and the Joint Regional Planning Panel (JRPP). The JRPP composition changes to two State appointed members and one locally appointed member. Designated development also remains.

Timeframes, stop the clock, 120 days lapsing

New timeframes are proposed for each track of development. However it should be noted timeframes means (other than for complying development) the deemed refusal period and the applicant has the opportunity to lodge an appeal in the Land and Environment Court, they are not timeframes that require determinations to be made they only give the applicant an alternate option for a decision. The proposed timeframes/deemed refusal periods are as follows:

Complying development	10 days
Complying with variation	25 days
Code	25 days or 50 days if consultation for submissions required
Merit	50 days
Designated and State Significant	90 days

A new provision is to have applications lapse if the response to additional information has not been made within 120 days of the request.

One stop shop

The new legislation proposes to introduce a one stop shop (for the State Government) for integrated referrals and concurrences compared to the current process where multiple referrals are made with multiple responses from the referral and concurrence agencies.

Local plan

Local Plans are proposed to replace the Local Environmental Plan and will contain the strategic vision for the area, land use zones, development guides, assessment tracks and contributions.

The Local Plan will also be the vehicle to carry out State and Regional planning objectives.

Amber light

A new proposed provision called the amber light approach is included in the draft legislation. A consent authority cannot refuse a development application unless the applicant has been notified of the intention to refuse and has been notified of any changes the consent authority considers necessary before it will reconsider the application and the consent authority has considered submissions made by the applicant in response to the proposed refusal.

Changes to consultation

Part of the objective to streamline assessments includes changing notification and consultation. The most significant change comes with code assessable development where it is proposed to not have consultation for submissions for development that meets the acceptable solutions, notice will be given for information only. Where a development is proposing an alternate acceptable solution consultation for submissions will be at the discretion of the consent authority. The notice period for code assessable and merit development will be fourteen days.

The theory behind no consultation for code assessable development that meets the acceptable solutions is that the community would have already been consulted on formulating the acceptable solutions in the code so it is not necessary to go back to the community for a proposal that complies with the standards in the code.

Strategic compatibility certificates

Strategic compatibility certificates are proposed to be used by the Director General where a regional growth plan or a subregional delivery plan has been made and the existing planning control provisions prohibit a proposal that is consistent with the regional or subregional plan. Certificates will only be valid for two years.

Appeals

It is proposed to expand mandatory conciliation and arbitration beyond single dwellings and dual occupancies. It is likely that code assessable development that does not meet the performance criteria will use this appeal track.

It is also proposed to introduce a third very fast track for appeals on single dwellings and dual occupancies. The key focus is to reduce costs and simplify procedures.

Planning Bill

The development assessment section of the Planning Bill is contained in Part 4 and is titled **Development (other than infrastructure) assessment and consent**. This Part deals with the procedures for the various assessment tracks.

Part 5 of the Bill is titled **Infrastructure and environmental impact assessment** and deals with (as the current Part 5 of the EP&A Act does) assessment of environmental impacts of infrastructure provision by public authorities.

Officers' Comment:

The Planning Act will ultimately be accompanied by new Regulations. The Regulations prescribe the detail to carry out the functions of the Act. The draft Regulations have not been provided at this point in time. The Regulations provide the requirements for procedures and processes for the operation of the Act. The Regulations can have a significant impact on the resources needed to carry out the functions of the Act. The Government should be requested to exhibit the draft Regulations and undertake consultation prior to adoption of the Act and accompanying Regulations.

The most significant change to development assessment is the introduction of code assessable development and, whilst the concept is generally supported, further explanation and detail of how this assessment stream will work needs to be articulated. Actual examples of Codes should be exhibited and details of how various design and assessment elements are codified such as view loss/sharing. Other details need to be examined as well such as will the Codes be development type specific eg. multi dwelling housing or will they be element specific such as a code for view sharing and a separate code for solar access etc. or a combination of both? Will the Codes have to allow for an alternate solution option for every element? These items are important because it is a gauge for the complexity of the system given a key objective of the draft legislation is to streamline development assessment.

The hybrid code assessable and merit application needs clarification. Will these applications need to be submitted concurrently or will they be able to be submitted sequentially?

Greater clarity and explanation is also required around the amber light proposal. The Planning Bill at section 4.16(4) says consent cannot be refused unless the amber light processes have been undertaken, however, at page 135 in the White Paper, it says that if the amber light processes is not used Council will have to justify its decision. The scope of the amber light process needs to be specified. An example of this is whether Council would need to be providing legal advice to applicants to have an application compliant.

The interaction between the deemed refusal appeal period and the lapsing of an application need to be explained and detailed. The deemed refusal appeal period is six months and the lapsing of the application for lack of response is 120 days. These two important time frames appear discordant.

In terms of future resourcing implications for Council's development assessment functions, the general theory of the White Paper points toward a greater emphasis of town planning expertise required at the front-end strategic planning stage, and reduction in the amount of merit based development assessment. Whilst not an immediate imperative, all NSW Councils will need to start planning for the future staff resourcing of the new planning system.

Recommended Submission

That the State Government:

- ***Consult further with local councils and other stakeholders on the feasibility of the proposed determination times of the new development assessment tracks, as well as the merits of retaining the one-size-fits all Codes SEPP, prior to finalizing the new planning legislation;***
- ***Be requested to publicly exhibit the new Draft Regulations and undertake consultation prior to finalizing the new Planning Act;***
- ***Be requested to provide further details and consult with local government and other key stakeholders on the practical implementation of the new Code Assessable system;***
- ***Provide clarification between the apparent discord between the new deemed refusal period and the period for the lapsing of an application; and***
- ***Be requested to re-examine the apparent contradiction of seeking faster development assessment determination times with the proposed "amber light" system, which allows applicants to extend a merit based development application process to address issues if the Council is seeking to refuse the application.***

INFRASTRUCTURE (CHAPTER 7 OF WHITE PAPER)

White Paper Proposal/Changes from Current Planning System/Legislation

- NSW will be the first Australian state or territory to introduce Growth Infrastructure Plans as an integral component of strategic planning at all levels. These Plans will be the key mechanism to integrate land use planning and infrastructure provision across subregions. This represents a fundamental reform to how government manages infrastructure planning and delivery and will support important land use planning decisions for growth;
- Growth Infrastructure Plans will include contestability assessments, to involve the private sector earlier in the planning process;
- Local and regional infrastructure contributions will be made more simple, certain, and more consistent. Contributions will more closely relate to the infrastructure needed; and
- Public Priority Infrastructure, for example major projects identified in a government strategy such as the *Long Term Transport Master Plan*, will be approved at the outset and the private sector will now be able to contribute earlier in the design and planning process in the knowledge that projects have been authorised to be carried out.

Key Aspects and Purported Benefits of the Proposed System (Page 163 of White Paper)

- Remove the Cap;
- Contributions to be limited to essential infrastructure attributable to development;
- 3 year limit on holding contribution revenue;
- Contributions can be paid nearer the point of sale;
- More stringent annual reporting on contributions;
- Benchmarking of infrastructure costs;
- Land for open space and drainage funded regionally;
- Better infrastructure delivery through growth infrastructure plans;
- Restricted use of Planning Agreements and consent conditions; and
- Fairer regional contributions through a broader base

Issues for Consideration

Layout and Structure of the Exposure Draft Planning Bill 2013

The layout and structure of infrastructure provisions in Part 7 of the Exposure Draft Planning Bill 2013 (Bill) are simpler and more logical than the current EP&A Act and generally easier to understand, being consolidated into one dedicated part of the Bill.

Local Infrastructure vs Regional Infrastructure

Local Infrastructure is defined as:

- Local roads
- Local drainage works
- Open space
- Community facilities

Local contributions must be in accordance with a "Local Infrastructure Plan", presumably similar to current "Section 94 Contributions Plans". Contributions, as now, will be imposed by conditions of development consent and payable to Council.

Regional infrastructure is defined as:

- Regional or state roads
- *Land for drainage*
- Transport infrastructure
- *Regional open space*
- Educational establishments

Regional contributions (which are additional to local contributions) are to be imposed in accordance with a "Regional Infrastructure Plan" which requires these matters to be incorporated into the "Local Plan" (new name for LEP) and Regional Contributions will also be imposed by conditions of development consent, but payable to a "Regional Contributions Fund". Payments out of this fund are to be determined by the "Subregional Planning Board".

Section 7.20 of the Bill advises that "growth infrastructure plans" for a "subregion" (not defined) will identify regional infrastructure for which regional contributions are required.

At present "*land for drainage*" and "*regional open space*" are included in Council's Section 94 Contributions Plans and they fund infrastructure such as the Western Drainage Scheme, Arkinstall Park and Jack Evans Boatharbour redevelopment. In the new arrangements, this will be taken out of Council's hands and be dealt with by a regional body. This arrangement appears to make little sense in areas like Tweed Shire.

It is understood these provisions in the Bill arise from *land for drainage* and *regional open space* issues in Sydney. For instance the South Creek catchment in Western Sydney includes a number of Council areas (Camden, Liverpool and Penrith) which contain a number of designated urban growth areas. Strategic planning and management of the South Creek waterway, stormwater quality, detention and riparian restoration to accommodate the considerable impacts of the proposed urbanisation are considered to be regional issues that require a multi-council or regional management and contributions funding. Similarly regional open space facilities would be shared across a number of Western Sydney councils.

The issue does not arise in most non-Sydney council areas. In particular, the Tweed does not share significant drainage catchments with any other Council and similarly Tweed's regional open space facilities have little to do with any other NSW councils, although there is a significant shared relationship with Gold Coast City. It would be totally inappropriate as an example for a regional body based in say Lismore to be making contribution funding and works decisions for stormwater drainage land at Cobaki or the next stage of Jack Evans Boat Harbour.

The solution of this issue for all councils except the Sydney area is to remove "*land for drainage*" and "*regional open space*" out of the "Regional Infrastructure" category and place them in the "Local Infrastructure" category.

Biodiversity Offset Contributions

In addition to local and regional infrastructure contributions, Division 7.4 of the Bill enables imposition of additional developer contributions for "conservation or enhancement of the natural environment of the state". What these enhancements are, where they will be and how much the contributions will be, are not detailed.

Proposed Three Year Limit to Expend Contributions

The Planning White Paper in regard to "Local Infrastructure Contributions" advises Councils may hold local infrastructure funds for a maximum 3 years unless otherwise approved by the Minister. This is to be legislated in Section 7.9(5) of Bill:

"7.9 (5) Money is to be applied, and land made available, under this section within 3 years for the purpose for which the contribution was imposed. The Minister may extend that period by 3 years in a particular case at the request of the council."

This provision is unrealistic in regard to the long lead times needed for major infrastructure projects to be funded by this mechanism.

The rate at which developer contributions are made to Council depends on developers' decisions on when to develop and in larger urban release areas this is complicated by many stages of construction and release of lots over many years. Councils have no control over these decisions and therefore must make educated guesses on the likely flow of funds. In this uncertain climate, Councils will not commit to the expense of commencing major infrastructure projects to be funded by developer contributions until there is a reasonable degree of certainty that sufficient funds will be available to complete such projects. In the case of a large urban release area there may be insufficient developer contributions to commence a large project until the release area is say 80% complete and this could be 10 or more years after a contribution is made for the first lot released.

The expenditure of developer contributions is further compromised by the long lead times needed to complete major infrastructure projects.

An example is the current Kirkwood Road, Interchange project which is currently being constructed from accumulated S94 developer contributions.

Kirkwood Road Example:

Project estimated cost \$17M, being \$11M from Tweed Shire S94 contributions and \$6M NSW Roads and Maritime Services (RMS). Timeline:

2008 - Joint TSC and RTA site inspections to identify preliminary options for 6 laning of adjacent Pacific Highway Freeway.

2009 - Consultants engaged to determine optimum configuration of adjacent Pacific Highway Freeway when future 6 laning occurs and a compatible concept design of Kirkwood Rd interchange.

2009 - Council commences environmental assessment and preparation of planning application for Kirkwood Rd project.

Aug 2010 RTA agrees to configuration of Kirkwood Rd Project.

September 2010 - Planning application submitted.

September 2010 - Detailed Design commenced.

May 2011 - Planning Approval Issued.

November 2011 - Contract let to SEE Civil for Construction of Kirkwood Road Project.

Late 2013 - Estimated Completion date of Project (subject to predicted settlement of preloaded soils).

This project has had a lead time of over 5 years from preliminary consideration of options until completion.

The effect of these two time considerations:

- Firstly there is a need to accumulate sufficient developer contributions to have the confidence to commit starting the project; and
- Secondly there is a long lead time for design, environmental assessment, planning approval, and lastly construction time for tendering and delivery of major projects,

which makes the Government's 3 year time limit to spend developer contributions unworkable.

The consequences if this 3 year limit is adopted by the NSW Government are likely to be:

- Abandonment of the developer contribution system by some Councils for the provision of major urban growth related infrastructure;
- Withdrawal by some Councils from forward planning and facilitation of major infrastructure required to support major development projects;
- A number of major development projects will be unable to proceed because necessary infrastructure will not be delivered;
- In these cases, the developers themselves, if they want the projects to proceed, will have to facilitate and fund the major infrastructure;
- In these cases, the developer who funds and builds the infrastructure will have no mechanism (unlike the current developer contributions system) to be reimbursed by other subsequent developers who may benefit from the infrastructure;
- Large development projects, particularly large urban release areas are likely to be curtailed unless there is sufficient existing unused/spare capacity in major infrastructure and arterial road networks;
- Infrastructure will be part built over stages driving the cost of the infrastructure up through start, stop and procurement process. This could also mean that infrastructure would start to deteriorate before it is ever commissioned; and
- The 3 year restriction is likely to compound the local government infrastructure backlog.

It is understood that unnecessary accumulation of developer contributions is undesirable, but the Government's solution of a fixed 3 year period to spend the funds fails to account for the need to accumulate sufficient developer contributions to be able to commit to a project and the long lead time for delivery of major projects.

A better solution is required that accounts for these time considerations if the Government wishes urban development in NSW to prosper.

Another alternative is for the State through Roads and Maritime Services (RMS) to take over from Councils, the planning, funding and management of the arterial roads necessary to service urban growth projects.

Note: Loan borrowings must be considered against Developer Contributions invested. For example in Tweed's case, Council has \$180M in loans and \$176M in Developer Contributions invested. The Contributions represent various infrastructure that has had monies collected. In some instances Council borrows in advance and then uses the monies collected to repay the loan. To have to expend the money in 3 years would likely see the capital of loans paid down, but if development were to slow or cease a Council could be left in the absurd situation of not having the funds to meet loan payments.

Institutional Arrangements for Planning and Management of Infrastructure

The White Paper and the Bill refer to "Growth Infrastructure Plans" for both infill and greenfield areas identified for housing and employment growth that will be informed by "Subregional Delivery Plans" that will include:

- An approved prioritised growth infrastructure delivery schedule with funding allocation for projects within the first five year period; and
- A regional infrastructure contributions schedule.

These plans are to be delivered by a "Subregional Planning Board" which will comprise:

- Up to four state representatives including the chair appointed by the Minister for Planning; and
- Representatives from each council in the subregion.

There is nothing in the White Paper to give any indication of the boundaries and councils to be included in these "subregions" outside of the Sydney Metropolitan area.

In Tweed's case, there is little urban growth anticipated in the rest of the Northern Rivers (if this was to be considered as a "subregion") compared to that projected in the Tweed. It does not make much sense for representatives in Lismore, Kyogle, Byron, Richmond Valley and Ballina to have the majority say of what happens to "regional infrastructure" and where regional contributions are spent, in regard to urban development which is mostly occurring in Tweed.

Transitional Arrangements

There is little information in either the White Paper or the Bill regarding transitional arrangements from the current Section 94 Contributions system to the new system. Potential issues include:

- The status of existing contributions plans, will they be deemed "local infrastructure plans" under a new act?;
- The status of existing S94 contributions plans that are for infrastructure that is not included in the local or regional infrastructure definitions in the Bill. For Tweed this is likely to include existing contribution plans for Council administration buildings, and cemeteries. In both these cases Council has borrowed considerable funds to provide these facilities in advance of collecting the contributions and the current flow of contributions is partly funding the loan repayments. It would be a considerable loss to this council if these contributions were automatically stopped as a consequence of the new Act;
- The status of Tweed's existing section 94 plans for "regional open space" and "land for drainage" if these are transferred from Council to the proposed "Subregional Planning Board" and
- The status of funds already collected, say in the Tweed Road Contributions Plan (TRCP) if they are not spent in 3 years.

Involvement of IPART

The Independent Pricing and Regulatory Tribunal (IPART) will review contributions plans proposed by councils. This will impose another level of bureaucratic, onerous and costly to comply with requirements on the preparation of, and amendment to contributions plans. It is likely to be yet another disincentive for councils to provide the infrastructure necessary for the development of growth areas. On a positive note, the role of IPART in benchmarking the costs of infrastructure components will be a useful tool, provided site specific variations can be taken into account where necessary.

A further issue may be the use of indices to allow for inflation costs of infrastructure and associated contributions. The use of the Sydney CPI is totally inappropriate for this purpose, particularly in regional border regions such as Tweed. The Sydney CPI includes matters such as cost of food and rentals in Sydney that are unrelated to infrastructure construction costs and land acquisition costs which for us are more related to South East Queensland.

Planning Agreements

Little change is anticipated in this area which will impact on the Tweed.

Contested Provision of Infrastructure

This is identified in the White Paper as a source of major savings in the provision of infrastructure. In reality, there is not much change proposed. All major infrastructure is already open to competitive tendering and water and sewerage can be provided by others under the Water Industry Competition Act (WICA). Tweed has actively encouraged this in a number of significant planning proposals.

The Minister's Objectives

The Minister for Planning and Infrastructure, Brad Hazard in the Daily Telegraph 4 June 2013 stated "*Analysis of lands rezoned for housing had revealed it was an "inability" to fund and build new roads, schools, parks and infrastructure that had stalled new development, he said. "It was a failure to deliver the infrastructure to support that development," Mr Hazzard said. "If you want growth, you need a clear plan for infrastructure to support growth."*

This is a very true statement. However, it is considered that there is a danger that some of the infrastructure provisions in the new planning system will discourage the provision of infrastructure by Councils and have the opposite effect to that sought.

Recommended Submission

That existing Section 94 Plans be rolled over into the new planning system, intact, and associated conditions of consent continue to be validly imposed, despite these plan's possible inconsistency with the definitions of "local infrastructure" or "regional infrastructure" in the new planning system;

Council endorses the removal of the developer contributions "cap".

For localities outside the Sydney Metropolitan area, the items "land for drainage" and "regional open space" be removed from "Regional Infrastructure" category and included in the "Local Infrastructure" category;

The proposed three year limit to expend contributions be removed;

The NSW Government through Roads and Maritime Services take responsibility (from Councils) for planning, funding and managing urban arterial roads required to service urban growth release areas (i.e. classify these roads as "State Roads");

That Tweed Shire be considered as a complete "Subregion" for the purposes of the new planning system and this subregion exclude any other NSW council areas;

That IPART only be required to review new developer contributions plans and that IPART be excluded from reviewing amendments to existing plans or the rollover of Section 94 Plans into the new planning system;

That the infrastructure provisions of the new planning system be critically examined and amended to ensure they create a positive and enabling environment that encourages councils to strategically plan and facilitate the provision of essential infrastructure for new infill and greenfield growth areas; and

That Local and Regional infrastructure Plans, be permitted to use appropriate regional infrastructure construction and land cost indices to adjust contributions for inflation (i.e. not be restricted to the inappropriate Sydney CPI).

BUILDING REGULATION AND CERTIFICATION (CHAPTER 8 OF WHITE PAPER)

White Paper Proposal/Changes from Current Planning System/Legislation

- Accreditation of additional occupations involved in building design and construction such as designers, specialist engineers, fire protection system installers and inspect/test technicians, energy efficiency designers and access consultants and other relevant professions;
- Mandatory certification of specified building aspects including the design, installation and commissioning of critical building systems and elements;
- Improved levels of documentation through all stages of the building life cycle, including the requirement for a building manual which will include key building information;
- Increased support for certifiers on complex building matters through peer review and enhanced decision support; and
- Strengthened controls on certifiers through stronger disciplinary guidelines, increased auditing and increased obligations to report non compliant building work and other controls.

Issues for Consideration

Building regulation and certification work together to ensure building and subdivision standards and planning requirements are met by development. They also provide for acceptable levels of safety throughout the life of a building.

Building regulation and certification are fundamental to meeting community and industry expectations for the NSW building sector. In 2011-12, the NSW building industry generated around \$22.6 billion in building approvals, comprising \$12.1 billion in residential building approvals and \$10.5 billion in non residential building approvals. The industry accounted for about five per cent of the NSW economy and Access Economics has forecast this will rise to 8.4 per cent in 2020.

To address shortcomings in the building regulation and certification system, steps will be taken to rebuild confidence in the quality and safety of buildings and provide better direction and support to the NSW building sector.

Better quality building design

Implementation of quality building design plans by appropriately qualified professionals satisfies minimum technical design and construction standards and meets planning requirements, expectations and outcomes.

Better approval of development

It is proposed that building certifiers address building requirements when issuing construction certificates or complying development certificates rather than at the planning approval stage. Standard construction matters, such as on-site sedimentation controls, hours of construction, hoardings and security fencing will be removed from development conditions of consent and centred on conditions within the Construction Certificate and/or Complying Development Certificate. This should allow planning approvals to be released more quickly and at lower cost. Consistent development consent conditions throughout the state will enable better compliance with conditions and faster determinations of development proposals.

Clear roles and responsibilities

It is proposed that the responsibilities of the building certifier, the consent authority, the builder and the council be clearly defined to reduce confusion, create better community understanding and define the limits of their relevant functions.

Officers' comment:

This is a positive step however, the White Paper also states; *Councils and consent authorities have significant enforcement powers, whereas private accredited certifiers have limited powers.* It therefore should be anticipated that Councils will have an increased role to play in enforcement and compliance and it is recommended that a monetary allowance be made to cater for the need to employ additional compliance staff.

Managing unauthorised building work:

Council currently invests considerable time, effort and resources managing and finalising unauthorised building work to ensure projects are completed meeting the required health and safety standards as detailed in the National Construction Code Series (Building Code of Australia). The community has an expectation that when projects are not completed and do not proceed in accordance with the approvals issued, that Council will take appropriate action and act in the public interest.

The White Paper states:

It is proposed that development will be able to proceed where unauthorised building work has occurred, however, only subject to certain conditions and requirements being satisfied.

Officers' comment:

It is assumed that the circumstances where unauthorised work will be able to proceed will be detailed within any future regulation under the Planning Act 2013.

Concern is expressed in relation to the lack of detail relating to the certain conditions and requirements where unauthorised work can proceed. Traditionally, when unauthorised work has occurred Council or the PCA would issue a Stop work and Show Cause Order under the Environmental Planning and Assessment Act. This would then allow Council the opportunity to consider all of the facts and request that an application under section 96 of the EPAA be submitted to ensure all matters required under section 79c of the EPAA were considered prior to an amended consent being issued.

This is further complicated by the fact that Construction Certificates can only be issued for proposed building work and not on existing building work. Currently, the only way to legally permit the retention of unauthorised building work is for Council to issue a Building Certificate under Section 149A of the EPAA. This Certificate can only be issued by Council and would only be issued after consideration of all Building Code of Australia matters eg. Structural adequacy, safety, egress, fire safety.

It is considered to be imperative that Council remains the only party able to issue Building Certificates when unauthorised building work occurs as this allows for an appropriate level of consumer and third party protection.

The community deserves better from the industry than to look next door at a building under construction, only to find that it in no way resembles what was approved, only weeks prior.

It is acknowledged however that relatively minor work could proceed under the guidance of a Building Certifier. This could include for example; minor internal changes to floor plans of class 1 dwellings, that could have been approved as Complying Development; relocating detached garages to a location that could have been approved as Complying Development.

Construction approvals

It is proposed that the Accredited Certifier and the Principal Certifying Authority no longer be separate entities and that they now be known as a Building Certifier.

Officers' comment:

This is considered to be a positive step as there will be a clear line of responsibility in relation to projects. However, it is also proposed that the applicant appoint the Building Certifier. Currently it is the owners' responsibility to appoint the Principal Certifying Authority. To ensure that a transparent system remains, it is recommended that the property owner retain the right to appoint the Building Certifier.

Construction approvals

It is proposed that plans have to be certified and submitted before work starts on critical aspects such as structural, mechanical, electrical and fire systems through the use of prescribed conditions.

Officers' comment:

It is considered essential that the above information not only be submitted before work commences, but be approved as part of the construction certificate before work commences. It would appear that a design and construct system is being proposed.

Compliance with the development approval

To increase confidence that what is approved for construction is not inconsistent with the development consent, building certifiers will be given the option to call on the expertise of additional occupations and relevant professionals to certify that the construction plans are not inconsistent with the development consent for small low scale developments. This will be mandatory for more complex building types and means that a building certifier is unable to issue a construction approval without the certification of an accredited/registered person.

Officers' comment:

This is an example of increased regulation, more expense, more time, additional consultant reports now being required to prevent the circumstance where a small number of unscrupulous Accredited Certifiers have issued Occupation Certificates on buildings that were inconsistent with the development consents.

Mandatory building inspections

There are currently six critical stage inspections that are mandatory for houses and only two or three depending on the type of development, for other development such as high rise residential buildings.

It is proposed that the critical stage inspections be improved by mandating inspections that relate to the risks and complexity of a building's design and construction.

Officers' comment:

This is considered to be a positive step that could be further enhanced if the government also placed a maximum time limit between the time that critical inspections had to occur eg. perhaps every four weeks for all class 2 to 9 buildings greater than 3 storeys in height. This could commence from the date of building commencement. This would ensure that Building certifiers that take on the responsibility of projects that are remote from their general geographical area of operation would have responsibilities to regularly inspect those sites and prevent their reliance on the defence of "I didn't know because I haven't been to the site for months".

Building manual

Proposed changes to the regulation, management and monitoring of ongoing building compliance will improve the quality and accessibility of key building information for Class 1b-9 buildings. The current fire safety schedule will be replaced with a simplified building manual along with the compliance schedule, improving building fire safety across the State. The manual will be prepared and issued at the end of the project with the occupation certificate by the building certifier.

Officers' comment:

This will assist building owners adequately maintain their buildings, however will add to the cost of obtaining a Construction Certificate.

Ongoing compliance of existing buildings

Amendments to a variety of routinely inspected, tested and certified measures and features will be carried out within the new system. Existing fire safety certificates will be separated into two documents. These two improved documents will validate the commissioning of fire safety measures and pledge to meet ongoing compliance responsibilities. This reinforces Council's primary role in compliance monitoring and enforcement. The White Paper also allows the Crown to not submit certification to Council's however, compliance responsibilities will be ongoing.

Better support systems and governance

The NSW Building Regulation Working Party identifies opportunities for agencies responsible for building regulation to provide a more integrated approach to building regulation. A review of the *Building Professionals Act 2005* is currently being undertaken in line with the review of the planning legislation, identifying key aspects of the act that need to be addressed. The Building Professionals Board will review its disciplinary guidelines to ensure consistency in its sanctions when considering appropriate penalties in disciplinary matters involving certifiers. The Board's auditing program will be significantly enhanced by the availability of building information in the manual which will ensure that certifying authorities are meeting their legislative obligations. A review of their accreditation scheme will be carried out in consultation with key stakeholders and regulatory bodies as the review of the Building Professionals Act progresses.

Other Concerns

Page 186 of the White Paper states under "Planning approvals" that:

"The development consent should be a concept approval for development. Ensuring building and subdivision work complies with the BCA and/or relevant standards should be addressed through the construction approval."

Officers' comment:

There needs to be some qualification of building and subdivision standards at the planning applications stage, rather than defer complex matters to the construction certificate stage, in order to reduce financial impacts for proponents at a later stage.

Page 187 of the White Paper states under "Construction approvals" that:

"It is proposed a subdivision certifier (an accredited certifier or council) will issue a works certificate, inspect the work as needed and issue the relevant subdivision certificate at the end of the work. There will no longer be a separate principal certifying authority."

Officers' Comment:

This is a major concern. Unlike (generally) for Building works, a Subdivision includes infrastructure which will ultimately be handed to Council as public infrastructure. Council should always be the authority issuing the Subdivision Certificate where public infrastructure is involved or where works are undertaken on public land.

Recommended Submission

That the State Government be requested to re-consider the proposal to allow the private certification of subdivision certificates where infrastructure associated with new developments is to ultimately held in public ownership.

OPTIONS:

1. That Council endorses the issues raised in this report to form the basis of a submission to the State Government on the White Paper, or
2. That Council identifies additional issues to those raised in this report to form the basis of a submission to the State Government on the White Paper.

The officers recommend Option 1.

CONCLUSION:

The emerging reforms are considered to be an important step in producing a more contemporary and best practice planning system for NSW. The State Government is to be commended for the extensive consultation and research of inter-state and international planning systems conducted in the lead up to the release of both the Green and White Papers.

The White Paper contains a number of positive reforms.

However, there are a number of concerns that have been identified through the officers' review of the exhibited material, as well as through consultation with Tweed Councillors and the Tweed community, which warrant a submission to the Minister for Planning and Infrastructure.

COUNCIL IMPLICATIONS:

a. Policy:

Major implications for Council's corporate and strategic planning processes and development assessment practices.

b. Budget/Long Term Financial Plan:

Major financial implications for the funding of future strategic planning processes, the ability of Council to gain income from future development assessment processes, and a major review of the current developer contribution systems. NSW Councils will also need to start planning for their future staff resourcing needs under the new planning system, including a greater emphasis on up-front, strategic planning, and enhanced building compliance and monitoring services.

c. Legal:

Significant legislative reform expected.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

The White Paper aims to raise the standards of community engagement, particularly in major strategic planning processes.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.1 Sustainable management of the population in accordance with strategic decisions of previous councils, the NSW and Commonwealth Governments and the Far North Coast Regional Strategy, including provision of amenities, infrastructure and services
- 1.5.1.1 Preferred population or environmental carrying capacity of the Tweed
- 1.5.1.1.1 Council planning documents are prepared in accordance with the State Plan and North Coast Regional Strategy

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Summary of Issues Raised at White Paper Public Information Session
Hosted by Tweed Council May 2013 (ECM 3080282)

29 [PR-CM] State Emergency Service - Memorandum of Understanding

SUBMITTED BY: Building and Environmental Health



Supporting Community Life

SUMMARY OF REPORT:

A draft memorandum of understanding has been prepared between the State Emergency Service and Tweed Shire Council to formalise the roles and responsibilities of the two organisations as it relates to Section 17 of the NSW *State Emergency Service Act 1989* and the maintenance and service issues arising from these requirements.

RECOMMENDATION:

That:

- 1. The draft State Emergency Service/Tweed Shire Council Memorandum of Understanding April 2013 be adopted, executed and forwarded to the NSW State Emergency Service in response to the Strategic Disaster Readiness Package proposed arrangements.**
- 2. The income from the sale of plant assets in accordance with the State Emergency Service/Tweed Shire Council Memorandum of Understanding April 2013 be allocated to part fund alterations/additions or relocation of the Tweed Heads State Emergency Service Unit facility dependant on the outcome of ongoing negotiations with NSW Crown Lands Division.**

REPORT:

As of 1 July 2009 the NSW State Emergency Service (SES) has been funded under a similar contributory funding system as the NSW Rural Fire Service and NSW Fire and Rescue and administered by Emergency Management NSW. At its ordinary meeting of 15 February 2011 Council considered the requirements of the Emergency Services Levy and its voluntary arrangements and resolved that:

- "1. Council advises the State Emergency Service that it intends to cease voluntary contributions from 1 July 2011 and seeks to enter into discussions to develop a memorandum of understanding with the State Emergency Service.***
- 2. Council officers prepare a draft memorandum of understanding between Tweed Shire Council and the State Emergency Service and report to Council for adoption prior to signing."***

Subsequently the SES advised they would develop an agreement for NSW councils to consider. In July 2012 Tweed Richmond Regional SES contacted Council's General Manager to discuss the Strategic Disaster Readiness Package which was the new funding arrangement, see **Attachment 1**.

The outcome of the discussions is the development of the draft Memorandum of Understanding (MOU), see **Attachment 2**.

With the development of the MOU the SES requested Council to consider its position of ownership of SES vehicles. Discussions to date have resulted in the MOU being drafted to include the disposal of Council owned SES vehicles. The disposal will likely result in approximately \$100 000 being received by Council. It is requested these funds be allocated to part fund alterations/additions or relocation of the Tweed Heads SES Unit facility dependant on the outcome of ongoing negotiations with NSW Crown Lands Division.

OPTIONS:

1. That Council endorses the recommended Partnership Agreement with the State Emergency Services; or
2. That Council rejects the Partnership Agreement and maintains current arrangements.

The Council officers recommend Option 1. The Agreement reflects the prior resolution of Council, with the addition of the intended disposal of existing plant assets.

CONCLUSION:

As a consequence of the implementation of the NSW Strategic Disaster Readiness Package NSW councils are requested to enter into Partnership Agreements with the NSW State Emergency Service. The Agreements sets out the agreed mutual support each organisation will give the other. The Agreement will formally relieve NSW councils of the costs associated with the day to day operations of NSW SES units in its area.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The funds for the sale of the plant assets be allocated to part fund alterations/additions or relocation of the Tweed Heads SES Unit facility dependant on the outcome of ongoing negotiations with NSW Crown Lands Division.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.4 Provide education and advocacy to promote and support the efforts of the police, emergency services and community groups to improve the safety of neighbourhoods and roads
- 2.1.4.8 Review fleet management services to State Emergency Services
- 2.1.4.8.1 Establish MOU for SES operations

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Strategic Disaster Readiness Package (ECM 3060584)
 - Attachment 2. Draft Memorandum of Understanding (ECM 3060585)
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30 [PR-CM] Tweed Development Control Plan - Section B15 - Seabreeze Estate, Pottsville

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/B15 Pt1



Civic Leadership

SUMMARY OF REPORT:

At its meetings of 14 February and 21 March 2013, Council provided resolutions regarding the draft Tweed Development Control Plan - Section B15 - Seabreeze Estate, Pottsville (draft Seabreeze DCP). Specifically, Council resolved regarding the use of land within 'Seabreeze - Stage 2' for a 'Potential School Site'. This report provides an update on the draft Seabreeze DCP, in light of a new DCP amendment request.

The request received seeks:

- The retention of a Potential School Site, as per Council's previous resolution,
- To shift the location of the 'Town Centre',
- To amend provisions relating to the layout of roads and pedestrian access,
- A waiver of fees and charges, and
- Other minor amendments.

Council's Planning Reform Unit (PRU) has reviewed the request and support several of the amendments sought.

A PRU review has identified some potential issues with the Potential Future School Site relating to land ownership, and compliance with Department of Education and Communities (DEC) advisory notes for new education facility sites. Notwithstanding these matters, the PRU recommend the inclusion and public exhibition of the Potential School Site.

The proposed shift in Town Centre location and minor amendments are supported by the PRU for public exhibition.

Requested amendments relating to road and pedestrian path layout, timing of further review of the need for a school site and the waiving of applicable fees and charges however are not supported at this stage and have not been implemented within the draft Seabreeze DCP attached to this report (Attachment 2).

RECOMMENDATION:

That:

- 1. The report on Tweed Development Control Plan - Section B15 - Seabreeze Estate, Pottsville be received and noted.**
- 2. Council requires the proponent pay Development Control Plan Amendment fees detailed within Council's fees and charges.**
- 3. Upon receipt of these fees, publicly exhibit the amended Tweed Development Control Plan, Section B15 – Seabreeze Estate, Pottsville, for a minimum period of 30 days, in accordance with section 74E of the Environmental Planning Assessment Act 1979 be endorsed.**
- 4. Following public exhibition of Draft Tweed Development Control Plan, Section B15 – Seabreeze Estate, Pottsville, a further report is submitted to Council.**

REPORT:

At its meeting of 14 February 2013, Council considered a report regarding a proposed amendment to the Tweed Development Control Plan 2008, Section B15 Seabreeze Estate - Pottsville (draft Seabreeze DCP). The primary purpose of the draft Seabreeze DCP was to remove the designation of land for a 'Potential School Site' to enable the development of the land for urban purposes. Council resolved to reject the draft Seabreeze DCP.

At Council's subsequent meeting of 21 March 2013 however, Council resolved to, reconsider the draft Seabreeze DCP, subject to the retention of a 6ha school site. Council's resolution is detailed below:

- "1. The request of Darryl Anderson Consulting Pty Ltd in respect of preparing an amendment to the Tweed Development Control Plan 2008, Section B15 - Seabreeze Estate Pottsville, which comprises the retention of a 6ha future school site and the inclusion of suitable planning provisions to enable and guide the development of the residual residentially zoned balance land, as required to satisfy the provision of the Tweed Local Environmental Plan 2000; cl 53E Specific provisions for Seabreeze Estate—Stage 2, be accepted; and*
- 2. The Development Control Plan amendment be prepared in accordance with Option 3 of the Council report of 14 February 2013 in respect of this matter; and*
- 3. The amended Development Control Plan includes a new provision detailing the review timeframe for the future school site, which is to accord with Resolution No.4 of the Council report of 14 February 2013 in respect of this matter."*

This report provides an update on the draft Seabreeze DCP, in light of a new DCP amendment request submitted. The request includes the retention of a 'Potential School Site', seeks to shift the location of the 'Town Centre', amend provisions relating to the layout of roads and pedestrian access, requests a waiver of fees and charges, and other minor amendments.

The specific details of the request are discussed in detail throughout this report.

Requested Amendments - School Site

As required by Council's previous resolution, the DCP request received includes the retention of a 6.1 hectare (ha) tract of land for a 'Potential School Site'. Map 1 identifies the area of land to be retained within the DCP request.

The potential school site shown is generally in accordance with the existing Seabreeze DCP, though more finite detail is provided to the sites parameters. Whilst located in generally the same location, in order to achieve the prescribed minimum site size of 6ha, the potential school site is located across an existing open stormwater channel, owned by Tweed Shire Council and identified on Map 1. Accordingly, of the 6.1ha allocated, approximately 5.692ha is owned by the proponent, and approximately 0.48ha functions as a drainage reserve, owned by Tweed Shire Council.

The proponent has detailed within their request that in the event that the 6ha site is required for a school, the open drain could be relocated to the western boundary of the site, or appropriate pedestrian/vehicular bridges could be provided to achieve efficient use of land on both sides of the channel. Notwithstanding the ability to realign the reserve, or ensure access through, land ownership issues or land use conflict may become present should a school be developed as it is not the preference of Council officers to cease ownership of a drainage reserve within this general location.



Map 1 – Location of the proposed 'Potential School Site'

The NSW Department of Education and Communities (DEC) provides advisory notes for developers and consent authorities for master planning new education facility sites. These advisory notes are considered flexible broad guidelines which may vary with individual developments, however establish the minimum expectations of the developer and/or consent authority from the DEC. A desktop analysis of the proposed Potential School Site in light of the advisory notes has been undertaken to ensure the proposed site is at least broadly suitable for the intended use. A complete assessment of DEC's advisory notes can be found within Attachment 1, however can be surmised as per Table 1 below.

Item	Result
Site Criteria	
Lot Size – Primary School	Compliance
Lot Size – High School	Substantial compliance
Lot Size – Alteration and addition to existing schools	Not applicable
Shape of site	Substantial compliance
Buildability	Compliance
Topography	Substantial compliance
Landforms, geology & soils	Compliance
Ecology	Compliance
Indigenous Heritage	Compliance
European Heritage	Compliance
Student Safety	Compliance
Services and drainage	Compliance
Location criteria	
Siting general	Substantial compliance
Siting distance	Substantial compliance
Existing school proximity	Compliance
Existing school capacity	Compliance
Traffic, transport & access	Compliance
Bushfire	Non-compliance
Hydrology flooding & water quality	Substantial compliance
Socio-economic	Substantial compliance
Urban Design	Substantial compliance
Air Quality	Substantial compliance
Land use	Compliance
Visual aesthetics	Compliance
Noise and vibration	Compliance

Table 1 – Assessment of the Potential School Site Considering Established Criteria for New Education Facility Sites

As detailed in Table 1, whilst further detailed assessment will need to be pursued, particularly relating to bushfire hazards, the site is predominately compliant with the established criteria. In light of these findings, it is considered that the proposed Potential School Site possesses sufficient merit to warrant its identification for the public exhibition of the draft Seabreeze DCP, which is provided as Attachment 2 of this report.

Whilst Planning Reform Unit (PRU) officers have undertaken this desktop assessment, further analysis and discussion with DEC will need to be pursued by any proponent should a non-private school be proposed. In addition, Council officers will refer a copy of this report, along with the draft Seabreeze DCP to DEC for comment on the site's suitability during any public exhibition period.

A further amendment requested by the proponent relating to the Potential School Site includes as follows:

"It is proposed that Section B15 be reviewed in terms of education infrastructure strategies and controls contained within Tweed DCP Section B21 Pottsville locality based development code as part of the Planning Reform Unit's General Policy Maintenance Programme endorsed in its Works Programme for 2012-2015."

This request is in contradiction with Council's resolution of 21 March 2013, which detailed:

"3. The amended Development Control Plan includes a new provision detailing the review timeframe for the future school site, which is to accord with Resolution No.4 of the Council report of 14 February 2013 (which prescribed a review no earlier than 2018) in respect of this matter."

In light of the above, this requested amendment to the Seabreeze DCP has not been recommended or pursued by the PRU.

Within the draft Seabreeze DCP, in relation to sewer, a total of 200 Equivalent Tenement (ET) is identified as available to the land identified in Map 6.1. In light of the sewer constraints applicable, PRU officers have included the minimum allocation of 63.5ET to the proposed Potential School Site.

The 63.5ET requirement is derived from discussions with DEC officers, which indicate that current models for secondary schools include student populations in the order of 1,000 - 1,200. In addition to the student population, a further 70 staff would be anticipated within any secondary school. When utilising applicable sewer rate, Education - School, the total school population of 1,270 generates a need for 63.5ET.

Requested Amendments - Town Centre

The request seeks to relocate the earmarked (not yet constructed) 'Town Centre' from a 2,305m² site, to an approximately 4,432m² site. The current and proposed Town Centre locations are displayed on Map 2.

The proposed shift in Town Centre location approximately 300m eastward is not considered to be compromised by site conditions. In this regard, both the current and proposed locations are generally flat, not identified as being affected by significant hazards (flooding, bushfire etc) and are well located in relation to higher order roads within the Seabreeze Estate. Accordingly, the suitability of the site by way of environmental constraints is not of concern.

The Seabreeze DCP establishes an objective and performance measure for non-residential development, as follows:

The range of uses within the neighbourhood centre to be restricted to convenience shops and services servicing the day-to-day needs of the surrounding areas, such as fruit shop, milk bar, general store, hairdressing salon, café, video outlet, childcare centre and the like.

Table 2 below details the permissibility of the envisaged land uses that could be pursued within the Town Centre within the current Tweed LEP 2000.

Land Use	Current Site - 2(c) Urban Expansion	Proposed Site - 2(a) Low Density Residential
Retail Premises (i.e. fruit shop, milk bar, hairdressing salon, video outlet)	Permissible	Prohibited
General Store/ Neighbourhood Shop	Permissible	Permissible
Food and Drink Premises	Permissible	Prohibited
Takeaway Food and Drink Premises	Permissible	Prohibited
Child care	Permissible	Permissible
Commercial/ Office Premises	Permissible	Prohibited
Markets	Permissible	Prohibited
Medical premises	Permissible	Prohibited
Shop-top housing	Permissible	Permissible at a maximum density of 1 unit per 450m ² of site area

Table 2 – Permissibility of Uses within the Existing and Proposed Town Centre Sites

As is detailed in Table 2, many of the non-residential land uses envisaged within the Seabreeze DCP are prohibited within the proposed Town Centre site. The limited non-residential land uses available within the low density zone raises concern as to the suitability of the site for a Town Centre, both initially in establishing a Town Centre, but also over time as land uses fluctuate to meet the local market. An assessment has also been undertaken in light of Council's draft Tweed Local Environmental Plan 2012 provisions which resulted in similar findings.

Notwithstanding the restrictions imposed by the zoning, as discussed previously, the proposed site is considered to be free of constraints and includes desirable site attributes (i.e. Opportunities for views overlooking an adjoining waterbody and vegetation beyond, buffered to surrounding properties by roads and overland flow paths confining potential noise and privacy impacts, adjoining residential development is of a mixture of densities and is centrally located within the Seabreeze Estate). Accordingly, the proposed site is considered highly suitable. In order to address the conflict between the proponents request and the limited range of uses provided within the Tweed LEP 2000 the draft Seabreeze DCP identifies both the current and proposed Town Centre sites and includes wording as follows:

The Town Centre is to be located on Lot 832 DP 1144994, nominated as Town Centre A. The secondary Town Centre option, nominated as Town Centre B, is also identified as a suitable town centre site, however is not zoned to permit an appropriate mix of non-residential uses. Council will consider the rezoning of this site to enable appropriate non-residential land uses that would support a viable and vibrant Town Centre. Should a rezoning be pursued and made, Town Centre B will be the desired location for the Town Centre and Town Centre A open to be developed for general residential purposes.

The abovementioned approach retains the primacy of the existing Town Centre site, which enables a wider spectrum of permissible uses, better supporting the establishment and continued operation of a Town Centre. The abovementioned approach also enables the flexibility necessary to give effect to any Planning Proposal pursued and made for the proposed site that would appropriately support a Town Centre.

Requested Amendments - Movement

The request seeks several minor amendments relating to movement, specifically the positioning of roads and pedestrian paths.

The previous draft Seabreeze DCP included a Structure Plan for 'Stage 2' of the Seabreeze Estate (Map 7A) which details the following commentary:

'Provide opportunities for pedestrian movement alongside existing wetlands, investigate opportunities for safe connection across existing overland flow path'.

The proponent has requested this provision be deleted.

The provision of a lineal pedestrian access along the existing wetlands and vegetation adjoining Cudgera Creek is considered to possess a number of advantages, including an increase in pedestrian permeability throughout the site, shorter travel times and distances, retaining a public interface to land of environmental quality, and creating a pedestrian journey of high amenity, further encouraging this sustainable form of movement.

In light of the above, it is not recommended to pursue this component of the proponents' request.

The previous draft Seabreeze DCP, clause B15.2.3 - Habitat, Bushfire Management and Buffers, detailed that mitigation measures should include, where relevant, the following:

'...Pursue a road layout that forms the edge to the natural and environmental protection areas, providing a public interface. Avoid the side or rear of properties directly adjoining vegetated areas or areas of environmental protection.'

The proponent has requested this provision be deleted.

Utilising a road to buffer private properties from areas of environmental protection (which in this instance are also identified as bushfire prone land) is regarded as a best practice outcome. This practice minimises land use conflict, assists in ongoing maintenance, provides a buffer to bushfire risk and minimises the 'privatisation' of environmental spaces. The early stages of Seabreeze Estate (i.e. Korora Parkway) have adopted this layout, however the latter stages predominately have not (i.e. Sandon Court and large sections of Lennox Circuit).

Ultimately the merits of future development applications will be assessed and determine the location of roads, however it is considered preferable to detail, through the Seabreeze DCP Council's preference for the layout to reflect best practice. Should that layout not be suitable for future subdivisions, then those constraints should be detailed and assessed within the future Development Application. Accordingly, it is not recommended to pursue this component of the proponents' request.

Requested Amendments - Miscellaneous

A number of miscellaneous changes (i.e. references to State Environmental Planning Policies, references to facilitating home business) have been requested. These amendments are supported to facilitate the public exhibition of the draft Seabreeze DCP.

Fees & Charges

Within the DCP amendment request submitted, the proponent has requested a waiver of further fees to review, prepare, exhibit and conclude the DCP amendment. Specifically, the proponent has detailed as follows:

At the Workshop with Councillors on 7 March 2013, the Deputy Mayor commented to the effect that Councillors may have misunderstood the need to amend the DCP in adopting Minute No. 71 which resulted in unintended consequences.

Clearly, it was open to Council to adopt the recommendation to 14 February 2013 Meeting, subject to the recommended Section B15 being amended to include a school site and review of timeframes for the future school site. It is therefore considered

unreasonable that Newland should have to pay any further fees to amend and finalise Section B15 to implement Council's Resolution of 21 March 2013 (Minute 125) and to incorporate the provisions of Clause 53E(5) of Tweed Local Environmental Plan 2000. In the circumstances, Council is therefore requested to waive any further fees.

Within Councils adopted Fees and Charges, the PRU has a clear fee structure established, including charges related to requested amendments of Council's Tweed DCP. The fees and charges reflect a user-pays system, so as to not adversely affect the wider community when pursuing developer-lead amendments.

As per Clause 21 of the Environmental Planning and Assessment Regulation 2000, the previous DCP amendment process concluded on 26 February 2013, being when Council gave public notice of its decision in a local newspaper (Tweed Link). Accordingly, the submitted request seeks to commence a new DCP amendment, requiring a new overall process of assessment, reporting, drafting and public consultation.

The submitted DCP request does not confine its request to adopting the previous draft Seabreeze DCP, with the exception of fulfilling Council's desire for a 6ha Potential Future School Site, rather proposes further amendments as detailed throughout this report. Further, if the Council had resolved as per the 21 March 2013 meeting whilst the previous process was still active, the resource cost of implementation would have been billed to the proponent as the resource was generated by their request.

In summary, pursuing a new DCP amendment is a significant resource burden upon the PRU. It is not considered equitable to burden the wider community with these resource costs; accordingly the PRU has developed an appropriate fee structure which has been in effect for a number of years. Despite the Council resolving to accept the concept of amending the Seabreeze DCP, this represents a new process that should be resourced by the proponent should they wish to pursue any amendment, as opposed to the wider community.

OPTIONS:

1. Resolve as per recommendation; or
2. Resolve to publically exhibit the draft Seabreeze DCP, with amendments prescribed by the Council; or
3. Reject the proponent's request to amend the DCP thereby retaining the existing Section B15 of the Tweed Development Control Plan.

The officers recommend Option 1.

CONCLUSION:

The submitted Development Control Plan (DCP) amendment request seeks to enable land referred to as 'Seabreeze Stage 2' to be developed for urban purposes. The current DCP, whilst identifying a Potential Future School Site, does not provide an appropriate planning framework for the remainder of the Seabreeze Stage 2 land, sterilising land that is suitable for urban development.

The requested amendment includes the retention of a 6ha Potential Future School Site in order to reflect the previous resolutions of Council. In addition, the Town Centre is proposed to shift to a new location 300 metres eastward and the remainder of the urban zoned land to be developed for residential use.

Council's Planning Reform Unit (PRU) has embodied the supported amendments into a draft Seabreeze DCP. The draft Seabreeze DCP now needs to be 'tested' for its level of acceptance within the broader community through a formal public exhibition period.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 1.5.2.2 Planning Controls updated regularly

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1: Assessment of NSW Department of Education and Communities - Advisory Notes for Developers and Consent Authority for Master Planning New Education Facility Sites (ECM 3079310)

Attachment 2: Draft Tweed Development Control Plan - Section B15 - Seabreeze Estate, Pottsville (ECM 3079311)

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31 [PR-CM] Development Application DA05/0004.03 for an Amendment to Development Consent DA05/0004 for Filling of Land at Part Lot 3 DP 828298 Cudgen Road, Cudgen; Lot 26C and 26D DP 10715 Quigan Street, Kingscliff

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA05/0004 Pt18



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of a S96(AA) Application to amend the previously issued Court Approval in relation to DA05/0004 that approved the filling of land at Turnock Street, Kingscliff (Gales Holdings Land).

The approved application incorporated filled areas to the north and south of Turnock Street (totalling 360,000m³), a Wallum Froglet Precinct north of Turnock Street (approximately 1ha of core habitat and an extra 1.4ha in ancillary drainage works) a haul road extending to the west and connecting with Tweed Coast Road, a conveyor over Tweed Coast Road, drainage works, and water quality treatment works.

The current S96AA modification specifically seeks to relocate the approved Wallum Froglet Precinct from the north of Turnock Street to west of Elrond Drive and Turnock Street roundabout within Lot 26D in DP 10715. This primary change will have flow on effects of increasing the amount of fill to approximately 580,000m³ (as the application seeks to fill the areas previously set aside for the Wallum Froglet Precinct and associated drainage areas), undertaking revised drainage works, undertaking revised water quality treatments works and generally necessitating many changes to the conditions of consent.

The applicant has stated that the justification for these changes is a direct result of the recent Supreme Court matter “Gales Holdings PTY Limited v Tweed Shire Council [2011] NSWSC 1128”. This case resulted in Council undertaking drainage works to the Blue Jay Circuit Scheme that negates the need for Gales Holdings to undertake stormwater works draining water to the northern limit of their site. In addition during the Supreme Court proceedings Gales Holdings expert Mr Michael Mahoney testified that the Wallum Froglet Precinct north of Turnock Street may become unviable in the future as the site will no longer be “wetting up”.

Accordingly Council staff have reviewed the current S96AA on its merits and has agreed with the applicant that the Wallum Froglet Precinct would be better situated west of Elrond Drive and Turnock Street roundabout within Lot 26D in DP 10715. In addition the increased fill and revised drainage works have also been considered on its merits and Council staff are of the view that the application can be supported subject to the revised conditions of consent as discussed within this report.

RECOMMENDATION:

That Development Application DA05/0004.03 for an amendment to Development Consent DA05/0004 for filling of land at Part Lot 3 DP 828298 Cudgen Road, Cudgen; Lot 26C and 26D DP 10715 Quigan Street, Kingscliff; Lots 11-14 DP 87175 and Lots 2-9 DP 781714 Turnock Street, Kingscliff be approved and Development Consent DA05/0004 be amended as detailed within this report so that the consent now reads as follows:

CONDITIONS DA05/0004

GENERAL

1. DELETED

1.1 The development shall be completed in accordance with the Amended Statement of Environmental Effects (November 2007) except where varied by the approved S96AA Applications (DA05/0004.01, DA05/0004.02 and DA05/0004.03) and the approved plans as follows:

- (a) Approximate Haul Road as approved per DA05/0004.03 – Project Number 1177 Plan No P030 Issue K prepared by Knobel Consulting Pty Ltd and dated 3/08/2012,
- (b) Haul Route, Conveyor Route Section and Stockpile Plan as approved by the original DA05/0004 – Project Number 1177 Plan No P031 Issue E prepared by Knobel Consulting Pty Ltd and dated 2/4/08,
- (c) Construction Filling Plan And Sediment Control as approved by DA05/0004.03 - Project Number 1177 Plan No P032 Issue K prepared by Knobel Consulting Pty Ltd and dated 3/08/2012,
- (d) Boxed In Conveyor System as approved by the original DA05/0004 - Project Number 1177 Plan No P042 Issue B prepared by Knobel Consulting Pty Ltd and dated 28/03/2008,
- (e) Schematic Stormwater Drainage Layout for possible future development North & South of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P153 Issue H prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (f) Schematic Stormwater Drainage Layout for possible future development South & West of Elrond Drive as approved by DA05/0004.03 - Project Number 1177 Plan No P155 Issue D prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (g) Details of Schematic Stormwater Drainage Layout for Possible Future Development South of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P156 Issue C prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (h) Earthworks and Drainage Layout Plan South and West of Elrond Drive as approved by DA05/0004.03 - Project Number 1177 Plan No P160 Issue C prepared by Knobel Consulting Pty Ltd and dated 06/08/2012,
- (i) Earthworks and Drainage Layout Plan North and of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P162 Issue D prepared by Knobel Consulting Pty Ltd and dated 06/08/2012,

- (j) Minor Engineering Works to Enhance new Wallum Froglet Habitat Area as approved by DA05/0004.03 - Project Number 1177 Plan No P166 Issue D prepared by Knobel Consulting Pty Ltd and dated 12/12/2012,
- (k) Dropboard Weir and Temporary Levee Detail as approved by DA05/0004.03 - Project Number 1177 Plan No P168 Issue A prepared by Knobel Consulting Pty Ltd and dated 12/12/2012,

except where varied by the conditions of this consent:

Please note: the minor engineering works referenced in plans P166 and P168 are approved by DA05/0004.03 and do not necessitate an application for a Construction Certificate to enable the works shown on those plans to be undertaken.

[GEN0005]

- 1.2 The Stage 1 Rehabilitation Works within the alternative Wallum Froglet Habitat Area are to be carried out in accordance with the Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated April 2013.
- 1.3 Within 60 days of commencing of work for the Stage 1 Rehabilitation Works , a restriction on user burdening that part of Lot 26D DP10715 that is retained for the benefit of the Wallum Froglet (the alternative Wallum Froglet Habitat Area) shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the fourth Restrictive Covenant annexed to these conditions and will affect the area of land referred to in the annexed fourth Restrictive Covenant.
- 1A. DELETED
- 1.4 Within 2 years of the date of commencement of DA05/0004, a restriction on user burdening lots 1, 2 and 3 DP 781714 for the land shown on the plan marked "Littoral Rainforest vegetation" as "covenant area" shall be registered in favour of Tweed Shire Council. The restriction shall prevent the removal of littoral rainforest vegetation from that land. The instrument shall be in or to the effect of the third Restrictive Covenant annexed to these conditions and will affect the area of land referred to in that Restrictive covenant.

[GENNS01]

1B. DELETED

- 1.5 Within 2 years of the date of commencement of DA05/0004 a restriction on user and public positive covenant burdening part of Lot 13 DP 871753 for the land shown on the Plan marked "Level Survey of Part of Land adjacent to Turnock Street, dated 7 April 2008 shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the first Restrictive Covenant annexed to these conditions and will affect the area of land referred to in that Restrictive covenant.

[GENNS01]

1C. DELETED

- 1.6 Within 2 years of the date of commencement of DA05/0004 a restriction on user burdening those parts of lot 11 and Lot 12 in DP871753 that are retained for the benefit of the Wallum Froglet (land to the south of Turnock Street) shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the second Restrictive Covenant annexed to these conditions and will affect the area of land referred to in the annexed second Restrictive Covenant.**

[GENNS01]

1CA. DELETED

1D. DELETED

- 1.7 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the area which is the subject of the first restrictive covenant. The management plan shall contain provisions with respect to:**

- a. habitat description: baseline survey of current condition and extent of habitat;**
- b. MRS survey: baseline survey of snail population;**
- c. review and assessment of threatening processes(including weeds, predators, storm water and wetting up);**
- d. initial habitat protection and restoration works (weeding and fencing);**
- e. monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), snail monitoring by day and night survey of fixed sample points (annual for five years), and**
- f. reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.**

The management plan, with the goal of ensuring that the local population of the Mitchell Rainforest Snail is not likely to be placed at risk of extinction, shall be approved by Council within 2 years of commencement of DA05/0004. Once approved the management plan shall be complied with at all times.

After 5 years of monitoring a revised plan shall be submitted to Council for approval which incorporates any necessary and feasible measures for continuing management of the land. Once approved the revised management plan shall be complied with at all times unless varied with the consent of Council.

[GEN0005]

1E. DELETED

- 1.8 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the Wallum Froglet Habitat area on Lots 11 and 12 in DP 871753 area which is the subject of the second restrictive covenants. The management plan shall contain provisions with respect to:**

- a. habitat description: baseline survey of current condition and extent of habitat;**

- b. Wallum Froglet Survey: baseline survey of Froglet population;**
- c. review and assessment of threatening processes (including weeds, predators, stormwater, physicochemical and hydrological conditions).**
- d. initial habitat protection and restoration works (e.g., if considered appropriate by the expert preparing the management plan, weeding, drainage or fencing);**
- e. monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), monitoring by day and night survey of fixed sample points (annual for five years) under suitable weather conditions and during breeding periods. Appropriate methodology, weather conditions and season for monitoring will be described in the management plan, and**
- f. reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.**

The management plan, with the goal of maintaining or improving existing Wallum Froglet habitat, shall be approved by Council within 2 years of commencement of DA05/0004. Once approved the management plan shall be complied with at all times. After approval, the management plan may be varied with the consent of Council.

[GENNS01]

1F. DELETED

- 1.9 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the littoral rainforest area within Lots 1, 2 and 3 of DP 781714 which is the subject of the third restrictive covenant. The management plan shall contain provisions in respect of the area coloured green in B&P Surveys Plan 16814 B Rev C as follows:**
- a. habitat description: baseline survey of current condition and extent of habitat;**
 - b. review and assessment of threatening processes(including weeds, and edge effects);**
 - c. initial habitat protection and restoration works (removal of exotic trees and shrubs and weeding);**
 - d. monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), and**
 - e. reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.**

The management plan shall have provisions to ensure that the balance of the covenant area is not managed or used in a manner which would interfere with the ecological integrity of the littoral rainforest vegetation community in the area coloured green in B&P Surveys Plan 16814 B Rev C.

The management plan, with the goal of ensuring that the ecological integrity of the littoral rainforest vegetation community is maintained or improved over time and furthermore is not likely to be placed at risk of local extinction, shall be approved by Council within 2 years of the date of commencement of DA05/0004. Once approved the management plan shall be complied with at all times.

After 5 years of monitoring a revised plan shall be submitted to Council for approval which incorporates any necessary and feasible measures for continuing management of the land with. Once approved the revised management plan shall be complied with at all times unless varied with the consent of Council.

[GENNS01]

2. (a) Condition 2 of the general conditions of development consent D96/518 shall prior to commencement of filling be modified in accordance with the Environmental Planning & Assessment Act, 1979 to include the subject filling sites as additional land to which the sand can be delivered.
- (b) The approved Environmental Management Plan in relation to D96/0518 is to be modified to the extent, if any, necessary to satisfy the conditions of this consent in relation to the quality of the fill material.

3. DELETED

- 3.1 All works shall comply with the approved Environmental Management Plan (HMC 2012.123EMP (HMC Environmental P/L, December 2012). A copy of the plan complete with Key Person and Contacts shall be provided to Tweed Shire Council prior to commencement of works.

[GEN0005]

4. DELETED

- 4.1 All works shall comply with the approved Acid Sulfate Soil Management Plan & Groundwater Management Plan HMC 2012.123ASSMP (HMC Environmental P/L, December 2012).

[GEN0005]

5. DELETED

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

[GEN0045]

7. The filling and associated works are to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils adopted Development Design and Construction Specifications except as otherwise provided in this consent.

[GEN0125]

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

[GEN0135]

9. **DELETED**

- 9.1 Prior to commencement of filling work, a Section 68 Certificate, Section 138 and a construction certificate and or engineering plans (as statutorily required) shall be submitted to Council for approval to enable commencement of the filling, drainage and general engineering works as proposed by this consent. This condition is not relevant to the minor engineering works proposed in the new Wallum Froglet Habitat Area which have been approved as part of DA05/0004.03.

[GEN0185]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE AND OR ENGINEERING PLANS AS STATUTORILY REQUIRED

- 10.1 Prior to Issue of a Construction Certificate for the filling works the applicant is to lodge a revised haulage route to minimise tree loss. Such plan is to be consistent with that route defined by Council's Dr. Mark Kingston, the applicants Dr Andrew Smith and the applicants Mr Greg Elks, on 31 March 2008 and such that the alignment is subject to trucks being able to turn on reasonable curves. Only the trees marked on site (with tape) are trees that are to be removed.

In addition the applicant is to lodge details for the rehabilitation of the temporary haul route. This should include details pertaining to the methods for removal, storage and reinstatement of top soil, disposal of temporary road base material, re-establishment of vegetation and minimising the impacts on the alternative Wallum Froglet Habitat Area as included in the approved "Wallum Froglet Habitat Management Plan, Kingscliff" prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated April 2013. This detail shall be approved by Council prior to the issue of a Construction Certificate for filling works.

[PCCNS01]

- 10.2 A community liaison officer and community liaison contact phone number shall be available on a 24 hour basis during construction works. Details of the contact person and telephone number shall be clearly displayed at the site entry. Details of the contact person and telephone number shall be locally advertised a minimum of fourteen days (14) prior to the commencement of filling works and local affected residents notified by means of an individual letter drop to each household.

A sign is to be erected at the entry of the site to clearly advise the community liaison officers details and contact number. These details are to be documented in the Construction Management Plan.

[PCCNS01]

- 10.3 A construction management plan is to be provided for the filling and earthworks. These details are to be submitted with the application for a Construction Certificate and or Engineering Plans as statutorily required for the filling and earthworks, identifying how the site and filling works are to be programmed and managed.

The construction management plan shall address, not be limited to, the following matters where relevant:

- Sequencing of filling/earthworks
- Contact details of site manager & community liaison officer
- Traffic and pedestrian management
- Dust Management
- Noise and vibration management
- Construction waste management
- Erosion and sediment control; and
- Flora and fauna management.

[PCCNS01]

10. DELETED

10.4 Section 94 Contributions

Heavy Haulage Component

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

Charges are fixed for a period of 12 months from the date of the original consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 6 prior to the issue of a construction certificate. The contribution shall be based on the following formula:

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6
 Cont = Cont (sand)+Cont (Gravel)
 = (580,000*1.44*5.4*0.4*1.05) + (10800*2.4*5.4*0.4*1.05)
 = 1894234 + 58786 cents
 = \$19,500

West Kingscliff - Drainage:

17.3844ha @ \$56,641 \$984,669.80**

S94 Plan No. 7

****Less the value of works in kind as defined below**

In accordance with the Section 94 Contributions Plan No 7 (CP7) the applicant's construction of the works referred to in condition 35(a) to (g) and the grant of the easement referred to in condition 35(h) are "works in kind" that will reduce the amount payable in accordance with CP7. The value of the works for the purpose of calculating the value of "works in kind" will be calculated in accordance with CP7 - Schedule 1 - Contribution Rates, b) Drainage. The value of the easement for the purpose of calculating the value of "works in kind" shall be 75% of the value of land "C" in CP7 - Schedule 1 - Contribution Rates, b) Drainage.

The net (\$984,669.80 less the value of works in kind) CP7 contribution, is to be paid at the earlier of 12 months from the date of the s.68 approval for drainage works required by condition 35 or at the completion of construction of the drainage works referred to in this condition.

If the value of "works in kind" exceed the contribution amount, then this amount shall be a CP7 credit towards future development by the applicant in the Kingscliff Drainage Catchment."

[PCC0225]

11. DELETED

- 11.1 Prior to commencement of filling work a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).

This bond will be drawn on by Council to undertake any rectification work directed but not completed or progressing to the satisfaction of the Tweed Shire Council's General Manager or delegate, within seventy two (72) hours from the date of serving any notice. The bond is to be released upon completion of all work, to the satisfaction of Tweed Shire Council's General Manager or delegate.

[PCC0275]

12. DELETED

- 12.1 Prior to commencement of filling work (or other work which may generate the need for a long service levy payment) a long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) must be paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

13. DELETED

- 13.1 All imported fill material shall be from the approved sand extraction at Lot 2 DP 216705 in accordance with DA96/0518. If the fill imported to the southern side of Turnock Street has a shell grit content in excess of 1%, then an impermeable barrier shall be placed within the fill batter to the Wallum Froglet Precinct. Any additional fill for topsoil, road base, mulch, etc is to be free of contaminants with details of such fill submitted to Council for approval prior to commencement of work.**

[PCC0465]

14. DELETED

- 14.1 The site is to be filled, graded and drained in general accordance with levels and dimensions shown on Filling Plan P162 Issue D prepared by Knobel Consulting Pty Ltd and dated 6/08/2012 except as amended by conditions of consent.**

No haulage vehicles are to access the area identified for Wallum Froglet Habitat.

The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

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

[PCC0485]

15. DELETED

- 15.1 Prior to the issue of a Construction Certificate and or Engineering Plans for the filling work as statutorily required the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.**

- (a) copies of compliance certificates relied upon**
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:**
 - earthworks**
 - roadworks/furnishings**
 - stormwater drainage**
 - landscaping and revegetation works**
 - sedimentation and erosion management plans**

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

16. DELETED

- 16.1 Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate for the filling work.**

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

[PCC1065]

17. DELETED

17.1 An application (or applications) under section 68 of the Local Government Act, 1993 is required prior to commencement of any filling works that involve any of the following:

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

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

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

[PCC1145]

18. The Section 68 Application relating to erosion and sediment control must include a plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater*.

- a. The Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
- b. Specific requirements to be detailed within the Section 68 application include:
 - (i) The exit from the haul road and the access into the filling site is to be sealed for a length of 15m prior to connection with public roads and is to include wheel washing facilities located prior to entry and exit onto public roads. These details are to be shown on the application for a construction certificate.

[PCC1155]

19. DELETED

19.1 The Section 68 application shall detail the following provisions in relation to stormwater management & quality

- (a) All stormwater quality control devices to be constructed generally in accordance with Plan 1177 – P032 prepared by Knoble Consulting Pty Ltd Issue K dated 3/08/2012 except as modified by conditions of consent.

[PCCNS01]

20. DELETED

21. DELETED

22. DELETED

23. Where water is to be drawn from Councils reticulated system, the proponent shall:
- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
 - Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
 - Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

24. Notwithstanding the issue of this development consent, prior to the issue of a construction certificate and or engineering plans as statutorily required , separate consent from Council under Section 138 of the Roads Act 1993, must be obtained for works proposed to take place on a public road including:

- a. The construction of new driveway access (or modification of access);
- b. DELETED;
- c. Temporary access to filling sites;
- d. The erection of the conveyor over Tweed Coast Road; and
- e. Any other works located within Council's road reserve.

The application shall include engineering plans and specifications and include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Road works/furnishings
- Stormwater drainage
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan(s)
- Detail for each of the proposed access points for transportation of the fill. The Tweed Coast Road access is to be constructed outside of peak traffic periods.
- Construction Access to the land north of Turnock Street will require a left turn lane for the left turn truck movements from Turnock Street. Right turn movements into the filling site to the north are not allowed.

The following specific details are required in relation to the for the boxed in conveyor system proposed across Tweed Coast Road for the transportation of fill from the west to the eastern side of the road:

- Minimum vertical clearance above Tweed Coast Road of 6m.
- Supports are located not closer than 5m from the nearest travel lane.
- Conveyor is to be suitably enclosed to ensure no escape of material onto the road reserve.

- A leasing arrangement is to be entered into with Council for use of the road reserve.
- The conveyor system to be dismantled and removed within 18 months of the commencement of filling works.

Applications for consent under Section 138 must be submitted on Council's standard application form, be accompanied by the required attachments and prescribed fee.

[PCCNS01]

25. DELETED

26. DELETED

26.1 Prior to issue of Construction Certificate and or engineering plans for filling works as statutory required, the Applicant shall lodge structural design details, detailing the design of the acoustic hay fence to satisfaction of Council.

[PCCNS01]

27. DELETED

27.1 Prior to the issue of the construction certificate and or engineering plans for filling works as statutory required a construction noise management plan shall be produced for approval by Council that is generally in accordance with the Environmental Noise Impact Assessment prepared by CRG Acoustic al Consultants dated November 2012, the Noise Guideline for Local Government 2010 and the NSW DECC Interim Construction Noise Guidelines 2009.

[PCCNS01]

28. DELETED

28.1 Prior to the issue of the construction certificate and or engineering plans for the filling works as statutory required a Construction Noise Management Plan must be prepared as part of the CEMP. This is to be lodged with Council for approval and must include:

- a) an education program for Construction personnel about noise minimisation.
- b) identification of each Construction activity, including Ancillary Facilities, and their associated noise sources;
- c) identification of all potentially affected Sensitive Receivers (a sensitive receiver is defined as a resident or occupier of a residential property, where the boundary is subject to noise levels recorded above 58 dB(A) L10 OR a commercial premises that is exposed to noise levels above that specified in Australian Standard AS/NZ 2107:2000 "Acoustics – Recommended reverberation times and sound levels for building interiors" when assessed inside the place of business or 58 dB(A) L10 at an outdoor area associated with operation of the business requiring a level of amenity for normal operation of that business;
- d) the Construction noise objective specified in the Conditions of Approval;
- e) noise and vibration monitoring, reporting and response procedures;
- f) a description of management methods and procedures and specific noise mitigation treatments that will be implemented to control noise and vibration during Construction;

- g) justification for any activities outside the Construction hours specified in the Conditions of Approval. This includes identifying areas where construction noise would not be audible at any Sensitive Receiver;
- h) procedures for notifying residents of Construction activities that are likely to affect their noise amenity; and
- i) contingency plans to be implemented in the event of non-compliance and/or noise complaints consultation procedures to be undertaken with residents.

[PCCNS01]

29. DELETED

29.1 A dilapidation report detailing the current structural condition of the adjoining and adjacent buildings, infrastructure and roads is to be prepared and endorsed by a suitably qualified engineer. The report is to be submitted and approved by Council prior to issue of a construction certificate and or engineering plans for the filling works as statutory required.

A second dilapidation report is to be prepared by a suitably qualified person at the completion of the works to ascertain if any structural damage has occurred to the adjoining and adjacent buildings, infrastructure and roads. The report is to be compared with the first report and recommend a course of action to carry out repairs if required. The report is to be submitted for approval by Council.

[PCCNS02]

30. DELETED

30.1 Within three weeks of fill being placed on the site in each fill stage, the area is to be topsoiled and mulched to the satisfaction to Tweed Shire Council's engineer. Mulch and topsoil detail are to be shown on the Construction Certificate application and or engineering plans as statutory required. Fertiliser shall not be used on the grassed area proximal to within 20m of the Wallum Froglet Habitat.

[PCCNS02]

31. DELETED

31.1 The parts of the site subject to filling are to be adequately fenced with a construction fence, for the works within each relevant stage. The construction fence details are to be shown on the Construction Certificate application.

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

[PCCNS02]

32. DELETED

32.1 The Construction Certificate application and or engineering plans as statutory required shall detail the following provisions having regard to perimeter & trunk drainage:

- a. Perimeter stormwater drainage shall be designed and constructed along all external boundaries to convey overland runoff from all external catchments to a lawful point of discharge for all storm events up to the ARI 100 year event without causing flooding of adjoining properties or road reserves. All fill batters, perimeter drainage services and associated formations must be contained wholly within the development site, and must not encroach into adjoining properties or road reserves.**
- b. Perimeter cross sections for the entire site are to be provided along the proposed filling perimeter every 20m. The cross sections are to provide existing and proposed finished levels, extending an adequate distance into adjoining land so as to establish external drainage paths.**
- c. DELETED**
- d. A stormwater drainage channel is to be designed and constructed to convey all runoff from Council's existing 750mm pipeline discharging from Turnock Street to the north east corner of the southern fill area to the Kingscliff drain generally along the alignment shown for the SWD documented on Drawing No. P037 issue H prepared by Knobel Consulting Pty Ltd and dated 08/11/07 and Drawing No. P038 issue G prepared by Knobel Consulting Pty Ltd and dated 29/10/07. The last part of the channel may follow a different path to the SWD, being around the fill to discharge to the Kingscliff drain.**
- e. AMENDED - An overland flow path shall be designed and constructed to convey external catchment runoff for the Q100 event from Turnock Street and Lot 100 DP 1071633 through the southern fill area to the Kingscliff Drain in accordance with Drawing Number 1177 – P162 Issue D prepared by Knobel Consulting Pty Ltd and included in Appendix B of the Engineering Report as submitted with the S96AA Reference Number DA05/004.03.**
- f. A stormwater drainage channel is to be designed and constructed to convey all runoff from Council's existing 450 mm SWD currently discharging off Pearl Street through Lot 6, DP21242, to the perimeter catch drain around the fill shown on Knobel Consulting Drawing No. P032, issue J, dated 26/10/07.**
- g. All drainage works required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.**

[PCCNS02]

33. DELETED

34. DELETED

34.1 The Construction Certificate application and or engineering plans as statutory required shall detail the following provisions having regard to existing stormwater infrastructure:

- a) Provision shall be made to connect any other existing public stormwater pipes discharging onto the site, through the filled area to a lawful point of discharge, without adverse impact on flooding in the locality.
- b) The drainage works required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.

[PCCNS02]

35. DELETED

35.1 The Construction Certificate and or engineering plans as statutory required shall detail the following provisions having regard to the construction of Kingscliff Drain:

- a) The Kingscliff Drain south of Turnock Street, adjacent to the filling and provisional water quality treatment area, is to be constructed concurrently with filling of the site south of Turnock Street. The drain shall be constructed from the south eastern extent of the provisional water quality treatment works shown on drawing P153 Issue H, dated 3/08/12 to the box culverts under Turnock Street.
- b) Except as varied by this condition, the above drain is to be constructed in general accordance with the trapezoidal channel cross section, and “access maintenance hardstand”, shown on “Main Drain 0-2000 (fig 7.3)” contained in “Appendix B: Supplementary TSC Cross Section Details” contained in “Kingscliff Catchment & Drainage Management Plan” prepared by WBM Oceanics, Revision 3 Dated 24/3/00. No “variable purpose” cross section construction is required beyond the northern limit of the “access maintenance hardstand” on the northern side of the drain. The fill batter shown on Plan P162 Issue D dated 6/08/12 will commence 3.5 m from the top of bank of the drain to allow for the “access maintenance hardstand. The 3.0m wide access maintenance hard stand area along the Kingscliff Drain is to be constructed on the north side of the drain from and connected to Turnock Street. A vehicle turn around area is to be constructed at the other end to permit vehicles using the maintenance access area to turn around. The design of the maintenance access must account for all transverse connections to the Kingscliff Drain, to remain trafficable without impeding runoff or causing flooding on upstream land.
- c) In the section of drain from the box culverts under Turnock Street, east to the start of filling works the cross section on the north side shall be modified to accommodate entry of runoff from the north. The maintenance access may include a series of floodway crossings in this section to enable flow of runoff from the north to cross over the access.
- d) On the south side of the drain, the constructed cross section is to terminate where the revetted bank section intersects natural surface level. No bank or “variable multipurpose” cross section construction is required beyond this point.
- e) The edge treatment and revetment of the drain may be varied to create a more “natural” aesthetically pleasing appearance, providing the hydraulic efficiency and maintainability of the drain is not adversely affected.

- f) The nominal 1.0m width of the drain invert may be increased to provide a more “natural” aesthetically pleasing appearance.
 - g) The invert of the drain is to be a maximum RL -0.5 AHD from the south-eastern extent of the fill to the invert of the culvert under Turnock Street. It may then taper up to the existing drain outlet invert at St Anthony’s School (lot 2 DP 610174) boundary. Level detail is to be provided for the drain invert.
 - h) Prior to the commencement of filling work a drainage easement is to be created benefiting Council over the main Kingscliff drain from St Anthony’s school to the box culverts under Turnock Street where it traverses lots 11, 12 & 13 DP 871753. The width of the easement shall be from the southern edge of revetment on the south side of the drain to the northern side of the maintenance access on the north side of the drain. Some meandering of the drain about the centreline may be permitted to provide a more “natural” aesthetically pleasing appearance. The easement must allow the bridging of the drain for access and the works referred to in this condition may be removed or altered for the purpose of constructing access ways so long as they are reinstated to a similar standard.
 - i) The drainage works (including the associated works in the drainage easement) required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.
36. The Construction Certificate application and or engineering plans as statutory required shall detail the following provisions having regard to the construction of the haul road;
- a) The plans accompanying a Section 68 stormwater application must ensure there is adequate capacity transverse drainage under/across the haul road to ensure runoff is not impeded or flooding caused on upstream land.
 - b) Where the proposed haul road crosses the Kingscliff Drain, a culvert system with invert level -0.5m generally in accordance with Section 2 of Knobel Consulting Plan P030 (provided it complies with the criteria in (a) above) or other configuration approved by Council shall be provided under the road.
 - c) All culverts constructed over the Kingscliff Drain to facilitate construction of the haul road shall be removed at the completion of filling works.
 - d) The drainage works required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.
- [PCCNS02]
37. DELETED
- 37.1 Traffic Management Plans are required prior to the issue of a construction certificate application and or engineering plans for each differing stage of the filling works. The traffic management plans shall be in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2. The plans are to be prepared by an RTA accredited person shall be submitted to the Principal Certifying Authority. Safe public access shall be provided at all times.

The Traffic Management Plans are to include all temporary signage and road layouts for each stage of the proposed works. The plans are to also provide for pedestrian and cycle movements.

[PCCNS02]

38. The application for a construction certificate and or engineering plans shall detail the conveyor belt over Tweed Coast Road, including the structural design details, the intended colours, a landscaping plan to ensure the stockpile site is screened from the road and to ensure dust is screened to mitigate dust encroaching onto Tweed Coast Road.

[PCCNS02]

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

[PCW0015]

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

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

41. Prior to work commencing, a "Notice of Commencement of Work shall be submitted to Council or principal certifying authority at least 2 days prior to work commencing.

[PCW0225]

42. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

43. Filling work in accordance with a development consent must not be commenced until a construction certificate for the civil work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by Council.

44. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$20 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

45. DELETED

- 45.1 Prior to commencement of work on the site relevant all erosion and sedimentation control measures are to be installed and operational. Prior to the commencement of filling works the wheel wash facility shall be installed to the satisfaction of Council.

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

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

[PCW0985]

DURING CONSTRUCTION

46. DELETED

- 46.1 The alternative Wallum Froglet Habitat Area is to be managed in accordance with the approved Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated 22 April 2013.

47. During construction, all works required by other conditions or approved management plans (including noise, dust, frog habitat, traffic, storm water, water quality, sediment and erosion control, and the environmental management plan) or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

48. DELETED

- 48.1 During the approved staged rehabilitation of the alternative Wallum Froglet Habitat Area, monitoring is to be conducted in accordance with the approved Wallum Froglet Habitat Management Plan dated 22 April 2013.

49. The Council and/or Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection.

[DUR0415]

50. DELETED

- 50.1 The proponent shall ensure a maximum 580,000m³ of extractive material is imported to the site along the approved haul route from the sources nominated in the development application.

[DUR0735]

51. DELETED

51.1 During filling operations:

- All fill and cut batters shall be contained wholly within the subject land.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 – Subdivision Manual and the Design Specification D6 Site Regrading to the satisfaction of the Principal Certifying Authority.

and upon completion,

- All topsoil and mulch is to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

52. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to Council upon completion.

[DUR0795]

53. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.

[DUR0815]

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

[DUR0985]

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

[DUR0995]

56. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site (in accordance with the noise management plan) and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot.

[DUR1015]

57. All practicable measures in accordance with the management plans must be taken to prevent and minimise harm to the neighbourhood, adjacent development and the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

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

[DUR1795]

59. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

60. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D, based on the rates contained in Council's current Fees and Charges:

Roadworks

- a. Pre-construction commencement erosion and sedimentation control measures
- b. Completion of earthworks
- c. Permanent erosion and sedimentation control measures
- d. Drainage channels and associated stormwater infrastructure
- e. Final Inspection for bond release

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

61. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

62. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

63. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

64. All fuels or chemicals shall be stored within a bunded area and not permitted to discharge or percolate to any watercourse.

[DURNS01]

65. DELETED

66. The site shall not be dewatered without prior approval from the relevant authority and notification to Council.

[DURNS01]

67. All surface water within the fill site shall be directed to the sedimentation ponds, monitored and treated (where necessary), before discharge from the site.

[DURNS01]

68. 'Run on water' to the fill site shall be diverted, where possible, clear of the site.

[DURNS01]

69. A sufficient number of 'on site builder's toilets' shall be provided to manage wastewater from on site employees.

[DURNS01]

70. Vegetation shall not be removed or damaged except as strictly necessary to undertake the proposed works.

[DURNS01]

71. Disturbance of 'monosulfide black ooze' shall be limited approximately to 40m of the main drain where the haul route crosses the drain.

[DURNS01]

72. DELETED

- 72.1 All material stripped and identified as PASS from the site or disturbed below existing ground level shall be placed within a bunded area and neutralised in accordance with the Acid Sulfate Soil Management Plan & Groundwater Management Plan HMC Environmental P/L, December 2012 before reuse or removal from the site.

[DURNS01]

73. All extracted fill materials shall be treated for acid sulfate potential prior to being transported across Chinderah Road.

[DURNS01]

74. Effective sediment and erosion controls shall be placed around all soil stockpiles and the perimeter of the proposed development site, and maintained for the duration of the proposed works to the satisfaction of the General Manager of his delegate.

[DURNS01]

75. Construction must only be carried out between the hours of 7.00 am to 6.00 pm (Monday to Friday), 8.00 am to 1.00 pm (Saturday) and at no time on Sunday and public holidays except:

- a) for the delivery of materials required outside these hours by the Police or other authorities for safety reasons; or
- b) where it is required in an emergency to avoid the loss of lives, property and/or to prevent environmental harm; or

- c) where the work is identified in the Construction Noise and Vibration Management Plan and approved as part of the CEMP.

Local residents must be informed of the timing and duration of work approved under item (c) at least 48 hours before that work commences.

[DURNS01]

76. All works detailed in the Construction Noise Management Plan and associated Noise Impact Assessment for Construction Works be implemented for the period of construction works.

[DURNS01]

77. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. All plant is to be kept in good operating condition, with regular inspections of the plant to minimise potential to generate noise nuisance.

[DURNS01]

78. Water trucks are to be available on the site at all times during filling operations. Dust creating activities are to cease when high winds exist and causes nuisance to neighbouring properties.

[DURNS02]

POST CONSTRUCTION & MANAGEMENT

79. DELETED

- 79.1 The alternative Wallum Froglet Habitat Area is to be managed in accordance with the approved Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated 22 April 2013. Upon any application for subdivision such application is to include provision for transfer of the management.

80. DELETED

- 80.1 Post filling operations the temporary haul road is to be rehabilitated in accordance with Condition 10.1 of this consent.

81. DELETED

82. DELETED

GENERAL TERMS OF APPROVAL UNDER SECTION 200 OF THE FISHERIES MANAGEMENT ACT 1994

83. Filling is only to be undertaken subsequent to an appropriate authorisation from a relevant public authority (other than a local Council) consistent with s200 of the Fisheries Management Act 1994.

GENERAL TERMS OF APPROVAL PERMIT UNDER s 89, 90, & 91 WATER MANAGEMENT ACT 2000

84. DELETED

- 84.1 The applicant is to obtain necessary approvals, if any, in accordance with the Water Management Act 2000 prior to commencement of filling work. Should dewatering be required the Council is to be notified 48 hours prior to commencement of works

TERMS OF FIRST RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is that part of Lot 13 DP 871753 bounded on the east by the eastern boundary of that Lot, on the north by the southern bank of the east/west drain, on the west by the eastern bank of the drain running from Quigan Street to the east/west drain and on the south by Quigan Street all as shown on the plan annexed marked A subject to final survey plan.

Restrictive covenant for conservation purposes in respect of the Mitchell's Rainforest Snail to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

1. In this instrument, unless the contrary intention appears –

“animals” includes sheep, goats, horses, deer and cattle.

“clearing” and “cleared” in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.

“development” in relation to land, means –

- (a) the erection of a building or structure (other than a fence) on the land;
or
- (b) the carrying out of a work in, on over or under the land;

“land” means the land described in the Schedule.

“Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the *Environmental Planning and Assessment Act 1979* or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.

“registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the *Real Property Act 1900*.

“substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.

“vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.

2. Without the prior written consent of the Tweed Shire Council –

- (a) no person shall reside on the land;**
- (b) no animal shall be depastured or driven on the land;**
- (c) no development shall be carried out on the land;**
- (d) the land shall not be cleared, slashed or cultivated;**
- (e) no substance, whether or not in or forming part of the land, shall be interfered with;**
- (f) no fire shall be lit on the land;**
- (g) no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and**
- (h) no use shall be made of the land or activities undertaken on the land which would interfere with or prevent the natural growth or regeneration of vegetation on the land.**

3. This covenant does not prevent or restrict in accordance with law:

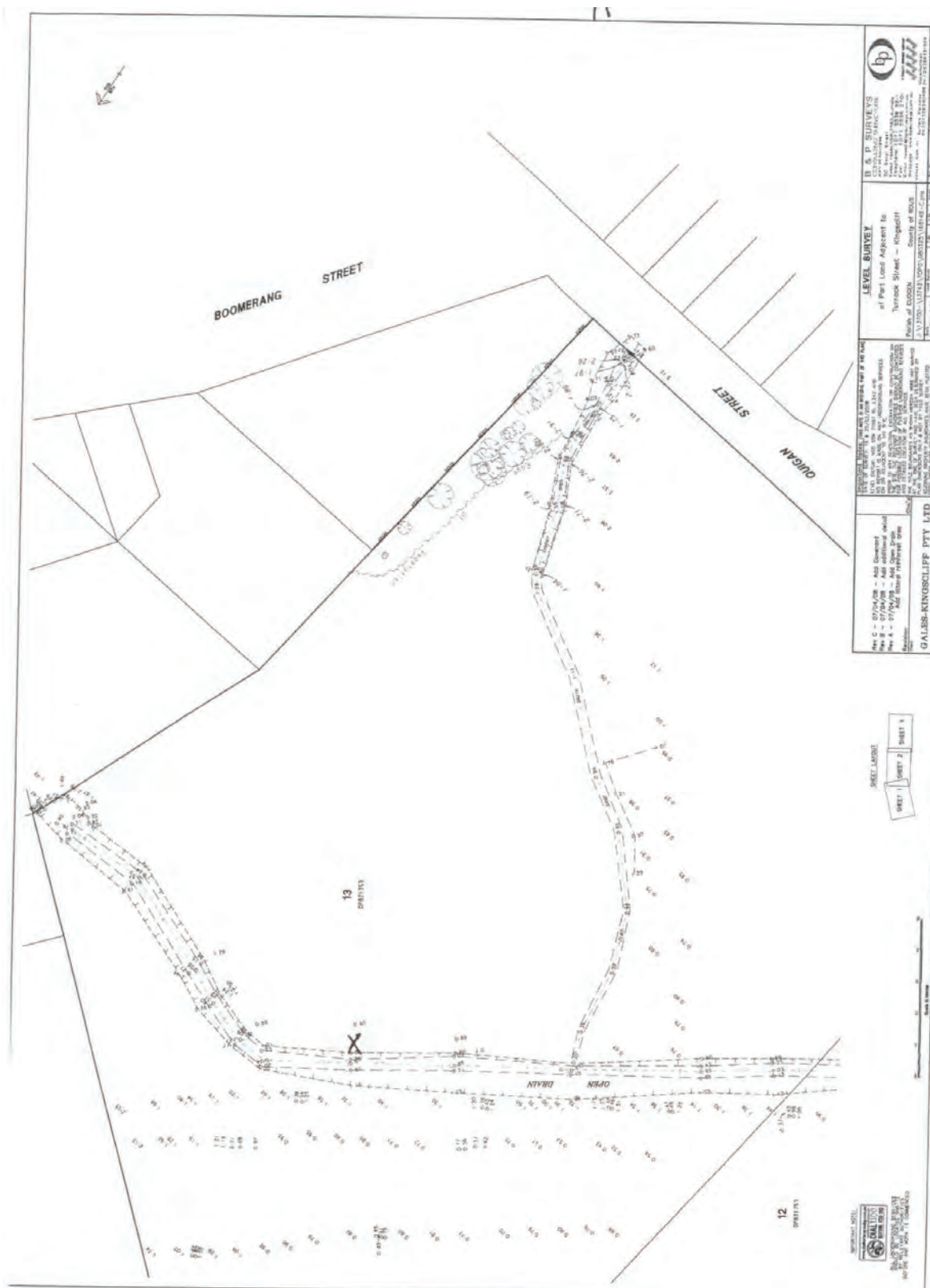
- (a) the destruction or removal of vegetation declared to be a noxious weed under the *Noxious Weeds Act 1993* or an Act consolidating or replacing that Act; or**
- (b) the destruction or removal of vegetation which is a prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* or an Act consolidating or replacing that Act; or**
- (c) the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or**
- (d) the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or**

- (e) the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the *Surveyors Act 2001* or any Act consolidating or replacing that Act;
- (f) the destruction or removal of vegetation or substance in compliance with the *Rural Fires Act 1997* or any Act consolidating or replacing that Act; or
- (g) the destruction or removal of vegetation or substance within 3 metres of the top bank of any drain on or adjoining the land for the purpose of maintaining the drain (but excluding the southern bank of the east/west drain for its length from the eastern boundary of Lot 13 to the point marked “x” shown on the annexed Plan marked “A” being B & P Survey Plan 16814B Revision C);
- (h) the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;
- (i) the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;
- (j) carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;
- (k) erecting, carrying out or using the land for environmental facilities, being a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, boardwalks, observation decks, bird hides, or the like, and associated display structures;
- (l) carrying out any other work permitted by the Management Plan.

4.

- (a) The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which a conservation agreement is entered into under Part 4 of Division 7 of the *National Parks and Wildlife Act 1974*.

- (b) The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.**
 - (c) The restriction on use may otherwise be released with the consent of the Tweed Shire Council.**
- 5. Any work on the land the subject of this covenant shall be carried out under the guidance of a Mitchell rainforest Snail ecologist in accordance with the recommendations of such ecologist and be consistent with any management plan.**
- 5A Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation.**
- 6. The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.**



TERMS OF SECOND RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is those parts of Lots 11 and 12 DP 871753 as shall be defined and detailed in final survey plan approximately as follows:

In relation to Lot 11 the area to the south of Turnock St bounded on the north by Turnock St, on the west by the western boundary of the Lot and on the east by the eastern boundary of the Lot; and

In relation to Lot 12 the area to the south of Turnock St bounded on the north by Turnock St, on the west by the western boundary of the Lot, on the south by the northern edge of the drainage easement created under Condition 35(b) in respect of the Kingscliff drain and on the east by the line of the western extent of the fill shown on Knobel Consulting Drawing PO38, Issue G dated 29/10/07; and

Restrictive covenant for conservation purposes in respect of the Wallum Froglet to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

1. In this instrument, unless the contrary intention appears –

“animals” includes sheep, goats, horses, deer and cattle.

“clearing” and “cleared” in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.

“development” in relation to land, means –

- (a) the erection of a building or structure (other than a fence) on the land;
or

- (b) the carrying out of a work in, on over or under the land;

“land” means the land described in the Schedule.

“Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the *Environmental Planning and Assessment Act 1979* or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.

“registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the *Real Property Act 1900*.

“substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.

“vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.

2. Without the prior written consent of the Tweed Shire Council –
 - (a) no person shall reside on the land;
 - (b) no animal shall be depastured or driven on the land;
 - (c) no development shall be carried out on the land;
 - (d) the land shall not be cleared, slashed or cultivated;
 - (e) no substance, whether or not in or forming part of the land, shall be interfered with;
 - (f) no fire shall be lit on the land;
 - (g) no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and
 - (h) no use shall be made of the land or activities undertaken on the land which would interfere with or prevent the natural growth or regeneration of vegetation on the land.
3. This covenant does not prevent or restrict in accordance with law:
 - (a) the destruction or removal of vegetation declared to be a noxious weed under the *Noxious Weeds Act 1993* or an Act consolidating or replacing that Act; or
 - (b) the destruction or removal of vegetation which is a prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* or an Act consolidating or replacing that Act; or
 - (c) the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or
 - (d) the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or
 - (e) the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the *Surveyors Act 2001* or any Act consolidating or replacing that Act;

- (f) the destruction or removal of vegetation or substance in compliance with the *Rural Fires Act 1997* or any Act consolidating or replacing that Act; or
- (g) the destruction or removal of vegetation or substance within 3 metres of the top bank of any drain on or adjoining the land for the purpose of maintaining the drain;
- (h) the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;
- (i) the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;
- (j) carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;
- (k) erecting, carrying out or using the land for environmental facilities, being a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, boardwalks, observation decks, bird hides, or the like, and associated display structures;
- (l) carrying out any other work permitted by the Management Plan.

4.

- (a) The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which a conservation agreement is entered into under Part 4 of Division 7 of the *National Parks and Wildlife Act 1974*.
- (b) The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.
- (c) The restriction on use may otherwise be released with the consent of the Tweed Shire Council.

7. Any work on the land the subject of this covenant shall be carried out under the guidance of an ecologist with experience and expertise in the habitat of the wallum froglet.

7A Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation

8. The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.

TERMS OF THIRD RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is that part of Lots 1, 2 and 3 DP 781714 shown as covenant area (approx. 4440 m²) on B & P Surveys drawing 16814 B Revision C Sheet 1 annexed hereto which specifies within the covenant area the littoral rainforest area (coloured green).

Restrictive covenant for conservation purposes in respect of Littoral Rainforest to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

1. In this instrument, unless the contrary intention appears –
 - “animals” includes sheep, goats, horses, deer and cattle.
 - “clearing” and “cleared” in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.
 - “development” in relation to land, means –
 - (c) the erection of a building or structure (other than a fence) on the land;
or
 - (d) the carrying out of a work in, on over or under the land;
 - “land” means the land described in the Schedule.
 - “Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the *Environmental Planning and Assessment Act 1979* or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.
 - “registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the *Real Property Act 1900*.
 - “substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.
 - “vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.
2. Without the prior written consent of the Tweed Shire Council –

- (a) in respect of the area coloured green on B & P Surveys Drawing 16814B Rev C the land shall not be cleared, slashed, grazed or cultivated;
 - (b) in respect of the area coloured green on B & P Surveys Drawing 16814B Rev C no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and
 - (c) no use shall be made of nor activities undertaken on the land the subject of this covenant which would interfere with the ecological integrity of the littoral rainforest vegetation community in the area coloured green on B&P Surveys Drawing 16814B Rev C.
3. This covenant does not prevent or restrict in accordance with Law:
- (a) the destruction or removal of vegetation declared to be a noxious weed under the *Noxious Weeds Act 1993* or an Act consolidating or replacing that Act; or
 - (b) the destruction or removal of vegetation which is a prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* or an Act consolidating or replacing that Act; or
 - (c) the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or
 - (d) the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or
 - (e) the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the *Surveyors Act 2001* or any Act consolidating or replacing that Act;
 - (f) the destruction or removal of vegetation or substance in compliance with the *Rural Fires Act 1997* or any Act consolidating or replacing that Act; or
 - (g) the destruction or removal of vegetation or substance within 3 metres of the top bank of any drain on or adjoining the land for the purpose of maintaining the drain;

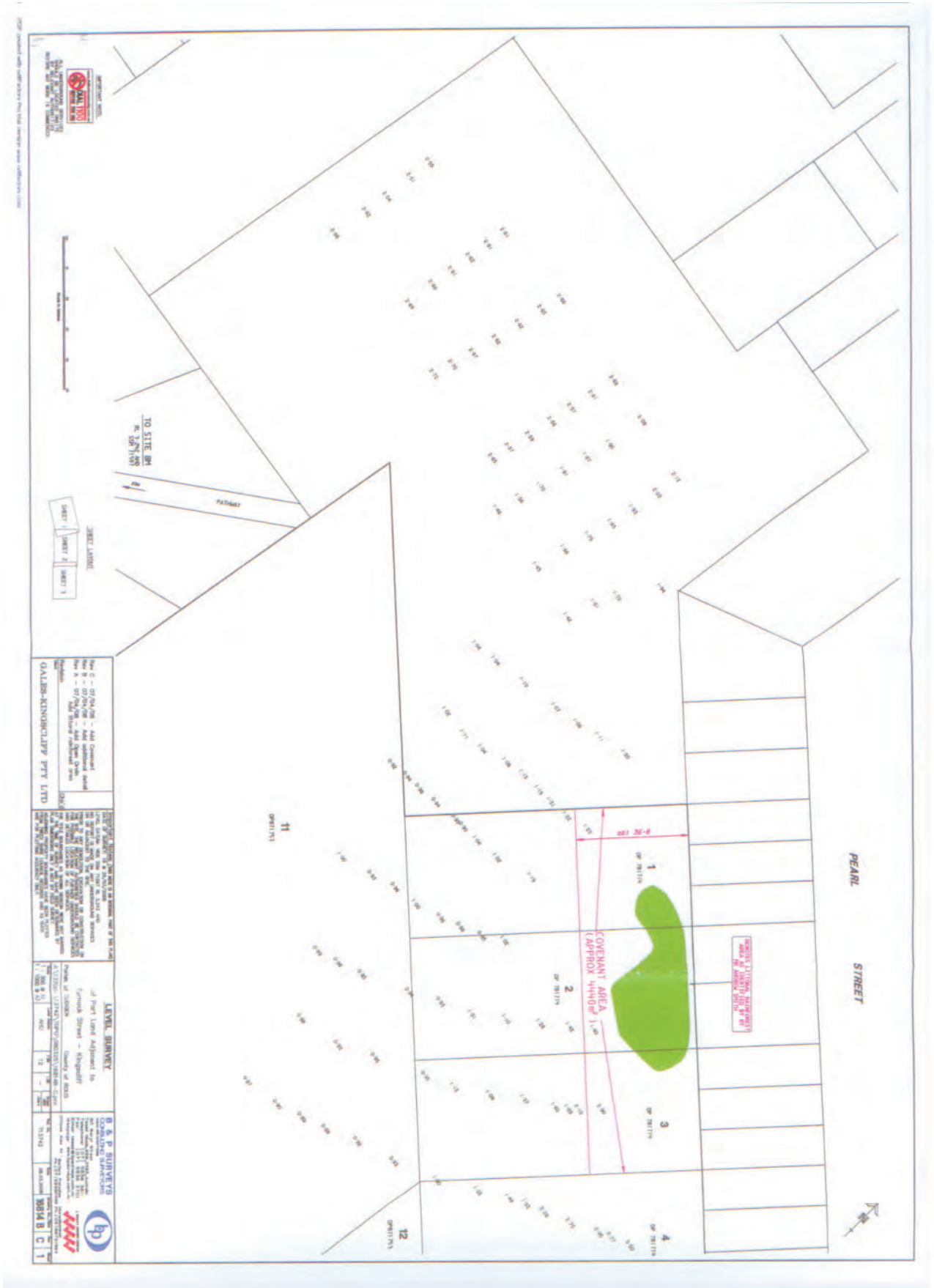
- (h) the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;
- (i) the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;
- (j) carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;
- (k) erecting, carrying out or using the land for environmental facilities, being a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, boardwalks, observation decks, bird hides, or the like, and associated display structures;
- (l) carrying out any other work permitted by the Management Plan.
- (m) landscaping and management (including mowing and weeding) outside the littoral rainforest area coloured green on B & P Survey drawing 16814B Revision C ("The littoral rainforest area") and which does not interfere with the ecological integrity of the littoral rainforest area.
- (n) the construction outside the littoral rainforest area of services for development the subject of consent or approval on any of the said lots and which does not interfere with the integrity of the littoral rainforest area.
- (o) Carrying out any work which would not interfere with the ecological integrity of the littoral rainforest vegetation community in the area coloured green on B&P Survey Drawing 16814B Rev C.

4.

- (a) The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which a conservation agreement is entered into under Part 4 of Division 7 of the *National Parks and Wildlife Act 1974*.
- (b) The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.

(c) The restriction on use may otherwise be released with the consent of the Tweed Shire Council.

5. Any work on the land the subject of this covenant shall be carried out under the guidance of an ecologist with experience and expertise in littoral rainforest.
- 5A Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation.
6. The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.



TERMS OF FOURTH RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is Lot 26D in DP 10715 shown indicatively as the Wallum Froglet Habitat Area (WFHA) being west of Elrond Drive as shown on Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012. For practical purposes the extent of the Covenant needs to embrace this area and extend to the fenceline in the East and either the fenceline or the top of bank of the drain in the south. The other boundaries are appropriate. The extent is to be detailed on a final survey plan.

Restrictive covenant for conservation purposes in respect of the Wallum Froglet to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

1. *In this instrument, unless the contrary intention appears –*
 - “animals” includes sheep, goats, horses, deer and cattle.*
 - “clearing” and “cleared” in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.*
 - “development” in relation to land, means –*
 - (a) the erection of a building or structure (other than a fence) on the land; or*
 - (b) the carrying out of a work in, on over or under the land;*
 - “Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the Environmental Planning and Assessment Act 1979 or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.*
 - “registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the Real Property Act 1900.*
 - “substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.*

“vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.

2. *In respect of the Wallum Froglet Habitat Area shown on Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012;*

(i) Without the prior written consent of the Tweed Shire Council –

- (a) no person shall reside on the land;***
- (b) no animal shall be depastured or driven on the land;***
- (c) no development shall be carried out on the land;***
- (d) the land shall not be cleared, slashed or cultivated;***
- (e) no substance, whether or not in or forming part of the land, shall be interfered with;***
- (f) no fire shall be lit on the land;***
- (g) no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and***
- (h) no use shall be made of the land or activities undertaken on the land which would interfere with or prevent the natural growth or regeneration of vegetation on the land.***

(ii) Any work shall be carried out under the guidance of an ecologist with experience and expertise in the habitat of the Wallum Froglet.

3. *In respect of all areas shown indicatively as Wallum Froglet Habitat Area on the Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012 other than those referred to in clause 2 above, such land shall be managed to facilitate the conservation of the wallum froglet in the Wallum Froglet Habitat Area.*

4. *This covenant does not prevent or restrict in accordance with Law:*

- (a) the destruction or removal of vegetation declared to be a noxious weed under the Noxious Weeds Act 1993 or an Act consolidating or replacing that Act; or***

- (b) the destruction or removal of vegetation which is a prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985 or an Act consolidating or replacing that Act; or*
- (c) the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or*
- (d) the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or*
- (e) the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the Surveyors Act 2001 or any Act consolidating or replacing that Act;*
- (f) the destruction or removal of vegetation or substance in compliance with the Rural Fires Act 1997 or any Act consolidating or replacing that Act; or*
- (g) the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;*
- (h) the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;*
- (i) carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;*
- (j) DELETED;*
- (k) carrying out any other work permitted by the Management Plan.*
- (l) carrying out any other work pursuant to development consent DA05/0004 and maintenance thereof.*

5.

- (a) The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which a conservation agreement is entered into under Part 4 of Division 7 of the National Parks and Wildlife Act 1974.*

(b) The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.

(c) The restriction on use may otherwise be released with the consent of the Tweed Shire Council.

5A Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation.

6. The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.

REPORT:

Applicant: Gales Holdings Pty Ltd
Owner: Gales Holdings Pty Ltd
Location: Part Lot 3 DP 828298 Cudgen Road and Tweed Coast Road, Cudgen; Lot 26C & 26D DP 10715; Quigan Street, Kingscliff; Lots 11-14 DP 871753 and Lots 2-9 DP 781714 Turnock Street, Kingscliff
Zoning: 2(c) Urban Expansion, Uncoloured Land, 5(a) Drainage Reserve, 7(l) Environmental Protection (Habitat), 1(b1) Agricultural Protection, and Deferred Area
Cost: Not Applicable for S96

Background & Proposed S96AA Details:

The subject application and the subject site generally have extensive development histories. Relevantly the NSW Land & Environment Court approved DA05/0004 on 28 August 2008.

The approved application incorporated filled areas to the north and south of Turnock Street (totalling 360,000m³), a Wallum Froglet Precinct north of Turnock Street (approximately 1ha of core habitat and an extra 1.4ha in ancillary drainage works) a haul road extending to the west and connecting with Tweed Coast Road, drainage works, and water quality treatment works.

The Determination Notice and the Judgement form **attachments** to this report.

The Court approved the proposal subject to three detailed deferred commencement conditions which related to:

- A.** A Wallum Froglet Management Plan and 12 months of frog monitoring;
- B.** A Revised haulage route to minimise tree loss;
- C.** The re-assessment, monitoring and design of the drainage system and water treatment train so that it meets the agreed water quality and hydro cycle features needed to maintain Wallum Froglet Habitat in the Wallum Froglet Precinct area

These conditions were originally to be satisfied within 2 years of the original consent (28 August 2010).

On 20 May 2010 Council approved DA05/0004.01 to extend the 2 year time frame to 5 years for Points B & C and 4 years for Point A (28 August 2013 and 28 August 2012).

On 2 August 2012 Council approved DA05/0004.02 to extend the 4 year time frame for Point A to five years. This amendment had the effect of extending all three deferred matters to be satisfied within 5 years of the original determination date (28 August 2013).

The current S96AA Modification seeks to remove the three deferred commencement conditions (and replace their intent within the body of the consent) and physically commence works before 28 August 2013 to ensure DA05/0004 remains valid into perpetuity.

Specifically the S96AA seeks to make the following amendments:

- 1. Increase the allowable importation of fill from 360,000m³ to approximately 580,000m³ to accommodate the following changes:**
 - (a) Undertake new filling work within the area approved as the Wallum Froglet Precinct north of Turnock Street (including filling the associated stormwater treatment areas).**

- (b) Undertake new filling work within the previously approved main trunk drainage channel.
- (c) Undertake additional filling work to the areas previously approved (3.5m AHD) for fill to ensure the site achieve a minimum level of 3.6m AHD (Council's climate change design flood level).

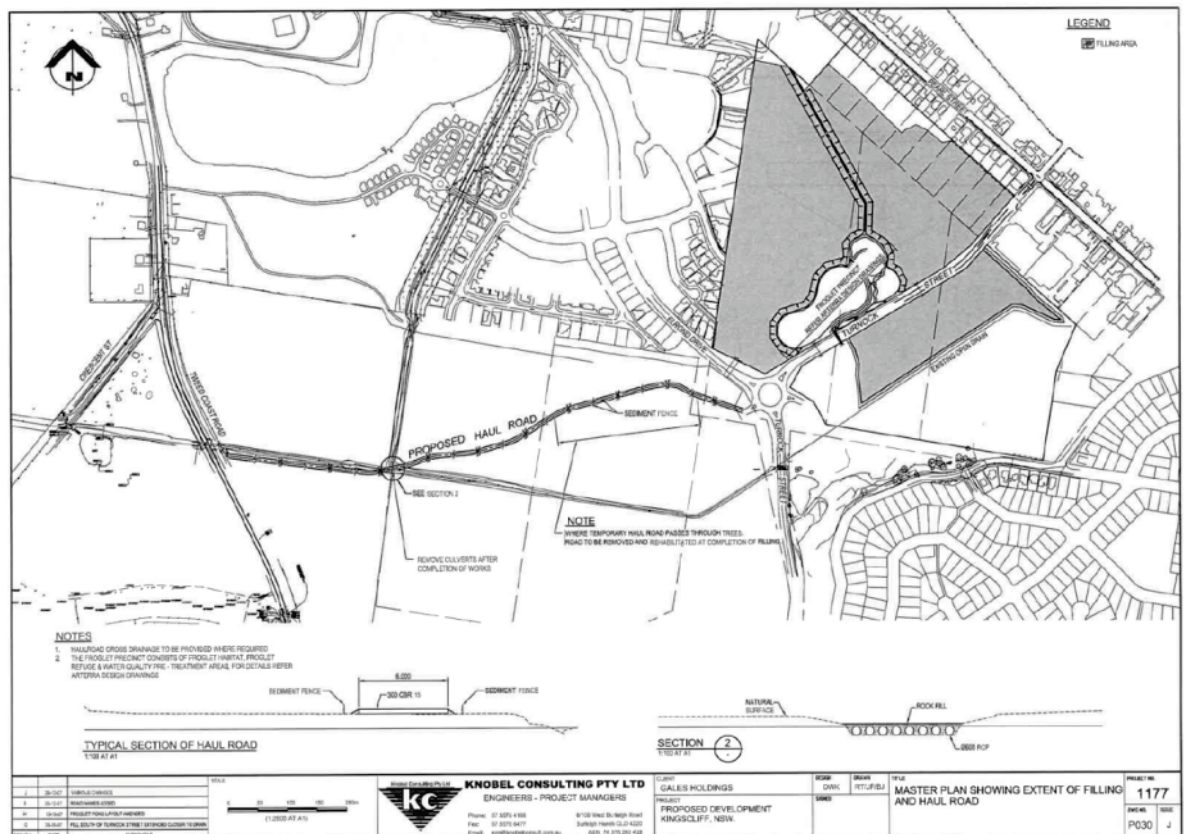
The applicant has stated that the justification for this amendment is directly related to Council undertaking the Blue Jay Circuit Scheme which negates the need for Gales to accommodate stormwater draining to the northern limit of their site and therefore the approved "main trunk drainage channel" that dissects the site will not be required.

As a result of the changed hydraulic regime north of Turnock Street the applicant concludes that there already is, and will be further, decline of the Wallum Froglet population north of Turnock Street and accordingly an alternative habitat area has been proposed.

The applicant states that future urban development will be benefitted by the amendment as a larger area of the site will be available for development and a major constraint to the design of the road layout and subdivision pattern will be removed resulting in better utilisation of urban land.

And finally the increase in height of the fill is a direct result of Council's climate change design flood level. The applicant has stated that the additional fill material will be sourced from the same location as currently approved fill.

The previous master plan showing the Wallum Froglet Precinct, extent of filling and haul road fill envelope was as follows:



The proposed fill envelope is now as follows:



2. **Relocate the approved Wallum Froglet habitat area from the north of Turnock Street to west of the Elrond Drive Turnock Street roundabout within Lot 26D in DP 10715 and undertake works within the new habitat area to enhance the areas suitability for frogs.**

The applicant has stated that due to the changing hydraulics in the area the original Wallum Froglet Precinct is unlikely to provide a sustainable Wallum Froglet Habitat Area.

The applicant advises that the proposed Wallum Froglet Precinct is considered suitable because:

- *It comprises a core habitat area of approximately 1.3 ha (with an additional partly treed area of 0.8 ha) larger than the core habitat area for the approved Wallum Froglet Precinct north of Turnock Street (1 ha).*
- *The alternative Wallum Froglet Habitat Area is largely clear of trees.*
- *Ground levels are lower than the approved Wallum Froglet Precinct to the north of Turnock Street - generally less than 0.6m AHD (approximately 0.2 m lower than within the Wallum Froglet Precinct).*
- *Both sites are located on Quarternary Sands.*

It is concluded that the alternative habitat area offers significant advantages over the Wallum Froglet Precinct because:

1. *The approved Wallum Froglet Precinct will be isolated as it will be "completely surrounded by fill with urban development on three sides and a raised road (Turnock Street) on the fourth. Complicated hydrological engineering is required to maintain the Wallum Froglet Habitat within the Wallum Froglet Precinct, and given the close proximity of the urban development there will be ongoing management issues and associated risks." – Wallum Froglet Management Plan December 2012*
2. *The alternative habitat area is located adjacent to the Kingscliff Drain and land that is zoned for environmental protection. By locating the habitat area as proposed there will be an ecological linkage and the perimeter of the environmental land is increased which provides for a greater resilience to this area.*

To ensure the proposed Wallum Froglet Habitat Area is viable certain hydrological works are required. Accordingly this S96AA specifically seeks approval for drainage works as follows:

Stage 1 – Wetting up to kill pasture grasses. This will be achieved by minor engineering works that would consist of bunds to block drains, diversion drains, a temporary levee and weirs in existing drains.

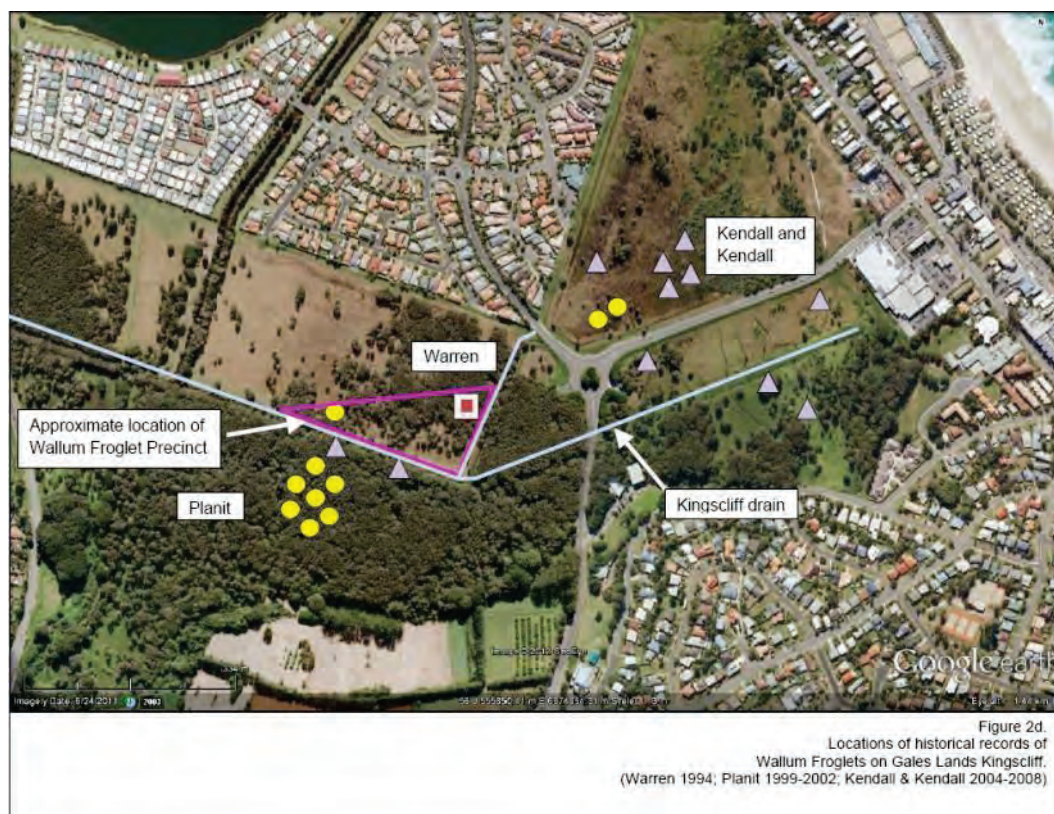
Stage 2 – Works to establish the long term hydraulic regime. Minor engineering works carried out as required to achieve ephemeral ponding of 6 weeks or more in summer and up to 6 months in winter. The required ponding will be achieved through adjustments to weirs, bunds and drains.

Stage 3 – Additional works to establish ephemeral ponds. If the desired outcomes are not achieved by adjusting the hydrology then minor

excavation (150 to 200mm) to create localised depressions will be considered.

It is proposed that these works will be authorised by this S96AA and no Construction Certificate will be required for such minor works. If works as detailed above are commenced prior to 28 August 2013 then DA05/0004 will be deemed to have been physically commenced.

The proposed Wallum Froglet Habitat Area is shown diagrammatically below:



3. Construct water quality treatment areas adjacent to the Elrond Drive Turnock Street roundabout, south of Turnock Street.

This change is necessary to accommodate the new hydraulic regime.

4. Construct larger culverts under Elrond Drive to convey stormwater to Kingscliff drain.

This change is necessary to accommodate the new hydraulic regime.

5. Construct stormwater culverts under Turnock Street.

This change is necessary to accommodate the new hydraulic regime.

6. Accommodate stormwater drains discharging onto Gales land.

This change is necessary to accommodate the new hydraulic regime.

7. Modify the development consent to remove the need for a Deferred Commencement Condition

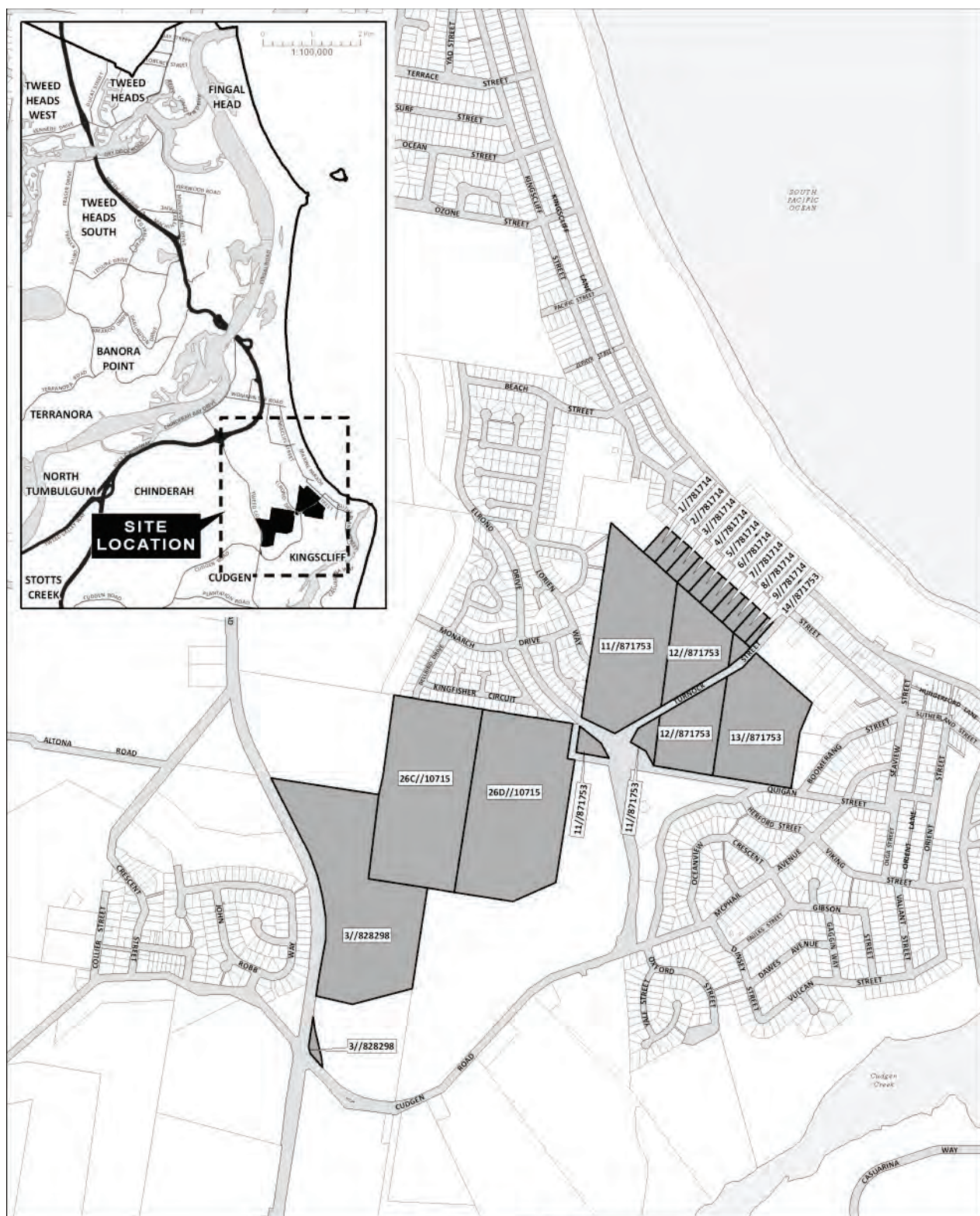
This change is necessary to ensure lawful physical commencement can occur prior to 28 August 2013.

8. Modify many conditions of the consent to reflect the new plans and changes as detailed above.

The many necessary changes are discussed in detail within this report.

The appropriateness of the proposed S96AA is assessed in the following report.

SITE DIAGRAM:



Locality Plan
DA05/0004.03

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Map Projection: Universal Transverse Mercator
Geoid: Geoid of Australia 2004
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Civic and Cultural Centre
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AERIAL PHOTOGRAPH 2012:



Aerial Photo
DA05/0004.03

Aerial Imagery May 2012
Aerial imagery was captured on
6th to 9th May 2012 © AAM Pty Ltd

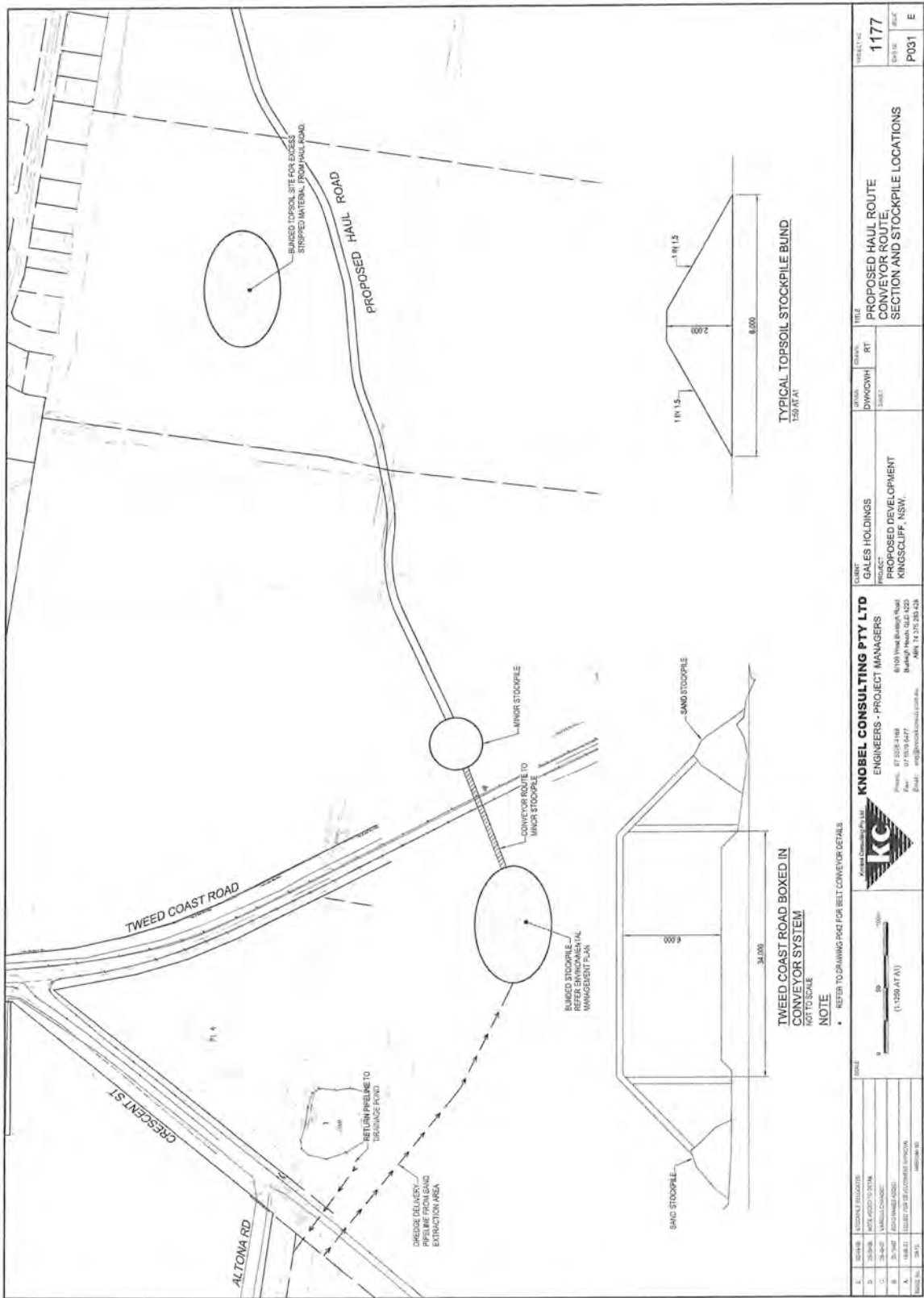
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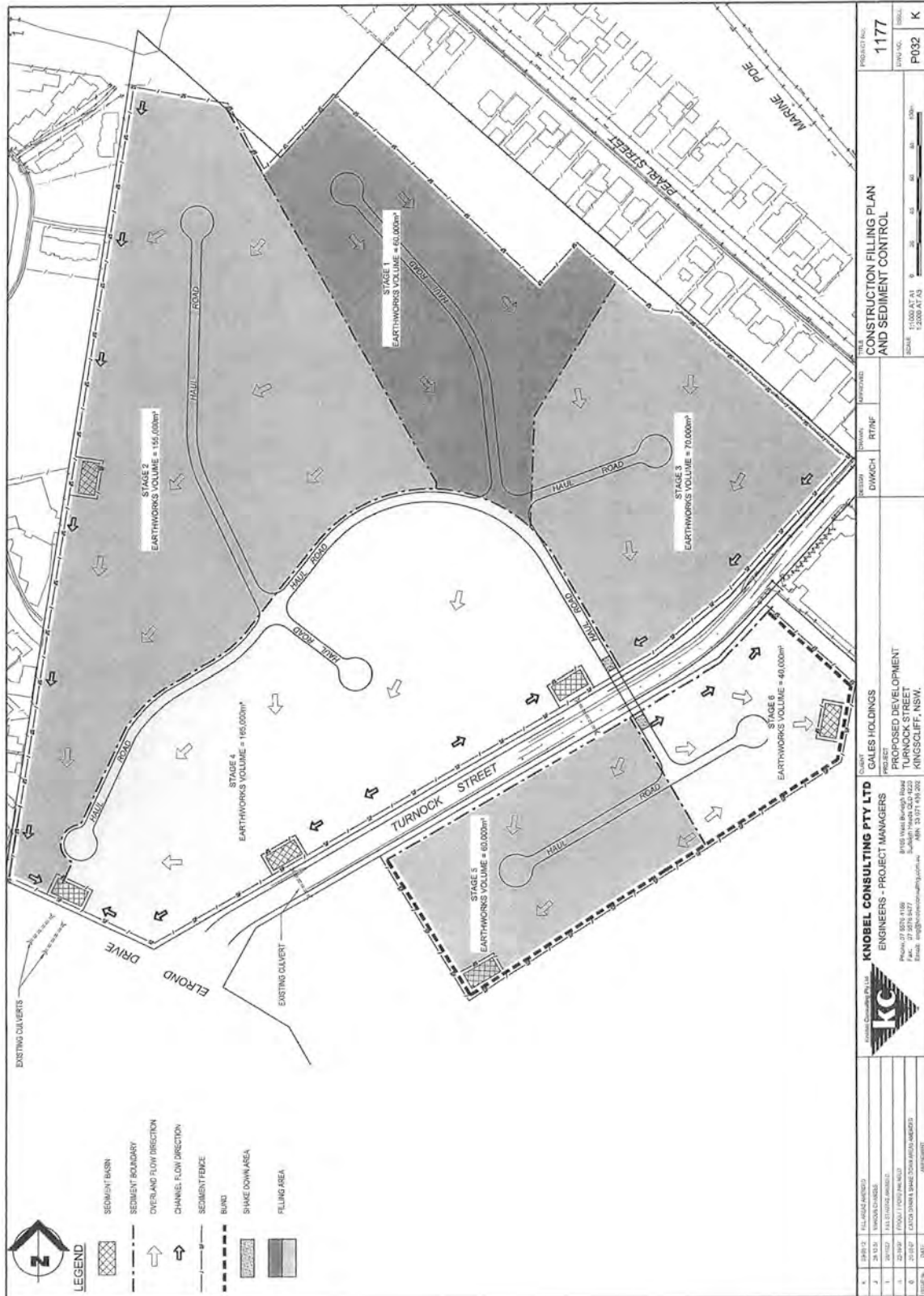
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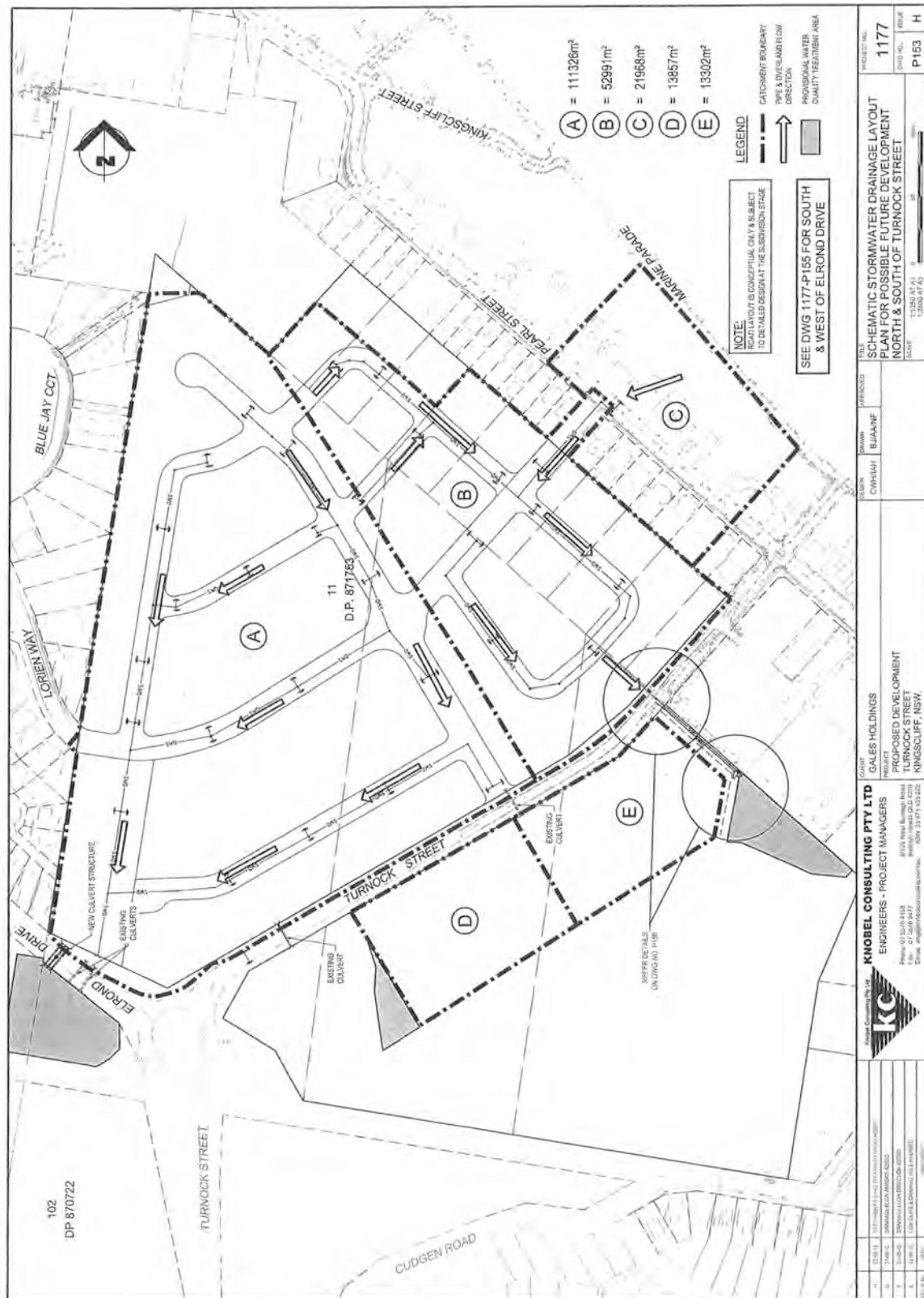


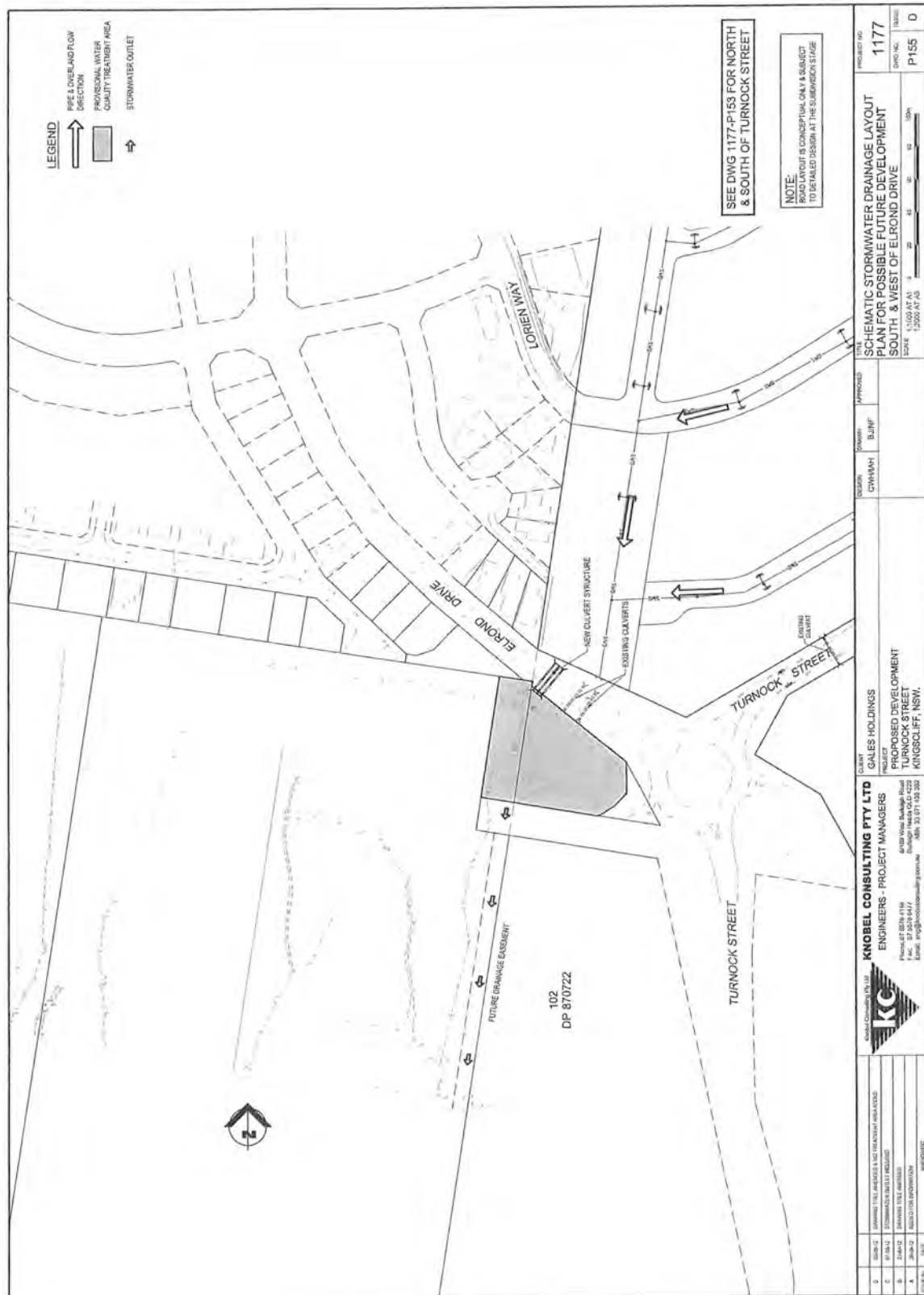


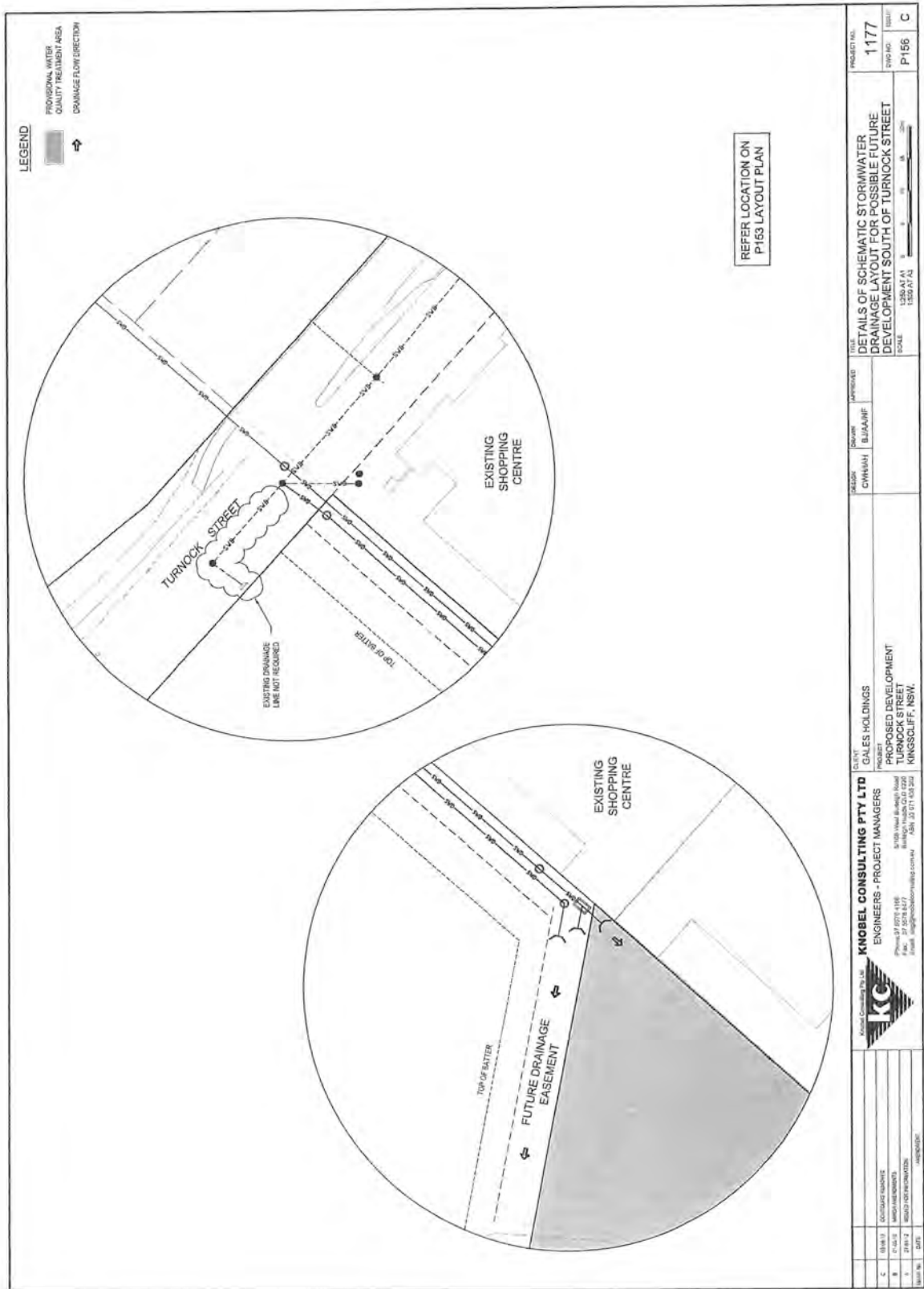
				KNOBEL CONSULTING PTY LTD ENGINEERS - PROJECT MANAGERS		CLIENT GALES HOLDINGS	TITLE PROPOSED HAUL ROUTE CONVEYOR ROUTE SECTION AND STOCKPILE LOCATIONS	
Project: F2324-148 8/100 Vines Road, Kingscliff Bundage NSW 2460 Phone: 07 5534 1188 Fax: 07 5534 8477 Email: info@knobel.com.au				Proposed Development Kingscliff, NSW.		1177		
Revision No.				Revision Description		Revision Date		
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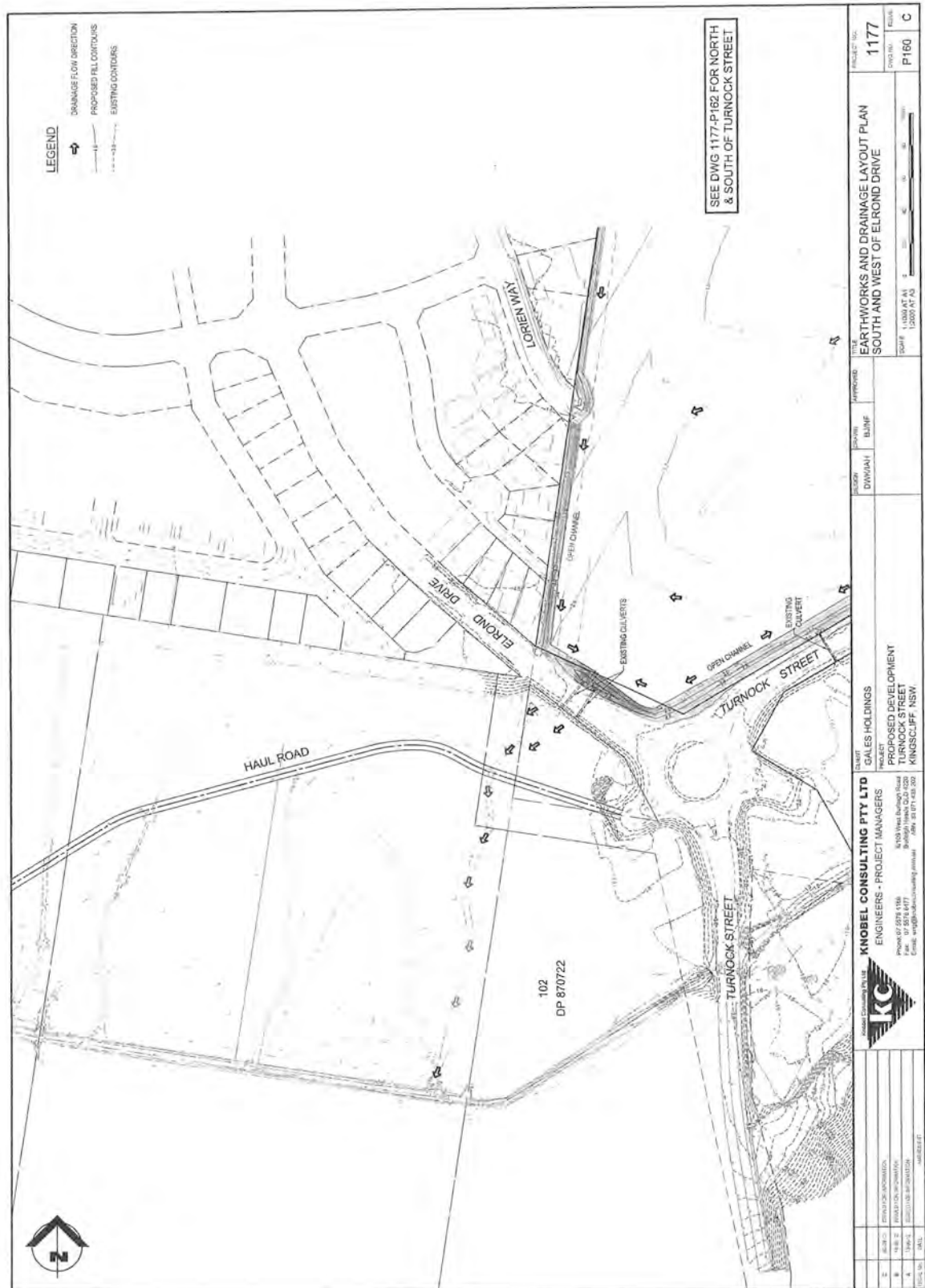


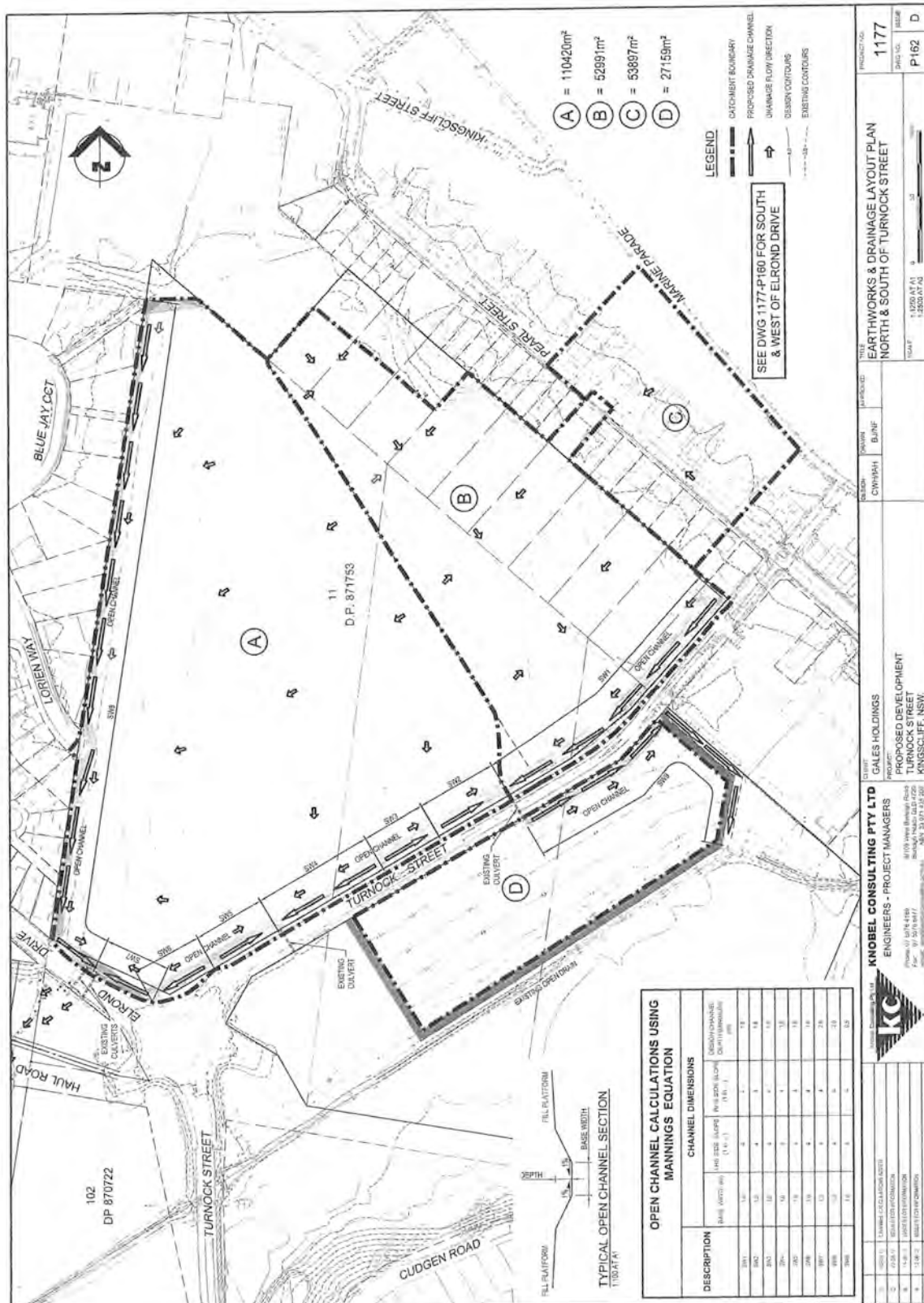


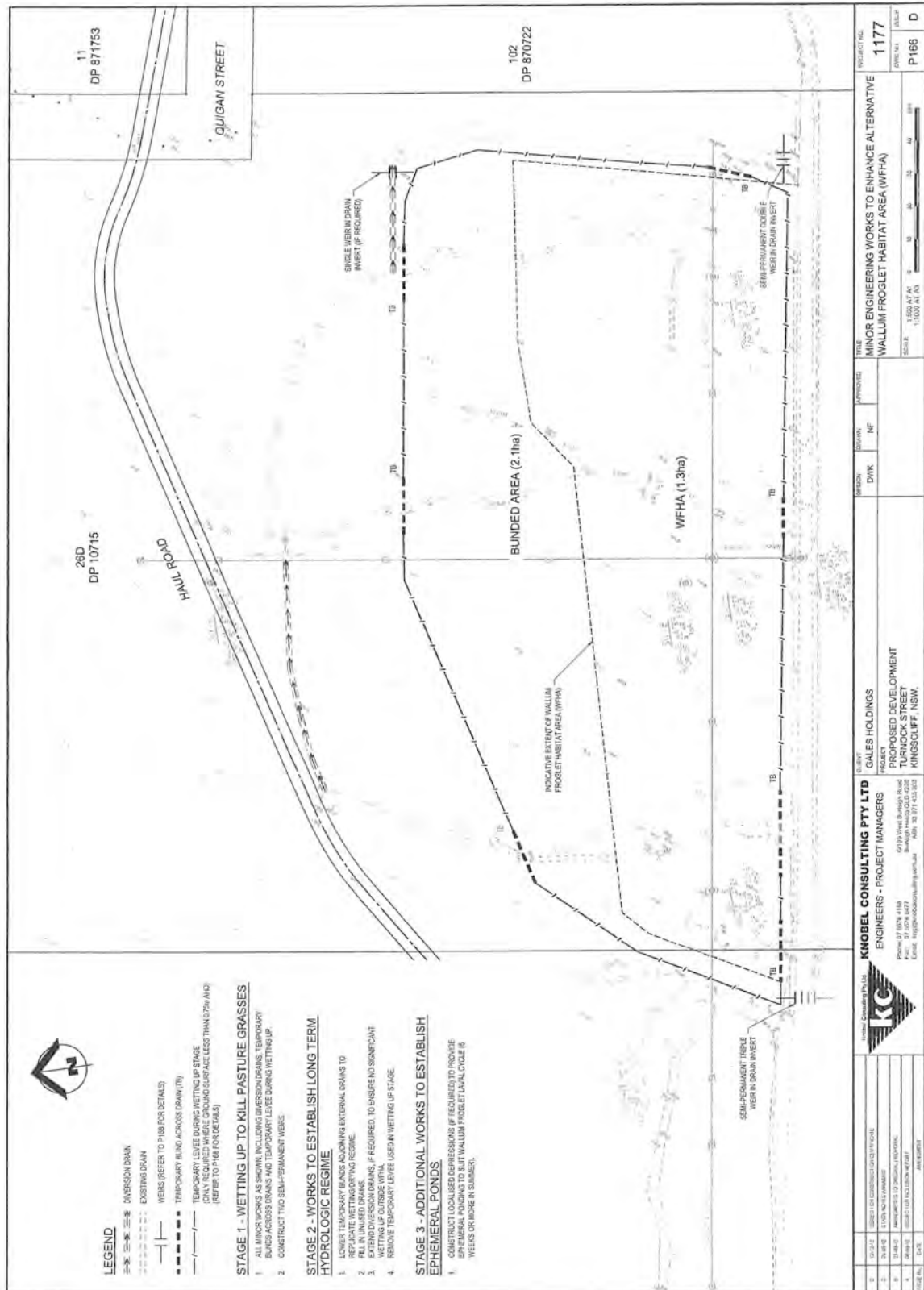














CONSIDERATIONS UNDER SECTION 79C AND 96AA OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96(AA) of the Act specifies that a Council can modify a Court Approved development consent only if it is satisfied that the proposed modified development is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken and considered in the assessment of the application.

The Act specifies that in determining an application for modification the consent authority must take into consideration such of the matters referred to in Section 79C(1) as are of relevance to the application.

Assessment of Substantially the Same Development and the Provisions of 79C of the Act

The applicant's proposal to relocate the Wallum Froglet Habitat Area, undertake additional filling and amend the drainage regime in the area has been considered by relevant Council staff.

The proposed location of the alternative Wallum Froglet Habitat Area is proposed within that part of Lot 26D in DP 10715 zoned 2(c) Urban Expansion under the Tweed Local Environmental Plan 2000 (Tweed LEP 2000), which is the same zone that the previous Wallum Froglet Precinct was located within. Therefore many of the statutory considerations remain unchanged.

The following merit assessments have been undertaken on the various aspects of the proposal:

Proposed Additional Filling Amendments

The applicant has provided an amended filling plan for the site, which removes the Wallum Froglet Precinct, the major drainage channel, and stormwater treatment area from the filled area north of Turnock Street.

Council's Blue Jay Circuit Scheme consists of a significant upgrade to the east-west drainage system connecting Gales land and adjoining catchments to the north to the Kingscliff Drain. Council's upgrade will achieve Q100 capacity, thereby allowing the range of design storms (minor and major) to flow to the west without having to traverse Gales' land. Construction is well advanced at the time of this assessment.

Due to this drainage upgrade, the major drainage channel through the fill is no longer necessary, and the fill plan has been amended accordingly. No objections are raised to this amendment.

The S96AA application proposes the relocation of the Wallum Froglet Precinct to a location south west of the Turnock Street-Elrond Drive roundabout. On the assumption that this relocation is supported by Council, the filling of the WFP area is not opposed, as it maximises the developable area and removes a significant constraint on the design and construction of the future subdivision of the site.

In the approved development, a stormwater treatment area was provided adjoining the Wallum Froglet Precinct. This area was required to treat urban runoff from the filled land and subsequent urban development to achieve the requirements of Development Design Specification D7, as well as additional ecologically based water quality objectives (WQOs) prior to discharge to the Wallum Froglet Precinct. Should the Wallum Froglet Precinct be relocated as proposed, it would also be feasible to relocate the stormwater treatment area. The applicant has nominated an area west of the Turnock Street-Elrond Drive roundabout to provide a treatment area that will apparently comply with D7. As direct discharge to the Wallum Froglet Precinct is no longer required, additional WQOs are also no longer relevant.

These amendments are supported in principle as it separates the "engineering" and the "ecological" aspects of the water management system, and simplifies design, construction and future maintenance.

Since the original Court approval, Council has updated the Tweed Valley Flood Study, and revised design flood levels in DCP Section A3 - Development of Flood Liable Land. A3 now specifies that "greenfield" subdivision is required to be filled to climate change affected design flood levels, to take into account future sea level rise and increased storm intensity. Accordingly, the design flood level increased from RL 3.3m AHD to RL 3.6m AHD at the subject site. The approved plans show land filled to a minimum of RL 3.5m AHD, so increases in fill to accommodate this upward revision of design flood level are necessary and are supported. The additional filling is not expected to have any significant impact on local flood behaviour in the locality, given the footprint of the fill does not change significantly, and that initial modelling done with the filling Development Application already assumed that the entire site would be filled, for simplicity.

Cumulatively, a significant increase in the volume of fill to be imported to the site results from these amendments, from the approved maximum 360,000m³ to 580,000m³, a 220,000m³ increase. The applicant has proposed no changes to the approved importation system, which consists of sand extraction west of Crescent Street Road, a conveyor over Tweed Coast Road to a stockpile site, and then truck haulage along an approved route to Turnock Street, utilising an existing stub on the Turnock Street roundabout, and then onto the site.

An addendum traffic report has been prepared by Cardno dated September 2012 to address the effects of the additional haulage movements.

The original haulage timetable was based on one excavator loading a truck and trailer combination with a 15m³ haulage capacity, arriving at the site every five minutes. This generates the following based on working a nine hour day, 6 days per week:

- 216 daily truck movements
- 24 peak hour truck movements
- 48,000 total truck movements
- 37 week haulage and filling program

The current S96AA proposes two haulage timetables to address the additional truck movements. Haulage timetable one proposes the same rationale as used in original timetable resulting in a longer timeframe to provide an additional 220,000m³ of fill to the site, resulting in a 60 week time table. The second timetable proposes an additional excavator and trucks to increase the haulage rate. This assumes a fully loaded truck and trailer can arrive to the site every 3.2 minutes. Therefore equating to 38 truck movements in one hour. This scenario could be challenging to achieve without adequate project management and programming the availability of trucks and trailers. This method of filling will generate the following based on a working a nine hour day, 6 days per week:

- 348 daily truck movements
- 38 peak hour truck movements
- 77,333 total truck movements
- 37 week program (same time frame as the original proposal)

The additional truck movements (maximum 132 extra trips above what is already approved) on Turnock Street are not expected to impact on capacity or safety, particularly if channelised turn treatments are provided. One issue is that in providing these turning lanes, the existing on-road shared user path on the northern side of Turnock Street will be impacted, and alternative arrangements and/or traffic control measures are needed to accommodate safe pedestrian and cyclist movements throughout construction.

In regards to noise, dust and general amenity issues associated with the additional fill the applicant has submitted an amended Environmental Management Plan. In addition there are recommended conditions of consent for construction noise management plans prior to issue of a construction certificate. The additional trips generated by the additional fill is not considered to raise any new significant issues but rather extend the construction period and or intensify operation to enable the additional fill to be imported. Given the extent of earthworks already approved by the Court the additional fill is considered in keeping with the intent of the original consent.

It is expected that proponent will be able to adequately project manage community complaints and queries associated with the filling works, therefore a condition has been recommended for the nomination of a community liaison officer by the proponent.

A construction management plan is also requested with the construction certificate application or engineering plans as statutorily required, to provide detail on construction management of the site plus sequencing/programming of the filling/earthworks.

Recommended new condition – community liaison officer

A COMMUNITY LIAISON OFFICER AND COMMUNITY LIAISON CONTACT PHONE NUMBER SHALL BE AVAILABLE ON A 24 HOUR BASIS DURING CONSTRUCTION WORKS. DETAILS OF THE CONTACT PERSON AND TELEPHONE NUMBER SHALL BE CLEARLY DISPLAYED AT THE SITE ENTRY. DETAILS OF THE CONTACT PERSON AND TELEPHONE NUMBER SHALL BE LOCALLY ADVERTISED A MINIMUM OF FOURTEEN DAYS (14) PRIOR TO THE COMMENCEMENT OF WORKS AND LOCAL AFFECTED RESIDENTS NOTIFIED BY MEANS OF AN INDIVIDUAL LETTER DROP TO EACH HOUSEHOLD.

A SIGN IS TO BE ERECTED AT THE ENTRY OF THE SITE TO CLEARLY ADVISE THE COMMUNITY LIAISON OFFICERS DETAILS AND CONTACT NUMBER. THESE DETAILS ARE TO BE DOCUMENTED IN THE CONSTRUCTION MANAGEMENT PLAN.

Recommended new condition – construction management plan

A construction management plan is to be provided for the filling and earthworks. These details are to be submitted with the application for a Construction Certificate and or Engineering Plans as statutorily required for the filling and earthworks, identifying how the site and filling works are to be programmed and managed.

The construction management plan shall address, not be limited to, the following matters where relevant:

- *Sequencing of filling/earthworks*
- *Contact details of site manager & community liaison officer*
- *Traffic and pedestrian management*
- *Dust Management*
- *Noise and vibration management*
- *Construction waste management*
- *Erosion and sediment control; and*
- *Flora and fauna management.*

These new conditions form part of the recommendation for this report.

Wallum Froglet Habitat Area

Prior to the applicant lodging the subject S96AA Application the applicant attended the Development Assessment Panel seeking guidance on the proposal.

A meeting of the Development Assessment Panel on 20 January 2012 determined that Council could consider a relocated Wallum Froglet Habitat Area provided that:

...any proposal to relocate the Wallum Froglet habitat area should meet the following conditions:

- 1. Identification of suitable non-bushland area(s) at least as large as the area to be relocated.*
- 2. Agreement among experts on the technical feasibility of recreating Wallum Froglet habitat and re-establishing a Wallum Froglet population.*
- 3. Any areas of new Wallum Froglet habitat should be established prior to the filling of the existing areas to the north and south of Turnock Street.*
- 4. Preparation and commitment to the implementation of an agreed management plan and monitoring strategy for a period of 5 years.*
- 5. Any new areas of Wallum Froglet habitat to be protected by restriction on title and environmental protection zoning.*

To demonstrate compliance with the above the applicant submitted a Wallum Froglet Management Plan. During the course of the assessment the Wallum Froglet Management Plan has been amended on two occasions. The above matters have now been adequately addressed within the latest management plan and brief commentary is provided below in this regard:

1. Identification of suitable area

The Wallum Froglet Habitat Management Plan submitted with the modification nominates an alternative area in the south-eastern corner of the northern half of Lot 26D DP10715, approximately 350m to the southwest of the Wallum Froglet Precinct to be dedicated to the creation of Wallum Froglet Habitat. The land is currently zoned 2(c) Urban Expansion. An area of approximately 1.3ha of predominantly cleared grazing land and an additional 0.8ha of partly treed land has been identified as the focus of this plan.

This location is considered to provide a more secure and sustainable area for habitat restoration/recreation due to its location in the landscape, adjacent vegetation remnants and 7(l) Environmental Protection (Habitat) zoning of land to the south.

2. Technical feasibility of recreation of Wallum Froglet habitat

The approach to the creation of suitable habitat for the Wallum Froglet is largely experimental and requires substantial manipulation of the existing conditions at the site. Council recognises that the site will require clearly defined targets, close monitoring and an adaptive response in order to achieve the desired outcomes. The initial management plan did not demonstrate sufficient monitoring for Council to be satisfied that appropriate water quality and that an appropriate hydrological regime could be achieved consistently. The latest Management Plan has incorporated the monitoring as required by Council to satisfy this provision.

3. Establishment of new areas of habitat prior to filling

The target vegetation community nominated for the proposed Wallum Froglet Habitat Area is modelled on the vegetation community recorded within the approved Wallum Froglet Precinct and requires a shift from a pasture grass to a sedgeland community. This is to be achieved through the initial "wetting-up" stage to remove existing pasture grass and *Melaleuca* seedlings and favour sedge growth, followed by manipulation of the drainage regime to maintain a sedgeland community on the site. The target for habitat establishment is generally stated to be 80% sedge/fern cover. This is considered acceptable and is to be measured using a quadrat-based survey design.

The revised Management Plan ensures that all targets and performance measures/thresholds are included in the Management Action table (Table 5) and that targets are clear and consistent throughout the Plan.

4. Implementation of management for a 5-year period

The original plan did not make a commitment for a 5-year period of management. The original plan only committed to the carrying out of wetting-up, modification of hydrology and ground level modification until establishment of the target vegetation parameters are met. One year of Wallum Froglet and habitat monitoring is specified post-habitat establishment. It is suggested that hydrology and habitat targets will take up to two years to establish. If this is the case, the requirements of the plan could be carried out within three years.

The amended Wallum Froglet Habitat Management Plan indicates approximately a two year establishment period (this could be less) with a commitment to monitoring for a minimum of three years post-establishment, such that approximately a five year management period is achieved.

5. Long-term protection of land

The original Management Plan contained no reference to a proposed mechanism for long-term protection of the Wallum Froglet Habitat Area. The recommended conditions of consent incorporate the need for a protective covenant for the new Wallum Froglet Habitat Area.

For the reasons outlined above the proposed relocation of the Wallum Froglet Precinct is supported from an ecological perspective.

In regards to drainage with the new Wallum Froglet Habitat Area Council acknowledges the required onsite works, and provided they do not result in the diversion of water or cause ponding on adjoining land, no concerns are raised. Any works that impact on the main Kingscliff Drain where it bounds the site will need to ensure that there are no significant impacts on tailwater conditions for existing drainage systems and private land upstream. These will need to be addressed in detail with the construction certificate.

Due to the adaptive management approach to this habitat area, the appropriate measures to influence hydraulic behaviour in the locality will need to change from time to time and be closely monitored for impacts (both positive and negative). Appropriate conditions are recommended in this regard.

Stormwater Management

The revised fill design removes several key constraints to future subdivision design, particularly with regard to stormwater drainage. While subdivision works are not part of the S96AA Application, the applicant has provided a schematic subdivision design to demonstrate an alternative drainage system that is compatible with finished fill levels, the future road layout, and revised discharge points.

The most significant change to note in this concept design is that the main discharge point for the major catchment north of Turnock Street will now be new culverts under Elrond Drive, rather than upgraded Turnock Street culverts as per the approval.

Other catchments north of Turnock Street, including an external catchment, will be directed southward to a new line running along the eastern boundary adjacent to the existing supermarket site. The existing Turnock Street drainage system will be connected into this system.

These arrangements are all generally acceptable, subject to a future subdivision application where these measures will be formalised. The consultants' reports demonstrate that a future residential subdivision can be adequately serviced in accordance with the revised filling plan.

Proposed Changes to Conditions

As part of the S96AA the applicant has requested many amendments to the existing conditions of consent. The following is a list of all the recommended changes to accommodate the applicant's amended proposed amendments:

1. **Delete the Deferred Commencement Heading and all parts of Schedule A** as this consent will no longer be considered a deferred commencement consent. Schedule A had the 3 components which can be summarised as follows:
 - A. *A Wallum Froglet Management Plan and 12 months of frog monitoring;*
 - B. *A Revised haulage route to minimise tree loss;*
 - C. *The re-assessment, monitoring and design of the drainage system and water treatment train so that it meets the agreed water quality and hydro cycle features needed to maintain Wallum Froglet Habitat in the Wallum Froglet Precinct area.*

The deletion of deferred matter A and C are considered acceptable as all relevant matters have now been addressed in the revised Wallum Froglet Management Plan.

In regards to the haulage route this deferred commencement condition can be moved to normal part of the consent as a condition prior to issue of a construction certificate. Therefore no objection is raised to the deletion of the deferred commencement heading and schedule A.

2. **Delete the reference to Schedule B and the associated NOTE in regards to Part B of the Consent**

This is an administrative change derived from the changes as detailed in 1 above.

3. **Delete Condition 1 which listed the approved plans and replace it with new Condition 1.1 to read as follows:**

- 1.1 The development shall be completed in accordance with the Amended Statement of Environmental Effects (November 2007) except where varied by the approved S96AA Applications (DA05/0004.01, DA05/0004.02 and DA05/0004.03) and the approved plans as follows:
 - (a) Approximate Haul Road as approved per DA05/0004.03 – Project Number 1177 Plan No P030 Issue K prepared by Knobel Consulting Pty Ltd and dated 3/08/2012,
 - (b) Haul Route, Conveyor Route Section and Stockpile Plan as approved by the original DA05/0004 – Project Number 1177 Plan No P031 Issue E prepared by Knobel Consulting Pty Ltd and dated 2/4/08,

- (c) Construction Filling Plan And Sediment Control as approved by DA05/0004.03 - Project Number 1177 Plan No P032 Issue K prepared by Knobel Consulting Pty Ltd and dated 3/08/2012,
- (d) Boxed In Conveyor System as approved by the original DA05/0004 - Project Number 1177 Plan No P042 Issue B prepared by Knobel Consulting Pty Ltd and dated 28/03/2008,
- (e) Schematic Stormwater Drainage Layout for possible future development North & South of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P153 Issue H prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (f) Schematic Stormwater Drainage Layout for possible future development South & West of Elrond Drive as approved by DA05/0004.03 - Project Number 1177 Plan No P155 Issue D prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (g) Details of Schematic Stormwater Drainage Layout for Possible Future Development South of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P156 Issue C prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (h) Earthworks and Drainage Layout Plan South and West of Elrond Drive as approved by DA05/0004.03 - Project Number 1177 Plan No P160 Issue C prepared by Knobel Consulting Pty Ltd and dated 06/08/2012,
- (i) Earthworks and Drainage Layout Plan North and of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P162 Issue D prepared by Knobel Consulting Pty Ltd and dated 06/08/2012,
- (j) Minor Engineering Works to Enhance new Wallum Froglet Habitat Area as approved by DA05/0004.03 - Project Number 1177 Plan No P166 Issue D prepared by Knobel Consulting Pty Ltd and dated 12/12/2012,
- (k) Dropboard Weir and Temporary Levee Detail as approved by DA05/0004.03 - Project Number 1177 Plan No P168 Issue A prepared by Knobel Consulting Pty Ltd and dated 12/12/2012,

except where varied by the conditions of this consent:

Please note: the minor engineering works referenced in plans P166 and P168 are approved by DA05/0004.03 and do not necessitate an application for a Construction Certificate to enable the works shown on those plans to be undertaken.

[GEN0005]

4. Add new Condition 1.2 to read as follows:

- 1.2 The Stage 1 Rehabilitation Works within the alternative Wallum Froglet Habitat Area are to be carried out in accordance with the Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated April 2013.

5. Add new Condition 1.3 to read as follows:

- 1.3 Within 60 days of commencing of work for the Stage 1 Rehabilitation Works , a restriction on user burdening that part of Lot 26D DP10715 that is retained for the benefit of the Wallum Froglet (the alternative Wallum Froglet Habitat Area) shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the fourth Restrictive Covenant annexed to these conditions and will affect the area of land referred to in the annexed fourth Restrictive Covenant.

6. Delete condition 1A and replace with an amended Condition now labelled 1.4 (to allow the registration to occur within 2 years of the date of commencement of DA05/0004 rather than prior to commencing work) as detailed below:

- 1.4 Within 2 years of the date of commencement of DA05/0004, a restriction on user burdening lots 1, 2 and 3 DP 781714 for the land shown on the plan marked "Littoral Rainforest vegetation" as "covenant area" shall be registered in favour of Tweed Shire Council. The restriction shall prevent the removal of littoral rainforest vegetation from that land. The instrument shall be in or to the effect of the third Restrictive Covenant annexed to these conditions and will affect the area of land referred to in that Restrictive covenant.

[GENNS01]

7. Delete condition 1B and replace with an amended Condition now labelled 1.5 (to allow the registration to occur within 2 years of the date of commencement of DA05/0004 rather than prior to commencing work) as detailed below:

- 1.5 Within 2 years of the date of commencement of DA05/0004 a restriction on user and public positive covenant burdening part of Lot 13 DP 871753 for the land shown on the Plan marked "Level Survey of Part of Land adjacent to Turnock Street, dated 7 April 2008 shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the first Restrictive Covenant annexed to these conditions and will affect the area of land referred to in that Restrictive covenant.

[GENNS01]

8. Delete condition 1C and replace with an amended Condition now labelled 1.6 (to allow the registration to occur within 2 years of the date of commencement of DA05/0004 rather than prior to commencing work) as detailed below:

- 1.6 Within 2 years of the date of commencement of DA05/0004 a restriction on user burdening those parts of lot 11 and Lot 12 in DP871753 that are retained for the benefit of the Wallum Froglet (land to the south of Turnock Street) shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the second Restrictive Covenant annexed to these conditions and will affect the area of land referred to in the annexed second Restrictive Covenant.

[GENNS01]

9. Delete condition 1CA which related to a restrictive covenant for the original Wallum Froglet Precinct north of Turnock Street as new condition 1.3 covers the registration of the new Wallum Froglet Habitat Area.

10. Delete condition 1D and replace with an amended Condition now labelled 1.7 (to enable the plan to be received within 2 years of the date of commencement of DA05/0004 rather than prior to commencing work) as detailed below:

- 1.7 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the area which is the subject of the first restrictive covenant. The management plan shall contain provisions with respect to:
- habitat description: baseline survey of current condition and extent of habitat;
 - MRS survey: baseline survey of snail population;
 - review and assessment of threatening processes(including weeds, predators, storm water and wetting up);
 - initial habitat protection and restoration works (weeding and fencing);

- e. monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), snail monitoring by day and night survey of fixed sample points (annual for five years), and
- f. reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.

The management plan, with the goal of ensuring that the local population of the Mitchell Rainforest Snail is not likely to be placed at risk of extinction, shall be approved by Council within 2 years of commencement of DA05/0004. Once approved the management plan shall be complied with at all times.

After 5 years of monitoring a revised plan shall be submitted to Council for approval which incorporates any necessary and feasible measures for continuing management of the land. Once approved the revised management plan shall be complied with at all times unless varied with the consent of Council.

[GENNS01]

11. Delete condition 1E and replace with an amended Condition now labelled 1.8 (to enable the plan to be received within 2 years of the date of commencement of DA05/0004 rather than prior to commencing work) as detailed below:

- 1.8 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the Wallum Froglet Habitat area on Lots 11 and 12 in DP 871753 area which is the subject of the second restrictive covenants. The management plan shall contain provisions with respect to:
- (a) habitat description: baseline survey of current condition and extent of habitat;
 - (b) Wallum Froglet Survey: baseline survey of Froglet population;
 - (c) review and assessment of threatening processes (including weeds, predators, stormwater, physicochemical and hydrological conditions).
 - (d) initial habitat protection and restoration works (e.g., if considered appropriate by the expert preparing the management plan, weeding, drainage or fencing).;
 - (e) monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), monitoring by day and night survey of fixed sample points (annual for five years) under suitable weather conditions and during breeding periods. Appropriate methodology, weather conditions and season for monitoring will be described in the management plan, and
 - (f) reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.

The management plan, with the goal of maintaining or improving existing Wallum Froglet habitat, shall be approved by Council within 2 years of commencement of DA05/0004. Once approved the management plan shall be complied with at all times. After approval, the management plan may be varied with the consent of Council.

[GENNS01]

12. Delete condition 1F and replace with an amended Condition now labelled 1.9 (to enable the plan to be received within 2 years of the date of commencement of DA05/0004 rather than prior to commencing work) as detailed below:

1.9 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the littoral rainforest area within Lots 1, 2 and 3 of DP 781714 which is the subject of the third restrictive covenant. The management plan shall contain provisions in respect of the area coloured green in B&P Surveys Plan 16814 B Rev C as follows:

- (a) habitat description: baseline survey of current condition and extent of habitat;
- (b) review and assessment of threatening processes(including weeds, and edge effects);
- (c) initial habitat protection and restoration works (removal of exotic trees and shrubs and weeding);
- (d) monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), and
- (e) reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.

The management plan shall have provisions to ensure that the balance of the covenant area is not managed or used in a manner which would interfere with the ecological integrity of the littoral rainforest vegetation community in the area coloured green in B&P Surveys Plan 16814 B Rev C.

The management plan, with the goal of ensuring that the ecological integrity of the littoral rainforest vegetation community is maintained or improved over time and furthermore is not likely to be placed at risk of local extinction, shall be approved by Council within 2 years of the date of commencement of DA05/0004. Once approved the management plan shall be complied with at all times.

After 5 years of monitoring a revised plan shall be submitted to Council for approval which incorporates any necessary and feasible measures for continuing management of the land with. Once approved the revised management plan shall be complied with at all times unless varied with the consent of Council.

[GENNS01]

13. Delete Condition 3 and replace it with a revised condition 3.1 (to reference the new Environmental Management Plan) as detailed below:

3.1 All works shall comply with the approved Environmental Management Plan (HMC 2012.123EMP (HMC Environmental P/L, December 2012). A copy of the plan complete with Key Person and Contacts shall be provided to Tweed Shire Council prior to commencement of works.

[GEN0005]

14. Delete Condition 4 and replace it with a revised condition 4.1 (to reference the new Acid Sulfate Soil Management Plan & Groundwater Management Plan) as detailed below:

4.1 All works shall comply with the approved Acid Sulfate Soil Management Plan & Groundwater Management Plan HMC 2012.123ASSMP (HMC Environmental P/L, December 2012).

[GEN0005]

15. Delete Condition 5 as the revised Environmental Management Plan adequately covers dust nuisance during construction.

16. Delete Condition 9 and replace it with a revised condition 9.1 (to reference Prior to commencement of filling works) as detailed below:

9.1 Prior to commencement of filling work, a Section 68 Certificate, Section 138 and a construction certificate and or engineering plans (as statutorily required) shall be submitted to Council for approval to enable commencement of the filling, drainage and general engineering works as proposed by this consent. This condition is not relevant to the minor engineering works proposed in the new Wallum Froglet Habitat Area which have been approved as part of DA05/0004.03

[GEN0185]

17. Insert a new condition 10.1 (to replace Deferred Commencement Condition B in regards to the haulage road being better defined) as detailed below:

10.1 Prior to Issue of a Construction Certificate for the filling works the applicant is to lodge a revised haulage route to minimise tree loss. Such plan is to be consistent with that route defined by Council's Dr. Mark Kingston, the applicants Dr Andrew Smith and the applicants Mr Greg Elks, on 31 March 2008 and such that the alignment is subject to trucks being able to turn on reasonable curves. Only the trees marked on site (with tape) are trees that are to be removed.

In addition the applicant is to lodge details for the rehabilitation of the temporary haul route. This should include details pertaining to the methods for removal, storage and reinstatement of top soil, disposal of temporary road base material, re-establishment of vegetation and minimising the impacts on the alternative Wallum Froglet Habitat Area as included in the approved "Wallum Froglet Habitat Management Plan, Kingscliff" prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated April 2013. This detail shall be approved by Council prior to the issue of a Construction Certificate for filling works.

[PCCNS01]

18. Insert a new condition 10.2 (to accommodate a community liaison officer) as detailed below:

10.2 A COMMUNITY LIAISON OFFICER AND COMMUNITY LIAISON CONTACT PHONE NUMBER SHALL BE AVAILABLE ON A 24 HOUR BASIS DURING CONSTRUCTION WORKS. DETAILS OF THE CONTACT PERSON AND TELEPHONE NUMBER SHALL BE CLEARLY DISPLAYED AT THE SITE ENTRY. DETAILS OF THE CONTACT PERSON AND TELEPHONE NUMBER SHALL BE LOCALLY ADVERTISED A MINIMUM OF FOURTEEN DAYS (14) PRIOR TO THE COMMENCEMENT OF FILLING WORKS AND LOCAL AFFECTED RESIDENTS NOTIFIED BY MEANS OF AN INDIVIDUAL LETTER DROP TO EACH HOUSEHOLD.

A SIGN IS TO BE ERECTED AT THE ENTRY OF THE SITE TO CLEARLY ADVISE THE COMMUNITY LIAISON OFFICERS DETAILS AND CONTACT NUMBER. THESE DETAILS ARE TO BE DOCUMENTED IN THE CONSTRUCTION MANAGEMENT PLAN.

[PCCNS01]

19. Insert a new condition 10.3 (to accommodate a construction management plan) as detailed below:

10.3 A construction management plan is to be provided for the filling and earthworks. These details are to be submitted with the application for a Construction Certificate and or Engineering Plans as statutorily required for the filling and earthworks, identifying how the site and filling works are to be programmed and managed.

The construction management plan shall address, not be limited to, the following matters where relevant:

- Sequencing of filling / earthworks

- Contact details of site manager & community liaison officer
- Traffic and pedestrian management
- Dust Management
- Noise and vibration management
- Construction waste management
- Erosion and sediment control; and
- Flora and fauna management.

[PCCNS01]

20. Delete Condition 10 and insert a new condition 10.4 (to accommodate revised heavy haulage rates and revised drainage rates for the increased fill) as detailed below:

10.4 Section 94 Contributions

Heavy Haulage Component

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

Charges are fixed for a period of 12 months from the date of the original consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 6 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

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

where:

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

and:

Prod.	projected demand for extractive material to be hauled to the site over life of project in tonnes
Dist.	average haulage distance of product on Shire roads (trip one way)
\$Unit	the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)
Admin.	Administration component - 5% - see Section 6.6
Cont	= Cont (sand)+Cont (Gravel) = (580,000*1.44*5.4*0.4*1.05) + (10800*2.4*5.4*0.4*1.05) = 1894234 + 58786 cents = \$19,500

West Kingscliff - Drainage:17.3844ha @ \$56,641 **\$984,669.80****

S94 Plan No. 7

****Less the value of works in kind as defined below**

In accordance with the Section 94 Contributions Plan No 7 (CP7) the applicant's construction of the works referred to in condition 35(a) to (g) and the grant of the easement referred to in condition 35(h) are "works in kind" that will reduce the amount payable in accordance with CP7. The value of the works for the purpose of calculating the value of "works in kind" will be calculated in accordance with CP7 - Schedule 1 - Contribution Rates, b) Drainage. The value of the easement for the purpose of calculating the value of "works in kind" shall be 75% of the value of land "C" in CP7 - Schedule 1 - Contribution Rates, b) Drainage.

The net (\$984,669.80 less the value of works in kind) CP7 contribution, is to be paid at the earlier of 12 months from the date of the Section 68 approval for drainage works required by condition 35 or at the completion of construction of the drainage works referred to in this condition.

If the value of "works in kind" exceed the contribution amount, then this amount shall be a CP7 credit towards future development by the applicant in the Kingscliff Drainage Catchment."

[PCC0225]

21. Delete Condition 11 and insert a new condition 11.1 (to reference prior to commencement of filling work) as detailed below:

11.1 Prior to commencement of filling work a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).

This bond will be drawn on by Council to undertake any rectification work directed but not completed or progressing to the satisfaction of the Tweed Shire Council's General Manager or delegate, within seventy two (72) hours from the date of serving any notice. The bond is to be released upon completion of all work, to the satisfaction of Tweed Shire Council's General Manager or delegate.

[PCC0275]

22. Delete Condition 12 and insert a new condition 12.1 (to reference prior to commencement of filling work) as detailed below:

12.1 Prior to commencement of filling work (or other work which may generate the need for a long service levy payment) a long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) must be paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

23. Delete Condition 13 and insert a new condition 13.1 (to reference the Wallum Froglet area south or Turnock Street only as no fill is proposed near the new Wallum Froglet area) as detailed below:

13.1 All imported fill material shall be from the approved sand extraction at Lot 2 DP 216705 in accordance with DA96/0518. If the fill imported to the southern side of Turnock Street has a shell grit content in excess of 1%, then an impermeable barrier shall be placed within the fill batter to the Wallum Froglet Precinct. Any additional fill for topsoil, road base, mulch, etc is to be free of contaminants with details of such fill submitted to Council for approval prior to commencement of work.

[PCC0465]

24. Delete Condition 14 and insert a new condition 14.1 (to reference new plans) as detailed below:

14.1 The site is to be filled, graded and drained in general accordance with levels and dimensions shown on Filling Plan P162 Issue D prepared by Knobel Consulting Pty Ltd and dated 6/08/2012 except as amended by conditions of consent. No haulage vehicles are to access the area identified for Wallum Froglet Habitat. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties. All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for approval by Council.

[PCC0485]

25. Delete Condition 15 and insert a new condition 15.1 (to reference "filling work") as detailed below:

15.1 Prior to the issue of a **Construction Certificate and or Engineering Plans for the filling work as statutorily required** the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks/furnishings
 - stormwater drainage
 - landscaping and revegetation works
 - sedimentation and erosion management plans

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

26. Delete Condition 16 and insert a new condition 16.1 (to reference “filling work”) as detailed below:

16.1 Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority **PRIOR** to the issue of a construction certificate for the filling work. The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

[PCC1065]

27. Delete Condition 17 and insert a new condition 17.1 (to reference “filling work”) as detailed below:

17.2 An application (or applications) under section 68 of the Local Government Act, 1993 is required prior to commencement of any filling works that involve any of the following:

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

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

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

[PCC1145]

28. Delete Condition 19 and insert a new condition 19.1 (to remove references to the water quality control devices no longer necessary) as detailed below:

19.1 The Section 68 application shall detail the following provisions in relation to stormwater management & quality

- (a) All stormwater quality control devices to be constructed generally in accordance with Plan 1177 – P032 prepared by Knoble Consulting Pty Ltd Issue K dated 3/08/2012 except as modified by conditions of consent.

[PCCNS01]

29. Delete Conditions 20, 21 and 22 as the water quality objectives for the Wallum Froglet Precinct and related stormwater treatment area are no longer needed.

30. Delete Condition 24 (b) which related to requiring a Section 138 Application for culvert works in Turnock Street. This can be deleted as the culvert works in Turnock Street are not required by the modified proposal.

31. Delete Condition 25 which stated that *“Prior to the commencement of work details of any ground and surface water monitoring locations in addition to those required for water quality shall be submitted to Council for approval in writing. Such approval shall not be unreasonably withheld.”* This condition can be deleted as it related to the water monitoring required for the original Wallum Froglet Precinct and is now irrelevant.

32. Delete Condition 26 and insert a new condition 26.1 (to reference “filling works”) as detailed below:

26.1 Prior to issue of Construction Certificate and or engineering plans for filling works as statutory required, the Applicant shall lodge structural design details, detailing the design of the acoustic hay fence to satisfaction of Council.

[PCCNS01]

33. Delete Condition 27 and insert a new condition 27.1 (to reference “filling works” and reference the new Environmental Noise Impact Assessment) as detailed below:

27.1 Prior to the issue of the construction certificate and or engineering plans for filling works as statutory required a construction noise management plan shall be produced for approval by Council that is generally in accordance with the Environmental Noise Impact Assessment prepared by CRG Acoustic al Consultants dated November 2012, the Noise Guideline for Local Government 2010 and the NSW DECC Interim Construction Noise Guidelines 2009.

[PCCNS01]

34. Delete Condition 28 and insert a new condition 28.1 (to reference “filling works”) as detailed below:

28.1 Prior to the issue of the construction certificate and or engineering plans for the filling works as statutory required a Construction Noise Management Plan must be prepared as part of the CEMP. This is to be lodged with Council for approval and must include:

- a) an education program for Construction personnel about noise minimisation.
- b) identification of each Construction activity, including Ancillary Facilities, and their associated noise sources;
- c) identification of all potentially affected Sensitive Receivers (a sensitive receiver is defined as a resident or occupier of a residential property, where the boundary is subject to noise levels recorded above 58 dB(A) L10 OR a commercial premises that is exposed to noise levels above that specified in Australian Standard AS/NZ 2107:2000 “Acoustics – Recommended reverberation times and sound levels for building interiors” when assessed inside the place of business or 58 dB(A) L10 at an outdoor area associated with operation of the business requiring a level of amenity for normal operation of that business;
- d) the Construction noise objective specified in the Conditions of Approval;
- e) noise and vibration monitoring, reporting and response procedures;
- f) a description of management methods and procedures and specific noise mitigation treatments that will be implemented to control noise and vibration during Construction;
- g) justification for any activities outside the Construction hours specified in the Conditions of Approval. This includes identifying areas where construction noise would not be audible at any Sensitive Receiver;

- h) procedures for notifying residents of Construction activities that are likely to affect their noise amenity; and
- i) contingency plans to be implemented in the event of non-compliance and/or noise complaints consultation procedures to be undertaken with residents.

[PCCNS01]

35. Delete Condition 29 and insert a new condition 29.1 (to reference “filling works”) as detailed below:

29.1 A dilapidation report detailing the current structural condition of the adjoining and adjacent buildings, infrastructure and roads is to be prepared and endorsed by a suitably qualified engineer. The report is to be submitted and approved by Council prior to issue of a construction certificate and or engineering plans for the filling works as statutory required.

A second dilapidation report is to be prepared by a suitably qualified person at the completion of the works to ascertain if any structural damage has occurred to the adjoining and adjacent buildings, infrastructure and roads. The report is to be compared with the first report and recommend a course of action to carry out repairs if required. The report is to be submitted for approval by Council.

[PCCNS02]

36. Delete Condition 30 and insert a new condition 30.1 (to delete reference to the Arterra Management Plans which are no longer applicable) as detailed below:

30.1 Within three weeks of fill being placed on the site in each fill stage, the area is to be topsoiled and mulched to the satisfaction to Tweed Shire Council's engineer. Mulch and topsoil detail are to be shown on the Construction Certificate application and or engineering plans as statutory required. Fertiliser shall not be used on the grassed area proximal to within 20m of the Wallum Froglet Habitat.

[PCCNS02]

37. Delete Condition 31 and insert a new condition 31.1 (to reference only the parts of the site subject to filling) as detailed below:

31.1 The parts of the site subject to filling are to be adequately fenced with a construction fence, for the works within each relevant stage. The construction fence details are to be shown on the Construction Certificate application.

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

[PCCNS02]

38. Delete Conditions 32 (c) and amend 32 (e) as these sections reference the Wallum Froglet Management Plan which has now been submitted, and the Turnock Street culverts which are no longer necessary Condition 32 should now read as follows:

32.1 The Construction Certificate application and or engineering plans as statutory required shall detail the following provisions having regard to perimeter & trunk drainage:

- (a) Perimeter stormwater drainage shall be designed and constructed along all external boundaries to convey overland runoff from all external catchments to a lawful point of discharge for all storm events up to the ARI 100 year event without causing flooding of adjoining properties or road reserves. All fill batters, perimeter drainage services and associated formations must be contained wholly within the development site, and must not encroach into adjoining properties or road reserves.
- (b) Perimeter cross sections for the entire site are to be provided along the proposed filling perimeter every 20m. The cross sections are to provide existing and proposed finished levels, extending an adequate distance into adjoining land so as to establish external drainage paths.
- (c) **DELETED**
- (d) A stormwater drainage channel is to be designed and constructed to convey all runoff from Council's existing 750mm pipeline discharging from Turnock Street to the north east corner of the southern fill area to the Kingscliff drain generally along the alignment shown for the SWD documented on Drawing No. P037 issue H prepared by Knobel Consulting Pty Ltd and dated 08/11/07 and Drawing No. P038 issue G prepared by Knobel Consulting Pty Ltd and dated 29/10/07. The last part of the channel may follow a different path to the SWD, being around the fill to discharge to the Kingscliff drain.
- (e) **AMENDED** - An overland flow path shall be designed and constructed to convey external catchment runoff for the Q100 event from Turnock Street and Lot 100 DP 1071633 through the southern fill area to the Kingscliff Drain in accordance with Drawing Number 1177 – P162 Issue D prepared by Knobel Consulting Pty Ltd and included in Appendix B of the Engineering Report as submitted with the S96AA Reference Number DA05/004.03.
- (f) A stormwater drainage channel is to be designed and constructed to convey all runoff from Council's existing 450 mm SWD currently discharging off Pearl Street through Lot 6, DP21242, to the perimeter catch drain around the fill shown on Knobel Consulting Drawing No. P032, issue J, dated 26/10/07.
- (g) All drainage works required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.

[PCCNS02]

39. Delete Conditions 33 in its entirety as this condition referenced culverts under Turnock Street which are no longer required.

40. Amend Conditions 34 to remove its reference to Condition 33 as Condition 33 has been deleted. Condition 34 should now read as follows:

34.1 The Construction Certificate application and or engineering plans as statutory required shall detail the following provisions having regard to existing stormwater infrastructure:

- a) Provision shall be made to connect any other existing public stormwater pipes discharging onto the site, through the filled area to a lawful point of discharge, without adverse impact on flooding in the locality.

- b) The drainage works required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.

[PCCNS02]

41. Amend Conditions 35 to allow the minor engineering works to the new Wallum Froglet Habitat Are to proceed without a Construction Certificate:

35.1 The Construction Certificate and or engineering plans as statutory required shall detail the following provisions having regard to the construction of Kingscliff Drain:

- a) The Kingscliff Drain south of Turnock Street, adjacent to the filling and provisional water quality treatment area, is to be constructed concurrently with filling of the site south of Turnock Street. The drain shall be constructed from the south eastern extent of the provisional water quality treatment works shown on drawing P153 Issue H, dated 3/08/12 to the box culverts under Turnock Street.
- b) Except as varied by this condition, the above drain is to be constructed in general accordance with the trapezoidal channel cross section, and “access maintenance hardstand”, shown on “Main Drain 0-2000 (fig 7.3)” contained in “Appendix B: Supplementary TSC Cross Section Details” contained in “Kingscliff Catchment & Drainage Management Plan” prepared by WBM Oceanics, Revision 3 Dated 24/3/00. No “variable purpose” cross section construction is required beyond the northern limit of the “access maintenance hardstand” on the northern side of the drain. The fill batter shown on Plan P162 Issue D dated 6/08/122 will commence 3.5 m from the top of bank of the drain to allow for the “access maintenance hardstand. The 3.0m wide access maintenance hard stand area along the Kingscliff Drain is to be constructed on the north side of the drain from and connected to Turnock Street. A vehicle turn around area is to be constructed at the other end to permit vehicles using the maintenance access area to turn around. The design of the maintenance access must account for all transverse connections to the Kingscliff Drain, to remain trafficable without impeding runoff or causing flooding on upstream land.
- c) In the section of drain from the box culverts under Turnock Street, east to the start of filling works the cross section on the north side shall be modified to accommodate entry of runoff from the north. The maintenance access may include a series of floodway crossings in this section to enable flow of runoff from the north to cross over the access.
- d) On the south side of the drain, the constructed cross section is to terminate where the revetted bank section intersects natural surface level. No bank or “variable multipurpose” cross section construction is required beyond this point.
- e) The edge treatment and revetment of the drain may be varied to create a more “natural” aesthetically pleasing appearance, providing the hydraulic efficiency and maintainability of the drain is not adversely affected.
- f) The nominal 1.0m width of the drain invert may be increased to provide a more “natural” aesthetically pleasing appearance.

- g) The invert of the drain is to be a maximum RL -0.5 AHD from the south-eastern extent of the fill to the invert of the culvert under Turnock Street. It may then taper up to the existing drain outlet invert at St Anthony's School (lot 2 DP 610174) boundary. Level detail is to be provided for the drain invert.
- h) Prior to the commencement of filling work a drainage easement is to be created benefiting Council over the main Kingscliff drain from St Anthony's school to the box culverts under Turnock Street where it traverses lots 11, 12 & 13 DP 871753. The width of the easement shall be from the southern edge of revetment on the south side of the drain to the northern side of the maintenance access on the north side of the drain. Some meandering of the drain about the centreline may be permitted to provide a more "natural" aesthetically pleasing appearance. The easement must allow the bridging of the drain for access and the works referred to in this condition may be removed or altered for the purpose of constructing access ways so long as they are reinstated to a similar standard.
- i) The drainage works (including the associated works in the drainage easement) required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.

[PCCNS02]

42. Amend Condition 37 to reference filling works so that condition 37 now reads as follows:

37.1 Traffic Management Plans are required prior to the issue of a construction certificate application and or engineering plans for each differing stage of the filling works. The traffic management plans shall be in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2. The plans are to be prepared by an RTA accredited person shall be submitted to the Principal Certifying Authority. Safe public access shall be provided at all times. The Traffic Management Plans are to include all temporary signage and road layouts for each stage of the proposed works. The plans are to also provide for pedestrian and cycle movements.

[PCCNS02]

43. Amend Condition 45 to allow other works to commence prior to issue of a construction certificate for filling so that condition 45 now reads as follows:

45.1 Prior to commencement of work on the site relevant all erosion and sedimentation control measures are to be installed and operational. Prior to the commencement of filling works the wheel wash facility shall be installed to the satisfaction of Council.

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

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

[PCW0985]

- 44. Amend Condition 46** to reference the revised Wallum Froglet Management Plan:
- 46.1 The alternative Wallum Froglet Habitat Area is to be managed in accordance with the approved Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated 22 April 2013.
- [DURNS01]
- 45. Amend Condition 48** to remove reference to the culvert construction and reference the new management plan:
- 48.1 During the approved staged rehabilitation of the alternative Wallum Froglet Habitat Area, monitoring is to be conducted in accordance with the approved Wallum Froglet Habitat Management Plan dated 22 April 2013.
- [DURNS01]
- 46. Amend Condition 50** to reference the amended fill quantity so that Condition 50 now reads as follows
- 50.1 The proponent shall ensure a maximum 580,000m³ of extractive material is imported to the site along the approved haul route from the sources nominated in the development application.
- [DUR0735]
- 47. Amend Condition 51** to reference new D6 instead of the old superseded DCP Part A14. Condition 51 should now read as follows:
- 51.1 During filling operations,
- All fill and cut batters shall be contained wholly within the subject land.
 - All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 – Subdivision Manual and the Design Specification D6 Site Regrading to the satisfaction of the Principal Certifying Authority.
- and upon completion,
- all topsoil and mulch is to be respread and the site to be grassed and landscaped including battered areas.
- [DUR0755]
- 48. Delete Condition 65** as this condition was only relevant to the original Wallum Froglet Precinct and not the new area.
- 49. Amend Condition 72** to reference the revised Acid Sulfate Soils Management Plan and Groundwater Management Plan so that Condition 72 now reads as follows:
- 72.1 All material stripped and identified as PASS from the site or disturbed below existing ground level shall be placed within a bunded area and neutralised in accordance with the Acid Sulfate Soil Management Plan & Groundwater Management Plan HMC Environmental P/L, December 2012 before reuse or removal from the site.

50. **Amend Condition 79** to reference the revised Wallum Froglet Management Plan so that Condition 79 now reads as follows:

79.1 The alternative Wallum Froglet Habitat Area is to be managed in accordance with the approved Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated 22 April 2013. Upon any application for subdivision such application is to include provision for transfer of the management.

51. **Amend Condition 80** to reference the revised plans as required by Condition 10.1 for the rehabilitation of the haul road so that Condition 80 now reads as follows:

80.1 Post filling operations the temporary haul road is to be rehabilitated in accordance with Condition 10.1 of this consent.

52. **Delete Conditions 81 and 82** as these conditions are superseded by the new Wallum Froglet Management Plan.

53. **Amend GTA Condition 84** to reference “for filling works” so that Condition 84 reads as follows:

84.1 The applicant is to obtain necessary approvals, if any, in accordance with the Water Management Act 2000 prior to commencement of filling work. Should dewatering be required the Council is to be notified 48 hours prior to commencement of works

54. **Amend the “TERMS of FOURTH RESTRICTIVE COVENANT REFERRED TO IN ORDERS”** at the end of the consent to reflect the new Wallum Froglet Habitat Area within Lot 26D DP 10715. This will have the effect of amending the wording to read as follows:

TERMS OF FOURTH RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is Lot 26D in DP 10715 shown indicatively as the Wallum Froglet Habitat Area (WFHA) being west of Elrond Drive as shown on Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012. For practical purposes the extent of the Covenant needs to embrace this area and extend to the fenceline in the East and either the fenceline or the top of bank of the drain in the south. The other boundaries are appropriate. The extent is to be detailed on a final survey plan.

Restrictive covenant for conservation purposes in respect of the Wallum Froglet to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

6. In this instrument, unless the contrary intention appears –

“animals” includes sheep, goats, horses, deer and cattle.

“clearing” and **“cleared”** in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.

“development” in relation to land, means –

(c) the erection of a building or structure (other than a fence) on the land;
or

(d) the carrying out of a work in, on over or under the land;

“Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the Environmental Planning and Assessment Act 1979 or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.

“registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the Real Property Act 1900.

“substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.

“vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.

7. In respect of the Wallum Froglet Habitat Area shown on Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012;

(i) Without the prior written consent of the Tweed Shire Council –

(i) no person shall reside on the land;

(j) no animal shall be depastured or driven on the land;

(k) no development shall be carried out on the land;

(l) the land shall not be cleared, slashed or cultivated;

(m) no substance, whether or not in or forming part of the land, shall be interfered with;

(n) no fire shall be lit on the land;

- (o) no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and*
 - (p) no use shall be made of the land or activities undertaken on the land which would interfere with or prevent the natural growth or regeneration of vegetation on the land.*
- (ii) Any work shall be carried out under the guidance of an ecologist with experience and expertise in the habitat of the Wallum Froglet.*
- 8. In respect of all areas shown indicatively as Wallum Froglet Habitat Area on the Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012 other than those referred to in clause 2 above, such land shall be managed to facilitate the conservation of the wallum froglet in the Wallum Froglet Habitat Area.*
- 9. This covenant does not prevent or restrict in accordance with Law:*
 - (m) the destruction or removal of vegetation declared to be a noxious weed under the Noxious Weeds Act 1993 or an Act consolidating or replacing that Act; or*
 - (n) the destruction or removal of vegetation which is a prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985 or an Act consolidating or replacing that Act; or*
 - (o) the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or*
 - (p) the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or*
 - (q) the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the Surveyors Act 2001 or any Act consolidating or replacing that Act;*
 - (r) the destruction or removal of vegetation or substance in compliance with the Rural Fires Act 1997 or any Act consolidating or replacing that Act; or*
 - (s) the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;*

- (t) *the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;*
- (u) *carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;*
- (v) *DELETED;*
- (w) *carrying out any other work permitted by the Management Plan.*
- (x) *carrying out any other work pursuant to development consent DA05/0004 and maintenance thereof.*

10.

- (d) *The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which a conservation agreement is entered into under Part 4 of Division 7 of the National Parks and Wildlife Act 1974.*
- (e) *The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.*
- (f) *The restriction on use may otherwise be released with the consent of the Tweed Shire Council.*

5A *Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation.*

- 6. *The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.*

The applicant has stated that the above changes are considered to result in substantially the same development as was detailed within the original Development Consent for the following reasons:

- 1) *The overall envelope of the fill is substantially the same although there are some small changes on the edges to reflect the higher fill level required.*
- 2) *The area of alternative habitat available for the Wallum Froglet is approximately 2.1 ha which exceeds the 1 ha of core habitat available north of Turnock Street within the WFP.*
- 3) *The increase in fill levels will reflect the latest flood information adopted by Council.*

- 4) *The proposed source of fill and method of transport to the site is not changed.*
- 5) *The proposal does not generate the need for any significant upgrade to services or infrastructure.*
- 6) *The modified development would not result in any additional environmental impacts that were not addressed in the original application.*

The above statements from the applicant are concurred with.

It should also be noted that the increased fill amount whilst substantial numerically does not result in a radically different fill amount to that approved by the Court. Conceptually it is considered substantially the same development and can be dealt with by way of S96AA.

The subject application does not raise any additional 79C matters that require specific re consideration, however, since approval of DA05/0004 Council has exhibited Draft LEP 2012. The Draft LEP proposes to adopt amended zonings on the subject site to R1 General Residential. It is noted that earthworks are currently not permitted in the R1 zone unless ancillary to a permissible use. However, the Court previously determined that fill without the associated land use is appropriate and reasonable and therefore this does not form grounds for refusal in this instance. Therefore, no additional matters arise as a result of this S96AA.

Notification & Consideration of Submissions

The Section 96 (AA) Application was notified to all originally nearby properties and to all those people who previously objected to DA05/0004 from 16 January 2013 to 31 January 2013.

During the notification period Council received one submission which stated as follows:

Comment: *That Kingscliff Ratepayers & Progress Associated advise Tweed Shire Council that our association generally supports the proposal listed in the dot points.*

However, we note that:

- *In the document there is no mention that if the relocated frog area is not proving successful then the area may need to be re configured.*

Our association strongly supports our request that the area set aside for the frogs be configured sufficiently in the first place so as not to disturb the frogs at a later date.

And

That the new location be in place for at least 12 months prior to the frogs old location being disturbed in any way.

Our members also still have concerns as to noise, dust, and traffic disruption that will be created when the fill is being trucked to the Turnock Street site.

Assessment: These comments are noted and have been considered in the assessment of this application.

In determining the appropriateness for the new Wallum Froglet Area Council required the following provisions to be met:

1. Identification of suitable non-bushland area(s) at least as large as the area to be relocated.

2. Agreement among experts on the technical feasibility of recreating Wallum Froglet habitat and re-establishing a Wallum Froglet population.
3. Any areas of new Wallum Froglet habitat should be established prior to the filling of the existing areas to the north and south of Turnock Street.
4. Preparation and commitment to the implementation of an agreed management plan and monitoring strategy for a period of 5 years.
5. Any new areas of Wallum Froglet habitat to be protected by restriction on title and environmental protection zoning.

All of these provisions have been met to Council's satisfaction and are now reinforced in the amended Wallum Froglet Management Plan and or conditions of consent as detailed within this report.

In regards to the noise, dust and traffic disruption associated with the additional fill the applicant has submitted an amended Environmental Management Plan. In addition there are recommended conditions of consent for construction noise management plans prior to issue of a construction certificate. The additional trips generated by the additional fill is not considered to raise any new significant issues but rather extend the construction period and or intensify operation to enable the additional fill to be imported. Given the extent of earthworks already approved by the Court the additional fill is considered in keeping with the intent of the original consent.

Having considered the submission in its entirety there is no issue raised that would warrant the refusal or any further amendment to the S96AA Application.

In addition the application was referred to Government Agencies who provided comment on the original application. In this regard feedback from the agencies was as follows:

- NSW Rural Fire Service – no change to original comments.
- Department of Primary Industries – No change to the GTA Conditions as imposed by the Court.
- NSW Office of Water – Accepted minor change to GTA to reflect “filling works”.
- NSW Office of Environment & Heritage – Able to support the modification request subject to the following matters:
 1. Creation of Wallum Froglet habitat to be at least the same size as the current approval requires and should be protected by an appropriate restriction on land title and environment protection zoning within the Local Environmental Plan.
 2. Newly created Wallum Froglet habitat should be established and occupied by a breeding population of Wallum Froglet prior to filling of the existing habitat area that will be developed.
 3. Wallum Froglet should not be translocated to the newly created habitat, but should be allowed to migrate into and populate the new area. This is to ensure that the habitat is suitable for occupation. Once the created habitat is colonised, if there are Wallum Froglet present at the time of works commencing in existing habitat areas, salvage and translocation of these animals to the new habitat may be considered.

4. It is recommended that the monitoring described in the "Threatened Species Management Plan for Walum Froglet Habitat in Kingscliff" be undertaken for a period of 5 years post completion of the habitat.
5. Vegetation in the habitat area should be designed and managed to maintain suitable foliage projection cover in the vegetation strata to maintain habitat for all stages of the lifecycle of Wallum Froglet, ie maintain sedgeland areas with scattered trees to prevent successional dominance by melaleuca woodland over time.
6. Habitat monitoring should include assessing the presence and severity of threats to Wallum Froglet within the new habitat area, in order to facilitate adaptive management. For example, the presence, density and severity of *Gambusia holbrooki*, *Bufo marinus* and *Cuphea carthagenesis* should be assessed, in addition to other parameters identified for monitoring.

The applicant was provided with an opportunity to respond to these matters and provided the following comments:

Comments from the Office of Environment and Heritage	Gales Response	Gales Agreed Outcomes/Actions
1. Creation of Wallum Froglet Habitat to be at least the same size as the current approval requires and should be protected by an appropriate restriction on land title and environment protection zoning within the Local Environmental Plan	Agreed	No change is proposed.

<p>2. Newly created Wallum Froglet Habitat should be established and occupied by a breeding population of Wallum Froglet prior to filling of the existing habitat area that will be developed.</p>	<p>This statement is at odds with the agreement reached between the Council and Gales at the meeting of the Development Assessment Panel held of 20 Jan 2012, which does not set a threshold for success that limits the filling of the site north of Turnock St.</p> <p>Gales have agreed to an adaptive management approach that should lead to the establishment of a suitable habitat. Further Gales will agree to an additional period of monitoring post habitat construction and prior to filling commencing. This will delay commencement of filling operations and allow further time for habitat establishment and for the WF to migrate to the WFHA.</p> <p>When dealing with natural processes and climatic conditions no guarantees are able to be provided and it would be unacceptable for any developer to accept investment in a project where there is no determinable commencement date.</p> <p>Gales would be happy to work with Council to overcome this concern of the OEH. We suspect that they are not familiar with much of the background that has lead to Gales seeking an alternative habitat site. The WFHA is being created to increase the chances of a viable WF population. The shortcomings of the WFP and its ability to sustain a population of WF's, and the acceptance of expert evidence by the Supreme Court that wallum froglets may become extinct in the WFP may not be understood by OEH.</p>	<p>Gales do not support the recommendation of OEH and propose no change to the document in relation to this matter.</p>
<p>3. Wallum Froglet should not be translocated to the newly created habitat, but should be allowed to migrate into and populate the new area. This is to ensure that the habitat is suitable for occupation. Once the created habitat is colonised, if there are Wallum Froglets present at the time of works commencing in existing habitat areas salvage and translocation of these animals to the new habitat</p>	<p>This point raised by OEH is generally supported by Gales but is at odds with one of the recommendations of Council and previous NPWS recommendations against WF translocation.</p>	<p>Gales propose no change to the documentation but would consider pre-clearance collection and translocation of WFs provided that there are no minimum numbers on how many would be moved. We suggest that once filling is to go ahead, if the frogs are actively calling and they can be collected by moving to calling individuals, then pre-clearance of the habitat will involve 6 hours of collecting by suitably trained ecologists and all WF collected would be translocated to the WFHA on the</p>

	may be considered.		same evening and released.
4.	It is recommended that the monitoring described in the Threatened Species Management Plan for the Wallum Froglet Habitat in Kingscliff be undertaken for a period of 5 years post completion of the habitat.	We have addressed this matter in point 4 of the response to Council's letter.	Same as response to point 4 of the Council letter above.
5.	Vegetation in the habitat area should be designed and managed to maintain suitable foliage protection cover in the vegetation strata to maintain habitat for all stages of the lifecycle of the Wallum Froglet ie. Maintain sedgeland areas.	We agree with this comment and believe that the document adequately addresses management of the WFHA to prevent the dominance of Melaleuca.	No change is proposed.
6.	Habitat monitoring should include assessing the presence and severity of threats to Wallum Froglet within the new habitat area, in order to facilitate adaptive management. For example the presence density and severity Gambusia holbrooki, Bufo marinus and Cuphea carthagenesis should be assessed, in addition to other parameters identified for monitoring.	It is agreed that habitat monitoring should include the occurrence of threatening processes. The threats identified by OEH, with the exception of Cuphea carthagenesis, are included in the WFHMP in phase 7 monitoring.	Amend Phase 7 of Table 5 as follows: In the columns titled "actions" and "monitoring" amend the last paragraph by adding "Cuphea carthagenesis".

Council staff have reviewed the applicants comments and concur that the revised Wallum Froglet Habitat Management Plan is now sufficient to enable the S96AA to be approved.

Council staff believe that it is unreasonable to require proof of Froglet activity on the site as the species may not be calling on any nearby sites. The approach taken with this application is to ensure the habitat is available and continues to be made available (with suitable conditions) to enable Froglets to utilise this area if the species is in the locality.

The OEH submission is not considered to warrant refusal of the application in this instance.

OPTIONS:

1. Approve the application with the amendments as detailed within this report; or
2. Alter the recommended conditions of consent; or
3. Refuse the S96AA with suitable reasons.

Council officers recommend Option 1.

CONCLUSION:

Council staff have reviewed the current S96AA on its merits and has agreed with the applicant that the Wallum Froglet Precinct would be better situated west of Elrond Drive and Turnock Street roundabout within Lot 26D in DP 10715. In addition the increased fill and revised drainage works have also been considered on its merits and Council staff are of the view that the application can be supported subject to the revised conditions of consent as discussed within this report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. DA05/0004.02 Latest Determination Notice (ECM 3081445)

Attachment 2. DA05/0004 Original Court Judgement (ECM 3081447)

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32 [PR-CM] Development Application DA12/0553 for a Dual Occupancy Including Demolition of Existing Dwelling/Structures at Lot 395 DP 755701 No. 55 Tweed Coast Road, Hastings Point

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0553 Pt1



Civic Leadership

SUMMARY OF REPORT:

The subject application seeks consent for the demolition of the existing dwelling/structures on site and the construction of a dual occupancy development comprising two x three bedroom units at the above address in Hastings Point. The proposed building is two storeys in height and provides for access off Tweed Coast Road.

The application includes a State Environmental Planning Policy No. 1 (SEPP No. 1) objection in relation to Clause 32B(4)(b) of the North Coast Regional Environmental Plan 1988 (NCREP) relating to overshadowing. In this regard, it is referred to Council for determination. Whilst Council has received a relaxation for Development Applications to be determined by full Council for variations to Clause 32B(4)(a) of the NCREP, this relaxation does not extend to Clause 32B(4)(b).

The proposed development is considered to demonstrate general compliance with the relevant planning instruments, apart from the proposed SEPP No. 1 objection. However it is considered that sufficient justification has been provided in this instance, and although there are a number of variations to Tweed Shire Council Development Control Plan (DCP) A1 Residential and Tourist Development Code and B23 Hastings Point, the proposed development is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA12/0553 for a dual occupancy including demolition of exiting dwelling/structures at Lot 395 DP 755701 No. 55 Tweed Coast Road, Hastings Point be approved subject to the following conditions:

- A. State Environmental Planning Policy No. 1 objection to Clause 32B(4)(b) of the North Coast Regional Environmental Plan 1988 relating to overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. GENERAL**
 - 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans;**

- Site Plan (Drawing No. DA1.3a)
- Ground Floor Plan (Drawing No. DA2.1a)
- First Floor Plan (Drawing No. DA2.2a)
- North and East Elevation (Drawing No. DA3.1a)
- South and West Elevation (Drawing No. D3.2)

prepared by Schafer Design and dated 1 February 2013, except where varied by the conditions of consent

[GEN0005]

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

[GEN0115]

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

[GEN0135]

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

[GEN0265]

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

[GEN0300]

6. As the dwellings are located on a designated road, both residential units are to have an acoustic seal on the front door to reduce noise transmission.

[GENNS01]

7. The subject development site adjoins Lot 7062 DP 1113884 comprising part of Tweed Coast Regional Crown Reserve (R1012191). This development consent does not confer any right on the proponent to;

- Encroach upon the Crown Reserve;
- Remove any native vegetation from the Reserve;
- Stockpile any materials or store any equipment, plant or machinery on the Reserve;
- Use the Reserve for vehicular access;
- Establish any asset protection zones on the Reserve; or
- Discharge stormwater or deposit wastes onto the Reserve.

[GENNS02]

8. The approved development shall not result in any clearing of native vegetation without prior approval from the relevant authority.

[GENNS03]

9. At the commencement of building works and in perpetuity the entire property shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.
 10. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
 11. New construction on the western elevation(s) shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
 12. New construction on northern, southern and eastern elevations shall comply with Sections 3 and 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
 13. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.
- [GENNS04]
14. All living room and bedroom windows orientated towards Tweed Coast Road are to be fitted with double glazing.
 15. Side and rear fencing is to be installed in accordance with the provisions of Tweed Shire Council Development Control Plan (DCP) A1 (Part A) for the subject site.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. The developer shall provide two (2) parking spaces per dwelling and one (1) Visitor Parking Space on the subject site including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

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

The visitor carpark must provide full access for the 85 percentile car in accordance with Part 1, Appendix B of Australian Standard AS2890.1-1993.

[PCC0065]

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

[PCC0285]

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

[PCC0465]

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

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

[PCC0485]

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

[PCC0585]

21. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: -

- (a) Provision of an vehicular access in accordance with Section 2 "Site Access and Parking Code" of Council's consolidated Tweed Development Control Plan and Council's "Driveway Access to Property Part 1" Design specification June 2004.
- (b) The access shall provide the required 2m x 2m "sight triangle" envelope.

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

- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

22. Disposal of stormwater by means of infiltration devices must be carried out in accordance with Section D7.9 of Tweed Shire Councils Development Design and Construction Specification - Stormwater Quality.

[PCC1125]

23. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.**
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.**
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:**
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.**
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.**
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).**
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).**
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.**
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.**
- (i) All infiltration devices are to be designed to withstand loading from vehicles during construction and operation of the development.**
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.**

[PCC1135]

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

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

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.**

- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

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

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

[PCC1155]

26. For developments containing less than four attached or detached dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

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

- a. **Water**
 - Disconnection of existing water meter and the new meter shall be installed by Council at the Developer's expense.
- b. **Sewerage**
 - Disconnection of existing sewerage house connection and the reconnection to the new dwelling.
- c. **Drainage works, including;**
 - the connection of a private stormwater drain to a public stormwater drain,
 - the installation of stormwater quality control devices,
 - erosion and sediment control works.

[PCC1195]

28. A single dwelling or group of up to three attached or detached dwellings, having a Building Code classification of 1a, must be connected by means of a single water service pipe each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1305]

29. Stormwater management measures and devices shall be provided in general accordance with Cozens Regan Williams Prove Drawing P.15.42 Sk.2 Issue B, dated October 2012, except where varied by these conditions of consent. Engineering details of the stormwater management system shall be submitted with a Section 68 Stormwater Application for Council approval prior to the issue of a Construction Certificate.

[PCCNS01]

30. Privacy screening is to be provided to Bedroom 1 of Unit 1 to the southern site boundary. Details of this are to be submitted to Council for the written approval of the General Manager or his delegate prior to the issue of a Construction Certificate.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

32. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

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

[PCW0215]

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

[PCW0225]

34. Residential building work:

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

[PCW0235]

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

[PCW0245]

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

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

[PCW0255]

37. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

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

[PCW1065]

39. An application is to be made to Council to disconnect the existing dwelling from Council sewerage system prior to any demolition work commencing.

[PCWNS01]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0375]

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

[DUR0405]

44. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

45. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

46. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

[DUR0675]

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

[DUR0815]

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

[DUR0905]

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

[DUR0985]

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

[DUR0995]

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

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

[DUR1005]

52. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

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

[DUR1025]

54. All works shall be carried out in accordance with the Demolition Plan prepared by Planit Consulting Pty Ltd and dated December 2012.

[DUR1065]

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

[DUR1795]

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

[DUR1875]

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

[DUR1905]

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

[DUR1925]

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

[DUR2185]

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

[DUR2195]

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

[DUR2445]

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

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

[DUR2485]

63. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

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

[DUR2505]

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

[DUR2535]

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

[DUR2545]

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

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

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

[DUR2555]

68. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

69. No works are to go beyond two metres below the natural ground surface and no works by which the water table is likely to be lowered beyond two metres below the natural ground surface without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

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

[POC0205]

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

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

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

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

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

[POC0265]

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

[POC0435]

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

[POC0745]

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

[POC0755]

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

[POC0865]

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

[POC0985]

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

[POC1045]

79. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

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

Prior to occupation of the building or issue of any interim or final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP6:	1 ET @ \$12150 per ET	\$12150
Sewer Hastings Point:	1 ET @ \$5838 per ET	\$5838

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

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

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

81. Section 94 Contributions

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

Prior to occupation of the building or issue of any interim or final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:

1.3 Trips @ \$1295 per Trips	\$1684
(\$1284 base rate + \$11 indexation)	
S94 Plan No. 4	
Sector8_4	

(b) Open Space (Casual):

0.75 ET @ \$526 per ET	\$395
(\$502 base rate + \$24 indexation)	
S94 Plan No. 5	

(c) Open Space (Structured):	
0.75 ET @ \$602 per ET	\$452
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	
(d) Shirewide Library Facilities:	
0.75 ET @ \$816 per ET	\$612
(\$792 base rate + \$24 indexation)	
S94 Plan No. 11	
(e) Bus Shelters:	
0.75 ET @ \$62 per ET	\$47
(\$60 base rate + \$2 indexation)	
S94 Plan No. 12	
(f) Eviron Cemetery:	
0.75 ET @ \$121 per ET	\$91
(\$101 base rate + \$20 indexation)	
S94 Plan No. 13	
(g) Community Facilities (Tweed Coast - North)	
0.75 ET @ \$1352 per ET	\$1014
(\$1305.6 base rate + \$46.4 indexation)	
S94 Plan No. 15	
(h) Extensions to Council Administration Offices & Technical Support Facilities	
0.75 ET @ \$1812.62 per ET	\$1359.47
(\$1759.9 base rate + \$52.72 indexation)	
S94 Plan No. 18	
(i) Cycleways:	
0.75 ET @ \$460 per ET	\$345
(\$447 base rate + \$13 indexation)	
S94 Plan No. 22	
(j) Regional Open Space (Casual)	
0.75 ET @ \$1064 per ET	\$798
(\$1031 base rate + \$33 indexation)	
S94 Plan No. 26	

(k) Regional Open Space (Structured):

0.75 ET @ \$3730 per ET

\$2798

(\$3619 base rate + \$111 indexation)

S94 Plan No. 26

[POCNS01]

USE

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

[USE0125]

- 83. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{Aeq}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.**

[USE0165]

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

[USE0175]

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

[USE0225]

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

[USE0435]

REPORT:

Applicant: Ms S Patterson and Ms L Johnson
Owner: Ms May E Johnson
Location: Lot 395 DP 755701 No. 55 Tweed Coast Road, Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$500,000

Background:

Proposed Development

The proposal is for a dual occupancy residential building and includes demolition of existing dwelling/structures. The proposal is a two storey attached dual occupancy. Unit 1 consists of three bedrooms and double garage whilst Unit 2 consists of three bedrooms, single car garage and single car carport.

Car parking is proposed within a double garage for Unit 1 and a combination of single garage and carport for Unit 2. An additional space for visitors is provided at the front of the site.

The proposal was submitted as integrated development under the Water Management Act 2000, however a response has been received from NSW Office of Water outlining that the proposed development is exempt from a requirement for a controlled activity.

A number of variations to Councils Development Control Plans are proposed as part of this Development Application. In particular the proposal results in a total of 10 variations to Tweed Shire Council Development Control Plan B23 Hastings Point and two variations to Tweed Shire Council Development Control Plan A1 Residential and Tourist Development Code. These are assessed in detail elsewhere in this report, with the variations being supported in this instance.

The application was notified to surrounding properties however Council did not receive any submissions relating to the proposal.

The application involves a SEPP No. 1 Objection to Clause 32B(4)(b) of the NCREP. The SEPP No. 1 Objection is considered reasonable and is supported in this instance.

Whilst Council has received a relaxation for Development Applications to be determined by full Council meeting for variations to Clause 32B(4)(a) of the NCREP, this relaxation does not extend to Clause 32B(4)(b).

Site Details

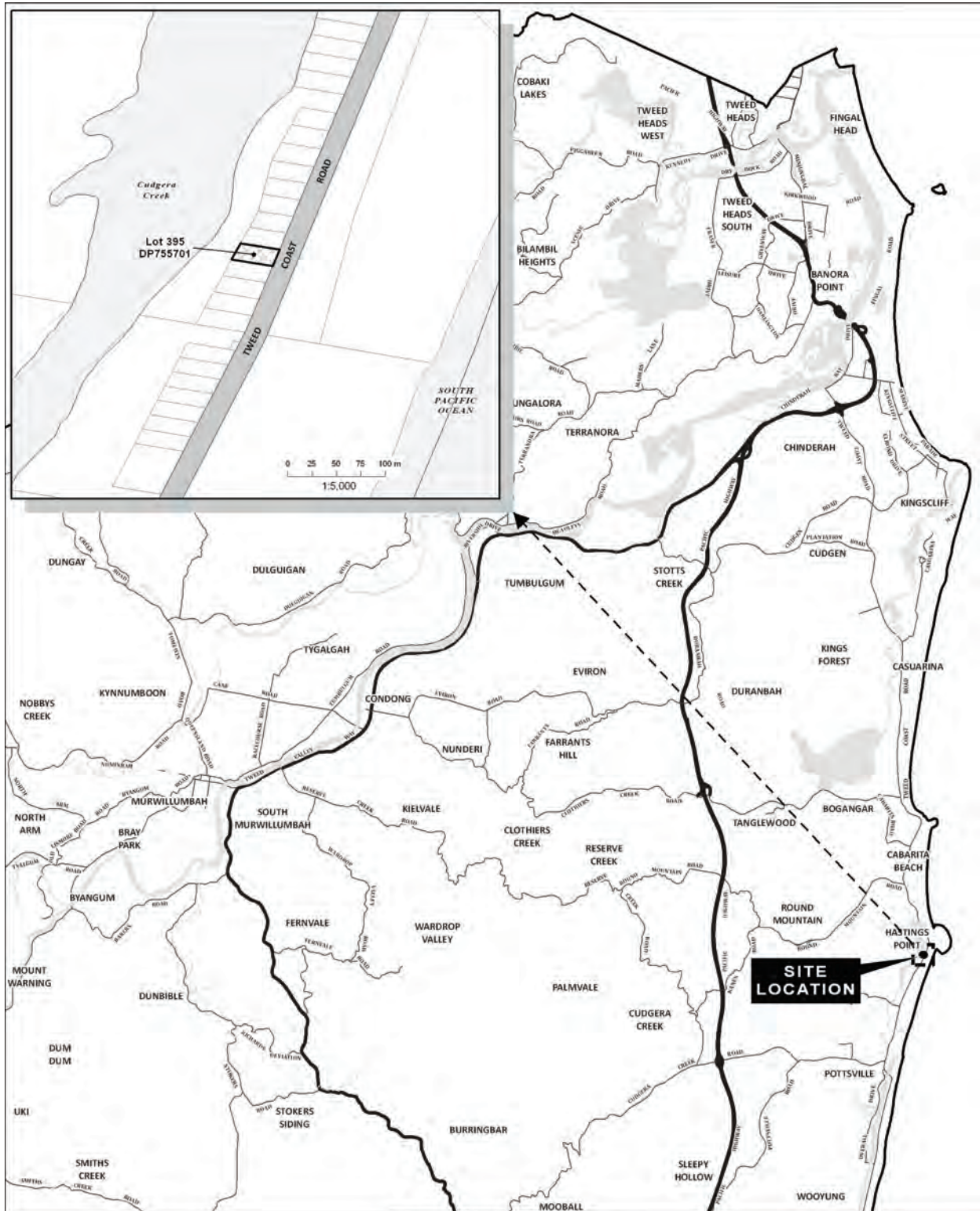
The subject property is legally described as Lot 395 DP 755701 and more commonly referred to as No. 55 Tweed Coast Road, Hasting Point. The property has an area of approximately 740m² which currently contains a two storey detached dwelling, detached single one storey garage and landscaping. The site is regular in shape with street frontage to Tweed Coast Road. Frontage width is 18.3m.

The subject property is zoned 2(b) Medium Density Residential under the provisions of Tweed Local Environmental Plan 2000 (TLEP 2000). Surrounding zones are a combination of 2(b) Medium Density Residential, 6(a) Open Space, 7(a) Environmental Protection (Wetlands and Littoral Rainforest) and 7(f) Environmental Protection (Coastal Lands).

History

0141/96B Building application for a dwelling. This dwelling is to be demolished as part of this application.

SITE DIAGRAM:



Locality Plan

Lot 395 DP 755701
No. 55 Tweed Coast Road, Hastings Point

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Cadastre: 27 May 2013
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Boundaries shown should be considered approximate only.

Scale: 1:120,000 @ A4 Portrait
COPY ONLY - NOT CERTIFIED
Map Data from: Universal Transverse Mercator
Horizontal Datum: GDA
Vertical Datum: Mean Sea Level
Map of Australia, Zone 56

Civic and Cultural Centre
1 Tumbulgum Road
Murwillumbah NSW 2484

PO Box 816
Murwillumbah NSW 2484

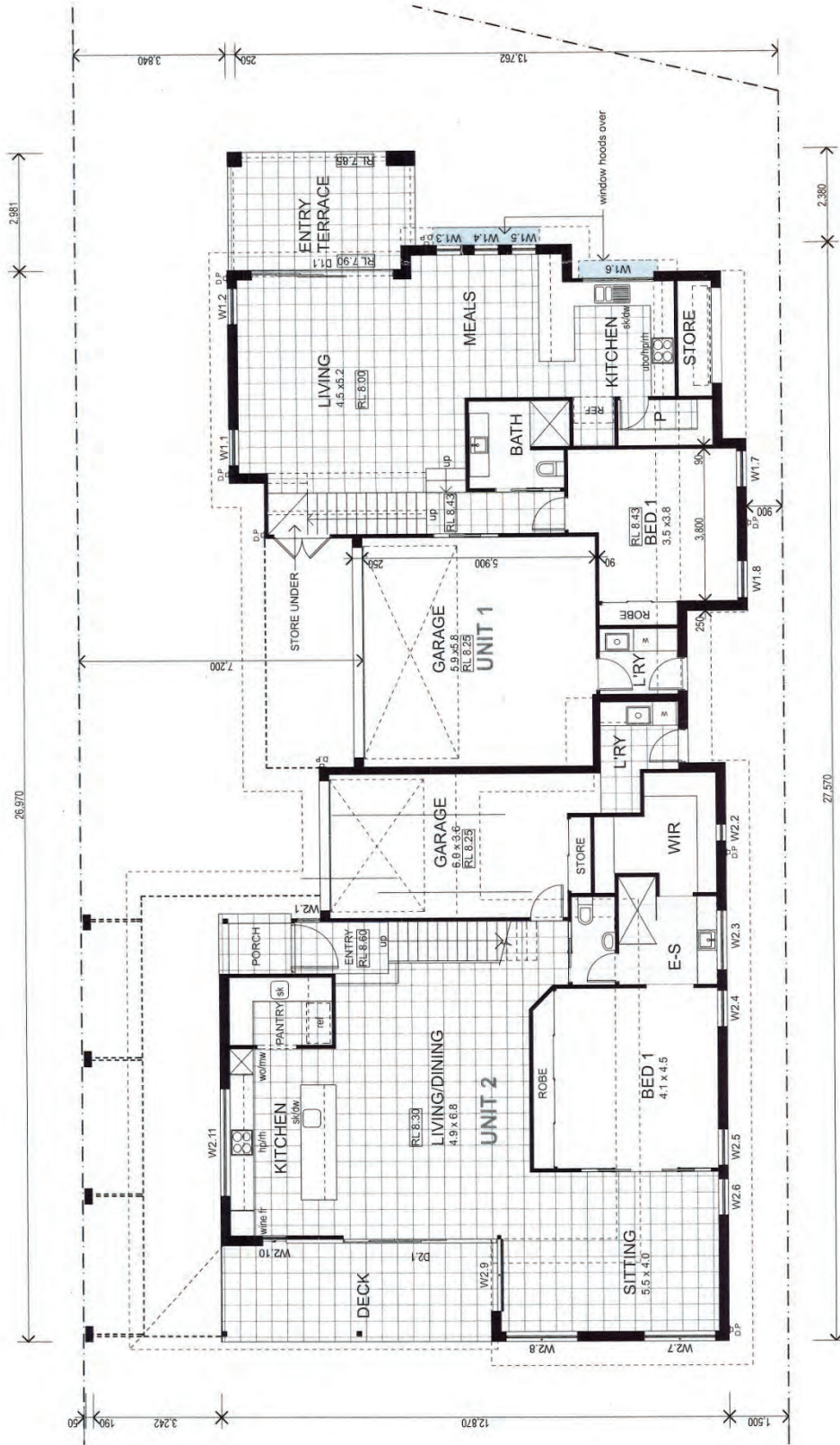
T | (02) 6670 2400 | 1300 292 872
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W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

Scale: 1:120,000 @ A4 Portrait





unit 1 135.5 sqm
unit 2 159.0 sqm

ground floor plan



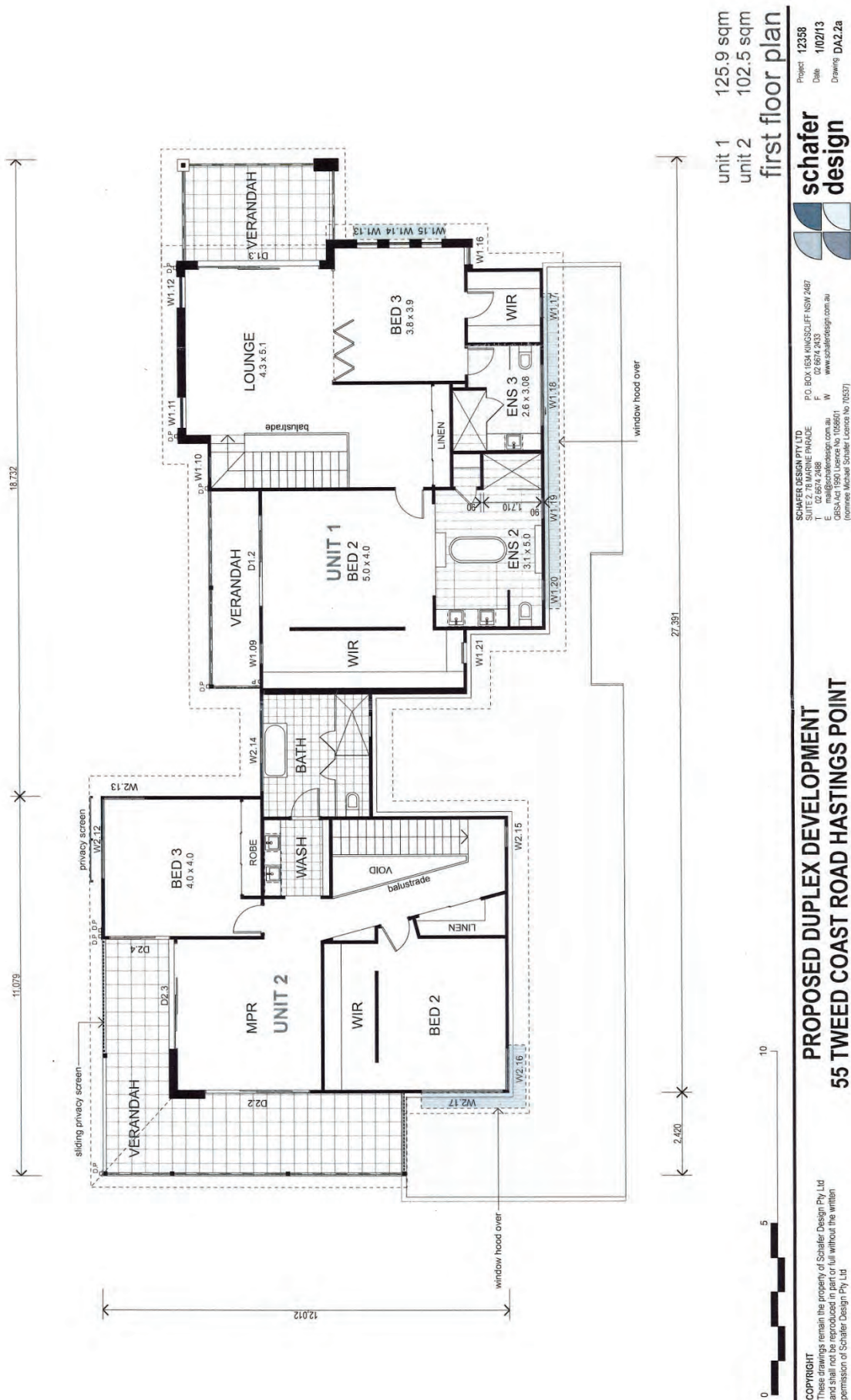
Project 12358
Date 1/02/13
Drawing DA2.1a

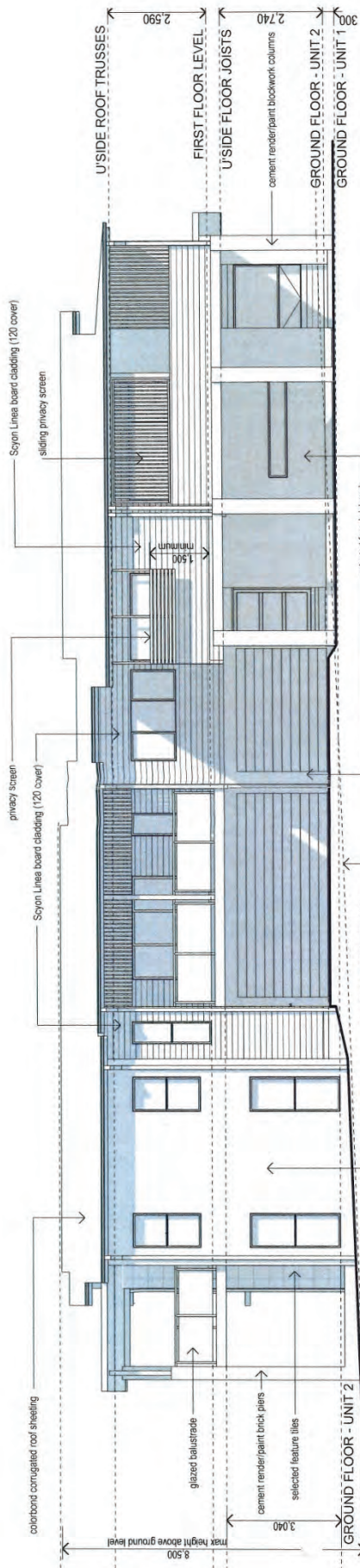


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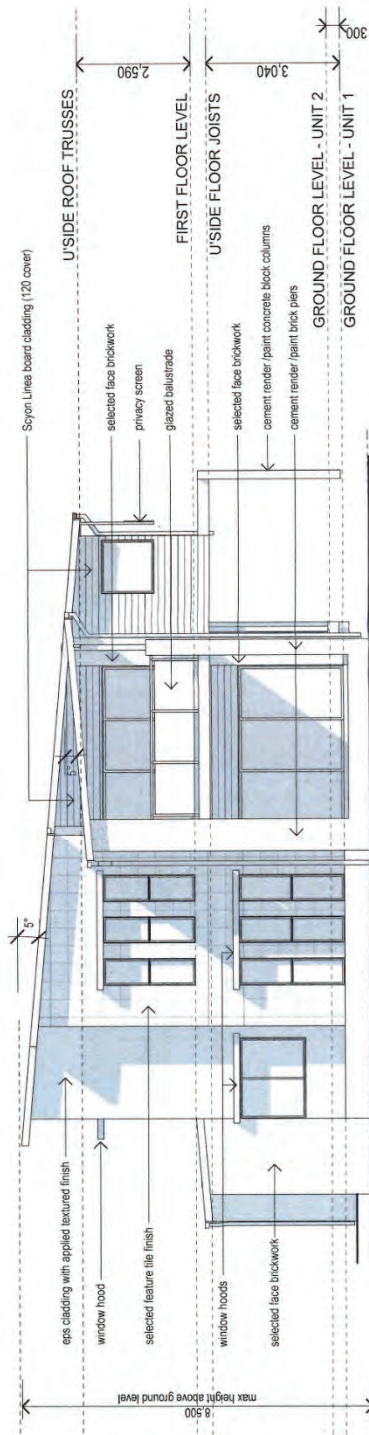
PROPOSED DUPLEX DEVELOPMENT 55 TWEED COAST ROAD HASTINGS POINT

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north elevation



east elevation

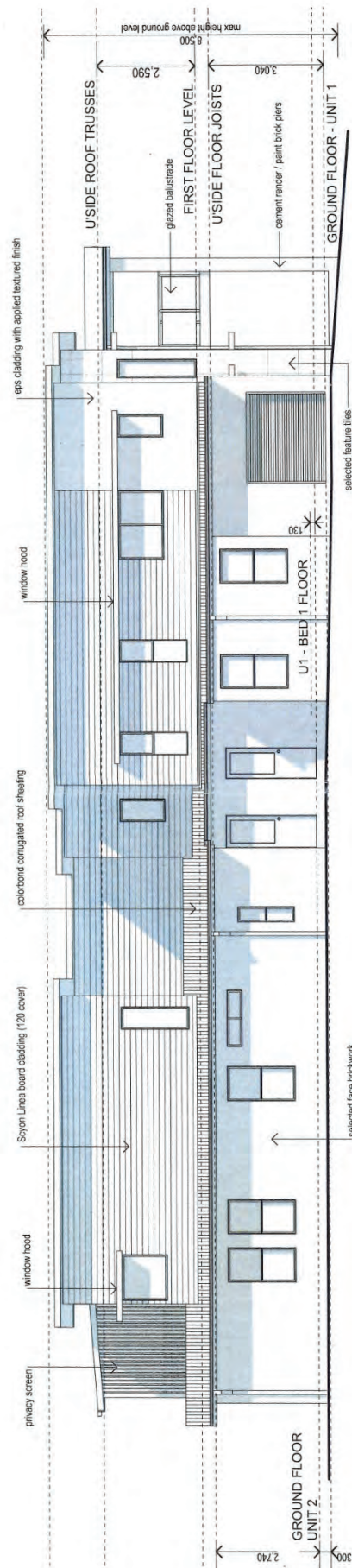


PROPOSED DUPLEX DEVELOPMENT
55 TWEED COAST ROAD HASTINGS POINT

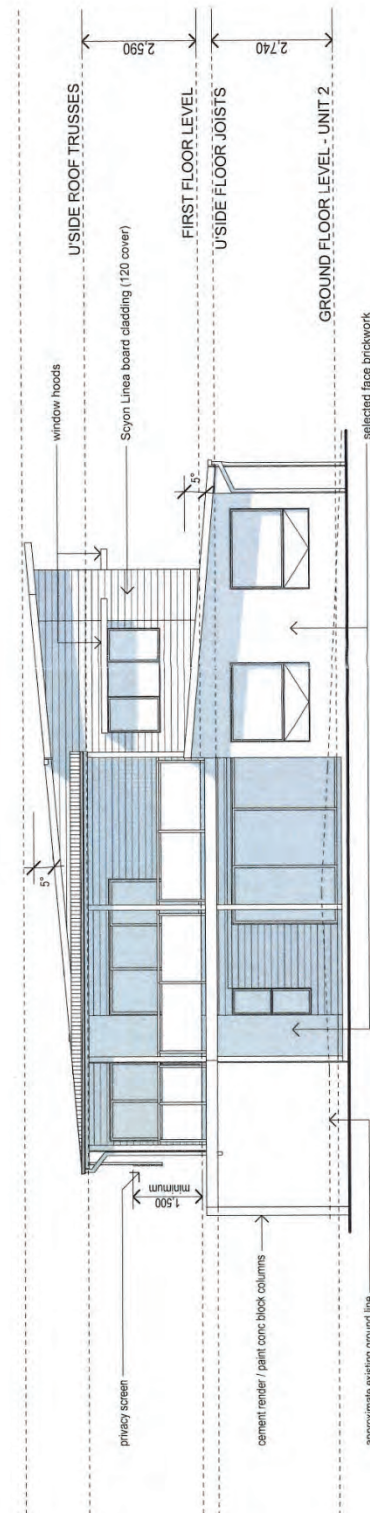
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Date 1/02/13
Drawing DA3.1a



south elevation



west elevation

Month	Number of Visitors
January	10
February	2
March	5
April	8
May	6
June	4
July	3
August	2
September	3
October	4
November	5
December	6

elevations

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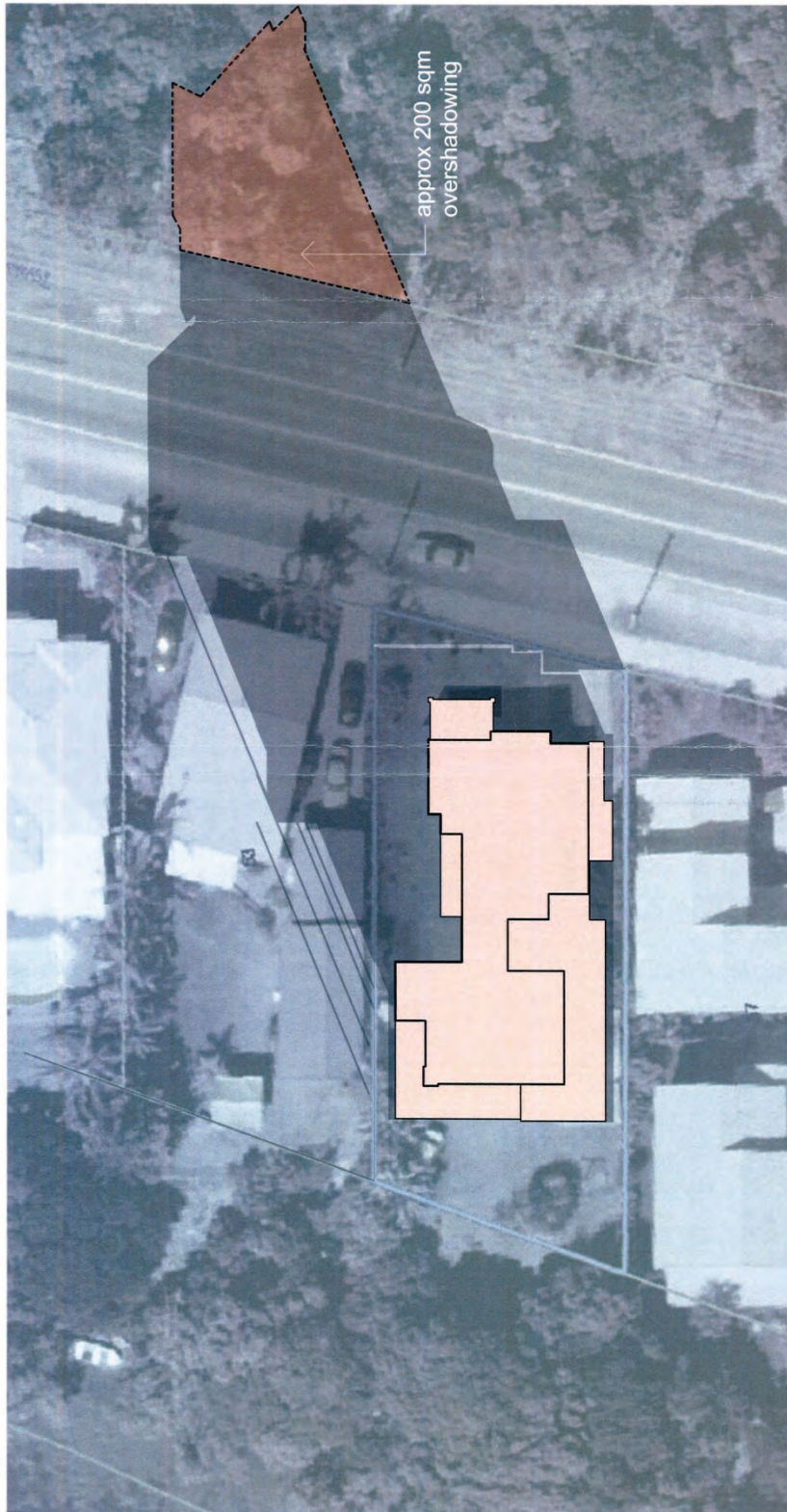
**PROPOSED DUPLEX DEVELOPMENT
55 TWEED COAST ROAD HASTINGS POINT**

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Project 12358
Date 1/02/13
Drawing DA3.2a



7:00 pm shadow

These shadow diagrams are approximate only. The shadows indicated are based on assumed level sites adjoining the subject property. The shadows cast on the adjoining properties are the approximate shadows that would be cast on the ground. The adjoining buildings have not been modelled and no allowances has been made for extent of shadowing that may occur on these buildings.

shadow diagram summer

Project 12358
Date 31/10/12
Drawing DA1.7



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*. Clause 4 further aims to provide a legal basis for the making of a Development Control Plan (DCP) to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

The development would generally accord with the aims of the plan, providing for a medium density residential use within an area zoned for this purpose.

Clause 5 - Ecologically Sustainable Development

The intent of this clause is to provide for development which is compatible with principles of ecological sustainable development (ESD) including the precautionary principle, inter-generational equity, ecological and environmental factors. The scale and nature of the proposal is not considered to conflict with principles of ESD.

Clause 8 - Consent Considerations

The subject site is located within the 2(b) Medium Density Residential zone. It is considered that the proposal meets the requirements of the primary objective of the zone, as detailed under Clause 11 below.

It is also considered that the proposal is consistent with the other aims and objectives of the LEP and other relevant plans as also detailed within the body of this report.

Given the nature and scale of the proposed development it is considered that the proposal would not have an unacceptable cumulative impact on the community, locality or on the Tweed as a whole as a result of its being carried out

Clause 11 - Zone Objectives

The site is zoned 2(b) – Medium Density Residential which under Clause 11 has the following primary objective:

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

Secondary objectives of the Zone are:

- *to allow for non-residential development which supports the residential use of the locality.*

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

The proposal is defined as 'Multi Dwelling Housing' under the Tweed Local Environmental Plan 2000 and is permissible with consent in the subject zone.

The proposal complies with the objectives and underlying intent of the 2(b) zone, providing medium density housing that achieves good urban design outcomes and which is in keeping with the established scale and height of the locality.

The development is therefore considered appropriate, meeting the objectives of the Zone.

Clause 15 - Essential Services

The primary objective of this Clause is to ensure that development does not occur without adequate measures to protect the environment and the community's health. The subject site is serviced with water, sewer, stormwater, power and telecommunications infrastructure. Accordingly, the proposal complies with the provisions of this clause.

Clause 16 - Height of Building

Clause 16 of the TLEP 2000 ensures development is undertaken in accordance with the building height plan. The subject land is identified as being in an area where development of up to three storeys is allowed.

The proposal consists of a two storey development and therefore the proposed development is in accordance with Clause 16.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP 2000 relates to social impact assessment, with the objective "*to ensure proper consideration of development that may have a significant social or economic impact*". Tweed Shire Council Development Control Plan (DCP) A13 requires a social impact assessment for the development of multi dwelling housing when more than 50 units are proposed. The requirements of DCP A13 therefore do not trigger the need for a social impact assessment and Clause 17 does not apply to the proposed development.

Clause 35 - Acid Sulfate Soils

The Acid Sulfate Soil (ASS) Planning Map on Council's GIS mapping system indicates that the proposed property is located on Class 4 Land.

The specified works for Class 4 land under this Clause are: *Works beyond 2 metres below the natural ground surface and works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface.*

This element of the application has been reviewed by Councils Environmental Health Section who have advised that given that the proposed works are not likely to go beyond the specified works criteria (i.e. greater than 2 metres depth) it is suitable to apply a condition that works don't go beyond these specifications without approval.

In this regard this Clause is considered to be satisfied.

Other Specific Clauses

Clause 22 – Designated Roads

The subject site has access and frontage to Tweed Coast Road which is a Council designated road. As such this clause applies to this site. This clause states that the consent authority may grant consent to development on land to which this clause applies only if the following is satisfied:

- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

The proposal is not considered to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road having regard to the nature and scale of the proposal on land zoned for this purpose.

- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

The subject site will maintain a single access point to the site, and the application will formalise this access point through the provision of a developed entranceway with a gate. Council's Development Engineering Section has provided a recommended condition of consent which requires a formal road access to be created to Council standards.

- (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*

The road is not identified for future road widening, with the proposal considered not to impede future road works. It is noted that there is approximately 7m between the current road edge and the site boundary as per Council's aerial imagery. The proposal is considered to be acceptable having regard to this objective.

- (d) *where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*

Not applicable. The subject site is zoned 2(b) Medium Density Residential.

- (e) *the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*

The proposed development is to be located on a designated road as such are to have an acoustic seal on the front door to reduce noise transmission. This would be enforced by an appropriate condition of consent. Furthermore, the application proposes a 1.8m high solid fence to provide privacy and noise attenuation.

- (f) *the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and*

The proposal is not considered to detract from the scenic values of the locality, due to variation in colours and materials to the building design and front fence design and landscaping.

- (g) *where practicable, access to the land is provided by a road other than the designated road, and*

The subject site cannot practically provide vehicular access except from the designated road.

- (h) *in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:*
- (i) *would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*
 - (ii) *would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
 - (iii) *would not compromise highway safety and efficiency, and*
 - (iv) *would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

Not applicable. The subject site is zoned 2 (b) Medium Density Residential.

Having regard to the above, the proposal is considered to comply with the objectives of clause 22 and sub clause 4.

Clause 34 – Flooding

The objectives of the Clause are as follows:

- *To minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.*
- *To minimise the adverse effect of flooding on the community.*

A small portion at the rear (west) of the site is flood prone, with a 1 in 100 year (Q100) flood level of RL 2.6m AHD and adopted minimum floor level of RL 3.1m AHD.

The proposal was assessed by Council's Planning and Infrastructure Unit (flooding engineers) and was considered acceptable. The sites current existing RL level of between 7m and 8m AHD are higher than the Q100 flood event. The proposed floor levels of the proposed development is RL 8m for Unit 1 and RL 8.3m for Unit 2. The proposed development is considered to be acceptable having regard to the provisions and objectives of this clause.

Clause 39 – Remediation of Contaminated land

The objective of this clause is '*to ensure that contaminated land is adequately remediated prior to development occurring*'.

A Pre-Demolition Underslab Soil Contamination Investigation Report was prepared by the applicant and submitted as part of this application. The report and investigation has been assessed by Councils Environmental Health Unit who have advised that it is unlikely that there is land contamination in this instance. As such the proposal is considered to be acceptable having regard to this Clause.

Clause 39A – Bushfire Protection

The subject site is located within a bushfire prone land area, with the entire site being within the 30m and 100m vegetation buffer zone.

The objective of this clause is '*to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets*'.

The proposed development was referred to the NSW Rural Fire Service (RFS) for comment. The NSW RFS responded with recommended conditions which are to be attached to any consent. This clause is considered to be satisfied.

Clause 54 – Tree Preservation Order

Clause 54 of the TLEP 2000 relates to tree preservation order and aims to protect vegetation for reasons of amenity or ecology. The subject site is identified as being covered by the 2004 Tree preservation order and the 2011 Tree preservation order within the koala habitat study area.

The site has been cleared of significant vegetation and currently contains common residential garden vegetation, some of which will require removal to facilitate the proposed development. The subject application was referred to Councils Natural Resource Management Unit who have advised that conditions should be attached to any consent with respect to native tree removal and landscaping.

Therefore the proposal is unlikely to impact on Koala habitat or amenity values of the site. As such the provisions of these TPO's are not contravened by this application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The subject land is designated coastal land and therefore this clause applies. The clause requires the consideration of the NSW Coastal Policy 1997 seeks to: protect, rehabilitate and improve the natural environment; protect and enhance aesthetic qualities and cultural heritage; and to provide for ecologically sustainable human development in the coastal zone.

Given the development comprises the construction of a two storey dual occupancy development, on residential zoned land in a previously approved subdivision, it is considered unlikely that the proposal will impact on the coastal values or cultural heritage. However, it is important to note that the proposal will create overshadowing of the waterfront open space (approximately 200m²) at 7:00pm. As noted elsewhere within this report a SEPP No. 1 objection is sought to the provisions of the Clause 32B of the NCREP. The SEPP No. 1 objection is supported in this specific situation.

The provisions state:

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*

- (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
- (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposal seeks a variation to the provision of Clause 32B (4) (b). The proposed development casts a shadow upon the foreshore reserve located across Tweed Coast Road before 7.00pm midwinter. Under the SEPP No. 1 assessment below this variation is supported.

Clause 43: Residential development

The provisions of Clause 43 of the REP relate to residential development on urban zoned land. The provisions state:

- (1) *The council shall not grant consent to development for residential purposes unless:*
 - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposed development is not considered to adversely affect environmental features of the site or generate any unreasonable burden onto the local road network. As a dual occupancy development, the proposed density is considered to be a reasonable response to the land use character of the area and the 2(b) Medium Density Residential zoning of the site. The proposed development will not result in the creation of any adverse physical impacts upon the locality.

SEPP No. 1 - Development Standards

SEPP No. 1 provides a mechanism in which a variation to a statutory development standard can be assessed and supported.

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

The subject application contains a SEPP No. 1 objection in relation to:

NORTH COAST REGIONAL ENVIRONMENTAL PLAN - REG 32B

Development control-coastal lands

32B Development control-coastal lands

- (4) The council must not consent to the carrying out of development:
- (a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or
 - (b) **elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).**

The proposed development overshadows a portion of the foreshore reserve to the east of the site. In this regard the proposal will result in a shadow extending into the adjacent foreshore reserve prior to 7:00pm midsummer (daylight savings time) approximately 200m² of shadow is cast at 7.00pm midsummer (daylight savings time).

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

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

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

“The objective of the standard contained within Clause 32(b) is related to the protection of the recreational integrity of foreshore open space areas and the need to restrict adverse impacts upon same by the erection of buildings in close proximity.

It is contended that the proposal is consistent with the abovementioned objective and that the integrity of Clause 32(b) would not be impacted upon via the approval of the structure. In this regard, the following matters are considered relevant to assessing the merits of the proposed departure from the development standard:

- *The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the foreshore reserve;*
- *The shadow cast by the local natural features will envelope any shadow cast by the proposal. As a result no increase to the existing level of shadow will result;*
- *That area subject to overshadowing is not significant active recreation area or beach;*
- *The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve;*

- *The overshadowing is minor at 7.00pm midsummer and is non-existent at 3 pm midwinter. And;*
- *The proposal does not overshadow the beach.*

In the light of the foregoing analysis it is concluded that compliance with the development standard is both unreasonable and unnecessary. Furthermore, as the proposed development demonstrates consistency with the intent and objective of the development standard, the granting of a variance in this instance would not prejudice the future integrity of that standard nor impact upon the amenity of the locality.

It is also further noted that Table 3 of the NSW Coastal Policy 1997 provides for comments under the heading of 'Design and Locational Principles for Consideration in LEPs, DCPs and Development Control'. In this regard and with reference to the overshadowing standard within NCREP 1988, the policy states, Inter alia:

'The suggested standard in this principle may be difficult to apply in highly urbanised environments. An LEP or DCP which is tailored to local conditions and which has the overriding objective of minimising overshadowing may be required in these situations'

In this circumstance, the subject site is within the urbanised area of Hastings Point. The proposal represents a development form compliant with Councils controls and which is consistent with the envisaged built character of the locality. Given the locational characteristics of the area, and the nature and size of the reserve adjacent, strict compliance with the standard is considered both unjustifiable and unnecessary."

Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The applicant has chosen the first way to demonstrate this:

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

As noted by the applicant, the proposed development is consistent with the intent and objectives of the development standard. In this instance, it is considered that compliance with the development standard is unreasonable and unnecessary.

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

The aims of the policy are as follows:

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

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

- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

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

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

It is considered that the proposed overshadowing is relatively minor and will not raise any matters for state or regional planning. The overshadowing will not impede the overall objectives of the clause. It will not reduce the quality of the useable foreshore area for the benefit and enjoyment of the public.

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

SEPP No. 14 - Coastal Wetlands

The subject land is located within the 100m buffer to mapped SEPP14 Wetlands at Cudgera Creek to the west of the site. The proposal will have no direct impact on or relation to these wetlands.

Clause 4 (4) states the following:

This Policy does not apply to land to which State Environmental Planning Policy No 26—Littoral Rainforests applies.

The subject site is included within the 100m buffer to mapped SEPP 26 Littoral Rainforest. Accordingly, the provisions of SEPP 14 do not apply to the site.

SEPP No. 26 - Littoral Rainforests

The subject site is included within the 100m buffer to mapped SEPP 26 Littoral Rainforest. As stated by Clause 4(1) of the policy:

This Policy applies to:

- (a) *land enclosed by the outer edge of the heavy black line on the series of maps held in the Department and marked “State Environmental Planning Policy No 26—Littoral Rainforests (Amendment No 2)”, and*
- (b) *land not so enclosed but within a distance of 100 metres from the outer edge of that heavy black line **except residential land and land to which State Environmental Planning Policy No 14—Coastal Wetlands applies.***

As defined by Clause 3 of the SEPP residential land means land which is within a zone designated “Residential”, “Village” or “Township” on the day on which this Policy takes effect in any environmental planning instrument.

The site is residential land for the purposes of SEPP 26 and as such the provisions of this SEPP do not apply.

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

(a) the aims of this Policy set out in clause 2,

The proposal is generally in accordance with the aims of this policy.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

It is noted that Cudgera Creek is located to the west of the site; however the proposal will not impact on public access along the foreshore, as currently the site does not offer any public access to the foreshore.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

It is not considered that this application offers any opportunities to provide new public access to the foreshore.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

The proposal is considered suitable, having regard to its permissibility in this area.

(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,

The proposal will not result in any detrimental impact on the coastal foreshore, however, it is to be noted that the development will create overshadowing of waterfront open space (approx. 200m²) at 7:00pm. It is however noted a SEPP 1 objection is sought to the provisions of the Clause 32B of the NCREP, which is supported in this instance.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,

The proposal would not impact negatively any animals or their habitats.

(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats

The proposal will not have an adverse impact upon marine environments or habitats.

(i) existing wildlife corridors and the impact of development on these corridors,

There are no wildlife corridors impacted by the proposed development.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards.

(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,

The proposal is not considered to cause any conflict between land-based and water-based activities.

(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,

The subject development is not considered to impact on any traditional Aboriginal cultural values.

(m) likely impacts of development on the water quality of coastal water bodies,

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies. Appropriate conditions have been applied in regard to erosion and sediment control and stormwater management.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

Not applicable to the subject application.

(p) only in cases in which a development application in relation to proposed development is determined:

(i) the cumulative impacts of the proposed development on the environment, and

This development is not considered to have a negative cumulative impact on the environment.

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

Appropriate measures have been adopted in terms of design to minimise energy usage including the orientation of the building to maximise solar access and allow natural light to filter into all dwellings. BASIX certificate has been prepared.

Conclusion

It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

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

The Draft Tweed Local Environmental Plan 2012 is applicable to the subject site.

Part 1 Preliminary

1.2 Aims of Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows;

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents,
 - (b) to promote employment, residential, recreational, arts, social, cultural and tourism opportunities in Tweed,
 - (c) to encourage the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas, the built environment and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development,
 - (e) to conserve and enhance the biological diversity, scenic quality and ecological integrity of the Tweed.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible in the subject zone.

1.4 Definitions

Under this Plan, the proposed development would be defined as 'dual occupancy' defined as '*meaning a dual occupancy (attached) or a dual occupancy (detached)*'.

This is permitted with consent in the R3 zone.

Part 2 Permitted or prohibited development

2.1 Land use zones

The proposed development area is zoned as R3 Medium Density Residential zone under the provisions of this plan.

2.3 Zone objectives and Land Use Table

The Draft TLEP 2012 zones the development area as R3 – Medium Density Residential. The objectives of the R3 – Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

In this zone, the proposed development is permissible with consent. The proposed development is considered to be consistent with the objectives of the zone.

The subject application is considered to be generally in accordance with the provisions of the Draft LEP and would remain permissible were the draft to be adopted in its current form.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A detailed assessment of Section A1 is appended to the file. Whilst a number of variations to Section A1 are required, particularly with respect to front deep soil zone and front fence, these are considered to represent an acceptable development of the site. The proposal is not considered to cause a significant impact on streetscape character and the variations are considered justified in this instance. The proposed variations are detailed further below.

Front deep soil zone

The proposed development is considered to result in a variation to the front deep soil zone controls due to the location of a car parking space within the area normally reserved as a front deep soil zone. In this regard it is noted that the proposal is to maintain permeable surfaces in this area and as such it is only the reduction of these areas as being suitable for planting which contravenes the objectives of this control. In this regard it is noted that adequate planting is to be proposed elsewhere on the site and will be formalised through the submission of a detailed landscaping plan as required by condition of consent. In this regard a variation to the front deep soil zone control is considered to be acceptable.

Front Fence

A solid front fence with a height of 1.8m has been proposed as part of this application. This represents a variation to the 1.5m height control as well as the 60% minimum openness ratio control set out in DCP A1. The following is advised with respect to this.

The proposal is located on Tweed Coast Road which is identified as a designated road. The proposal includes a 1.8m high front fence constructed of rendered concrete block, combined with a lapped timber pedestrian gate and automatic sliding driveway gate. The fence has been proposed to provide acoustic mitigation from the adjoining Tweed Coast Road.

To compensate for the fence height the fencing has been articulated and setback from the front boundary line and would include landscaping to the front and behind to soften the interface to the street (Refer to Figure 1 below). It is noted that the new Section A1 permits the construction of a solid front fence of up to 1.8m, when located on an arterial road, and as such the proposal would comply with this control.

The applicant has submitted that the proposed front fencing:

- Effectively defines the front boundary;
- Through integrated landscaping that contributes positively to the streetscape,
- Enhances the usability of the private open space within the front yard and
- Offers acoustic and visual privacy from Tweed Coast Road.

The proposal is considered to generally comply with the relevant objectives and the variation is supported in this instance.



Figure 1: Perspective of front fence

It is noted, that as of 21 May 2013 a new DCP A1 became effective with controls relating to dual occupancy development. Whilst this DCP does not contain a savings provision for Development Applications lodged pre-adoption date, it is considered reasonable and pragmatic to assess this application generally in accordance with the DCP controls in effect on the date of lodgement (27 November 2012).

In any case it is considered that the proposed development is generally in accordance with the provisions of the new DCP A1, although it is noted that a site analysis would be required to be submitted under the new DCP provisions. The following variations to the new DCP A1 have been identified and are addressed below:

3.1 Setbacks

Control C1.

This control outlines that a minimum rear setback of 8m would be required for the proposed development given the site area (740m²) and the height of the proposed building (+4.5m). This is a variation which is addressed under the assessment of DCP B23 below, with the extent of development within the 8m setback being assessed as minimal. In this regard the proposal is considered to be acceptable.

3.3 Site coverage

Control C1.

This control stipulates that the maximum site coverage for this allotment would be a total of 50%.

Site coverage is a control which was not addressed by the applicant in the submitted application as the information was not required at that time, however from extrapolation of the information provided by the applicant it is considered that the proposal would result in total site coverage of approximately 56% (taken from impermeable site area). This is considered to be an acceptable variation to this control due to its minor nature and the fact that the application was submitted to Council prior to the adoption of this control.

Conclusion

Overall the proposal is considered to be generally compliant with both versions of DCP A1, with the variations considered to be acceptable in this instance.

A2-Site Access and Parking Code

The proposed dual occupancy development has frontage to Tweed Coast Road. Tweed Coast Road offers an 8m wide bitumen sealed road pavement in fair condition with no kerb and guttering servicing either side of the street at this location. An upgrade of Tweed Coast Road is not required. Adequate site distance exists from the proposed access to the site. A public transport system currently services the Hastings Point area and is considered accessible to the proposed development.

Access

Access to the development is proposed via a new driveway crossover, located at the northern end of the site and will be subject to a Section 138 application, ensuring compliance with Councils Access to Property Guidelines.

The proposed access to the site has been reviewed by Council's Development Engineering Section who have indicated that the proposal is acceptable in this regard subject to appropriate conditions being applied to any consent. Tweed Coast Road is considered to have sufficient capacity to cater for the additional traffic generated by the proposed Dual Occupancy development.

Parking

Two parking spaces are provided for each unit in addition to one driveway parking space.

- Unit 1 will have a double garage, therefore satisfies requirement.
- Unit 2 will have a single garage plus a carport, therefore satisfies requirement.

The visitor parking space is proposed between Unit 1 and the front boundary.

Based on the above, it is noted that the proposal is compliant with the parking standard and is considered to be acceptable in this regard. A condition of consent would be applied to any approval requiring the above parking spaces be provided. The development is considered to be consistent with DCP section A2.

A3-Development of Flood Liable Land

A small portion at the rear (west) of the site is flood prone, with a 1 in 100 year (Q100) flood level of RL 2.6m AHD adopted minimum floor level of RL 3.1m AHD.

The proposal was assessed by Council flooding engineers (Planning and Infrastructure) and considered acceptable. The sites current existing RL level of between 7m and 8m AHD are higher than the Q100 flood event. The proposed floor levels of both units are RL 8m (Unit 1) and RL 8.3m (Unit 2). The proposed development will not adversely affect the current flood pattern and levels in the area. The development is considered to be consistent with DCP section A3.

A11-Public Notification of Development Proposals

The proposed development was notified for a period of 30 days from 10 December 2012 to 14 January 2013. Council did not receive any submissions during this time.

B23-Hastings Point

An assessment of the proposed development against Section B23 has been undertaken with the proposal considered to generally comply with Section B23 of the Tweed Development Control Plan. The site is situated within the South Hastings Point Precinct. However, the proposed development seeks a number of variations to the Plan. These variations are discussed in detail below.

Variations

The proposed development seeks the following variations to Tweed Shire Council's Development Control Plan:

1. Section B23 – Part 4.4.3.5 – Controls – Residential Lots – Control 2;
2. Section B23 – Part 6.3.2.3 –DC2 Site Configuration – Landscaping – Control I);
3. DC3 Setbacks – Front Setbacks Building Lines – Control a);
4. DC3 Setbacks – Front Setbacks Building Lines – Control d);
5. DC3 Setbacks – Side Setbacks – Control a);
6. DC3 Setbacks – Rear Setbacks – Control a);
7. DC4 Car Parking & Access – Control c);
8. DC4 Car Parking & Access – Control f);
9. DC8 – External Building Elements – Fences and Walls: Front, Side and Rear – Control c);
10. DC8 – External Building Elements – Fences and Walls: Front, Side and Rear – Control d).

Section B23 – Part 4.4.3.5 – Controls – Residential Lots – Control 2

Under this section of the DCP control 2 states that:

‘Setbacks are to be in accordance with Figure 4.29 Control Diagram - South Hastings Point’.

Figure 4.29 specifies a minimum 6m front setback which can be varied under DC3 Setbacks – Front Setbacks Building Lines – Control b) which states:

"This setback can be varied up to plus or minus 1 metre. On sites where the angle of the front and side boundaries vary by more than 10 degrees the setback can vary by +/- 2 metres."

The angle of the site boundaries are considered to exceed the 10 degree standard. As such a front setback of 4m is permitted under the provisions of this DCP. The Dual Occupancy proposes a varying front setback ranging from 3.544m to 4.942m on a lot where the angle of the front and side boundaries vary by more than 10 degrees (the boundary angle is 14 degrees). The applicant states that the *'proposed front setback has been established by the average of the adjoining setbacks +/- 2m in accord with control b of Section B23 of the TDCP 2008.'*

The variation is considered to relate to a small non compliance of 0.456m, concerning the outermost projection of the Unit 1 front terrace/verandah (see below). A comparison has been undertaken against the setbacks of adjoining residences. No. 53 Tweed Coast Road (to the north) has a front setback of approximately 3.2m, with No. 57 Tweed Coast Road (to the south) having a varied front setback of 5.4m and 7.3m. The proposed development incorporates a front building setback of 3.54m to the outermost projection of the Unit 1 front terrace/verandah and 4.759m to front wall. The provided setbacks are considered to be acceptable having regard to neighbouring dwellings and the character of the locality and establish an average front setback consistent with the policy.

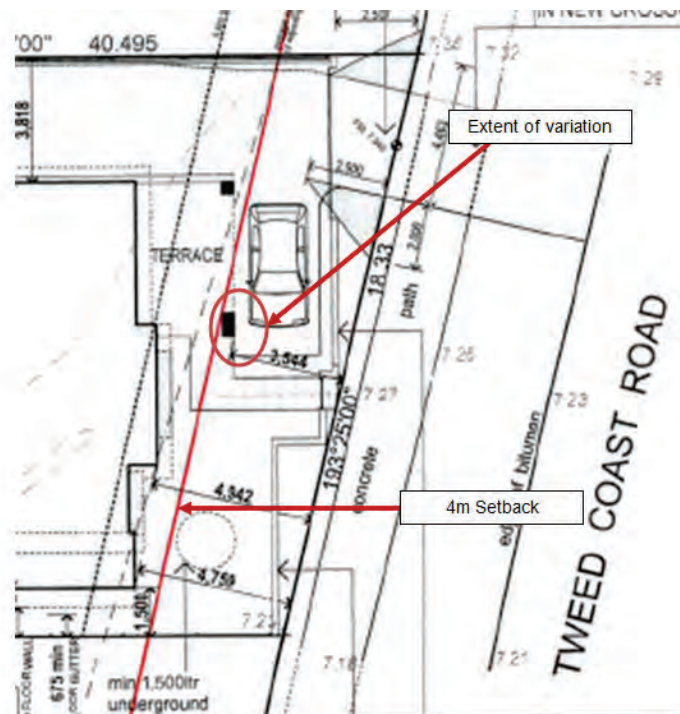


Figure 2: Extent of Front Setback Variation

The proposed variation to this control is considered to be acceptable and is therefore supported in this instance.

DC2 Site Configuration – Landscaping – Control I);

The proposal incorporates a visitor car parking space between the Unit 1 Terrace and the front fencing and landscaping. Control I) states:

'Pools, car parking, tennis courts and other uses that result in hard surfaces are not permitted within the prescribed front setback area'.

Section B23 refers back to the Section A1 objectives. The landscaping objectives within Section A1 are:

Objectives

- *To enhance the appearance and amenity of development.*
- *To enhance the character of the locality and the streetscape.*
- *To retain existing important landscape features.*
- *To provide privacy between adjoining dwellings and private open space.*
- *To assist in the percolation of rainwater and reduction in stormwater runoff.*
- *To improve microclimatic conditions on sites and the solar performance of dwellings.*
- *To contribute to improving urban air quality.*
- *To provide fauna and flora habitat.*
- *To assist in the protection of urban bushland.*

Each objective is addressed individually by the applicant below:

- To enhance the appearance and amenity of development.
‘The proposal incorporates high quality native landscaping. The proposed visitor space within the front setback does not compromise the appearance of amenity of the development.’
- To enhance the character of the locality and the streetscape.
‘The proposal incorporates high quality native landscaping. The proposed visitor space within the front setback is shielded from view via the proposed front fencing and landscaping located between the front fence and boundary. The proposal does not compromise the character of the locality.’
- To retain existing important landscape features.
‘Not Applicable. This objective does not have any relevance to the proposed variation. No existing important landscape features are located on the site.’
- To provide privacy between adjoining dwellings and private open space.
‘The proposed visitor space within the front setback does not impact upon the privacy of the adjoining dwellings and private open space.’
- To assist in the percolation of rainwater and reduction in stormwater runoff.
‘The proposed visitor space is finished in pervious paving. Rainwater percolation will be maintained.’
- To improve microclimatic conditions on sites and the solar performance of dwellings.
‘The proposed visitor space within the front setback does not impact upon the solar performance of the dwellings.’
- To contribute to improving urban air quality.
‘The proposed visitor space within the front setback does not impact upon urban air quality.’

- To provide fauna and flora habitat.
'Any proposed landscaping is to be predominately native only plantings.'
- To assist in the protection of urban bushland.
'The proposed visitor space within the front setback does not impact upon urban bushland.'

The proposed variation is supported in this instance. It should also be noted that the car parking space is to be paved with a permeable 'Atlantis Turfcell' surface which will maintain permeability in this location, consistent with it being a grassed area. The proposal is considered to maintain compliance with the above objectives. The proposal and the variation are considered to meet the landscaping objectives Section A1 and Section B23.

DC3 Setbacks – Front Setbacks Building Lines – Control a);

Front setbacks objectives are referred back to Section A1. However, there are additional controls under this DCP. Control a. is varied as follows:

Control a. states:

'Buildings are to have setbacks in accordance with Part 4: Precinct Specific Strategies.'

Control 2 'Setbacks are to be in accordance with Figure 4.29 Control Diagram - South Hastings Point'. Figure 4.29 specifies a minimum 6m front setback. As noted previously, a setback of 4m is permitted under DCP B23, due to the angle of the front boundary exceeding 10 degrees. The Dual Occupancy proposes a varying front setback ranging from 3.544m to 4.942m. Therefore this variation is considered to relate to a non compliance of 0.456m, concerning the outermost projection of the Unit 1 front terrace/verandah. As noted previously, the provided setbacks are complementary to neighbouring dwellings and the character of the locality and establish an average front setback consistent with the policy. The proposal and the variation are considered to meet the front setback objectives of Section B23.

DC3 Setbacks – Front Setbacks Building Lines – Control d)

The proposal incorporates a visitor car parking space between the Unit 1 Terrace and the front fencing and landscaping. Control d) states:

'On grade parking must be located a minimum of 6 metres setback from the building front elevation or to the rear of the site.'

Section B23 refers back to the Section A1 objectives in this regard, which state:

Objectives

- *To establish the desired spatial proportions of the street and define the street edge.*
- *To enable a transition between public and private space.*
- *To create a landscape setting for residential buildings.*
- *To ensure compatibility with other buildings in the street.*
- *To allow for landscaping.*

The proposed visitor's space is not considered to impact upon the spatial proportions of the street; prevent front landscaping of the southern portion of the full front setback; or make the proposal incompatible with adjoining dwellings. The proposal is considered to be consistent with the setback objectives above and the variation is supported in this instance.

DC3 Setbacks – Side Setbacks – Control a);

Side setbacks objectives are referred back to Section A1. However, there are additional controls provided under this DCP. Control a. is varied as follows:

Control a. states:

‘Buildings can have minimum of 1.5 metre setbacks for the first and second levels of the building’.

The proposal includes a small area of the ground (first) level of Unit 1 at 900mm from the southern site boundary. The length of the part of the building at 900mm is limited to 4.4m in length. The use of that part of the building is a bedroom. Section A1 side setbacks objectives state:

Objectives

- *To provide an orientation for windows of ancillary rooms.*
- *To provide access to the rear of the lot.*
- *To provide a location for rainwater tanks.*
- *To facilitate visual and acoustic privacy between neighbouring lots.*

The proposed variation is not considered to:

- Prevent windows from being orientated to the side boundary. In this regard it is considered appropriate that a condition be attached to any consent requiring that the proposal provide for screening to this elevation.
- Prevent access being provided to the rear of the lot as this is provided to the north of the site through the vehicular entrance. In any case, the 900mm setback would still provide access to the rear of the allotment in this location.
- An underground rainwater tank has been proposed and in this regard the area where the extended bedroom is located does not preclude the provision rainwater tanks.
- Result in a visual or acoustic privacy issues to the adjoining dwelling. In this regard it is noted that the variation is relatively minor, being for a length of 4.4m along a 27m long building which relate to approximately 16% of the total building.

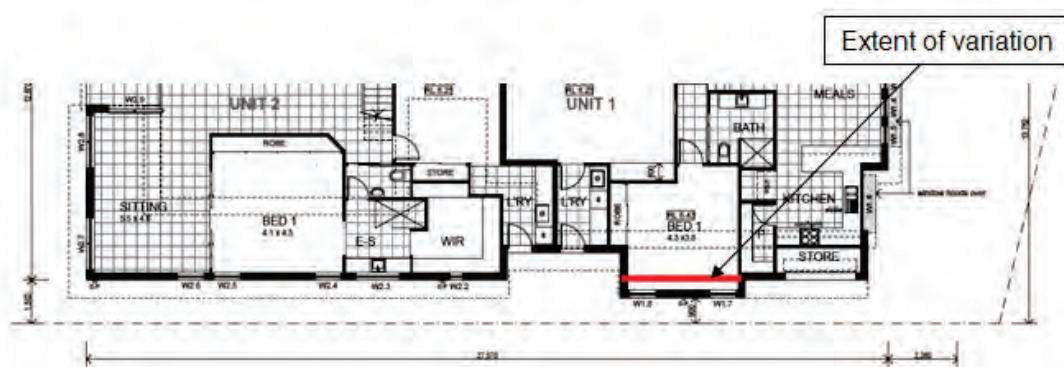


Figure 3: Extent of Side Setback Variation

The proposal is therefore considered to comply with the Section A1 Side Setback objectives and the proposed variation to B23 is supported.

DC3 Setbacks – Rear Setbacks – Control a);

Rear setbacks objectives are referred back to Section A1. However, there are additional controls for consideration provided under this DCP. Control a is varied as follows:

Control a. states:

'The minimum rear boundary setback is 8 metres or the deep soil zone whichever is the greater. The minimum building separation distances must be met.'

The proposal includes a varied setback ranging from 10.078m to 5.193m to the rear boundary. The minor part of the building within the rear setback is a ground floor deck and upper floor balcony, neither of which is enclosed. The proposal continues to provide a compliant rear deep soil zone of 8m by 8m. It is further noted that this setback has been varied on the surrounding properties, particularly to the south of the development site (Refer to Figures 4 & 5 below).

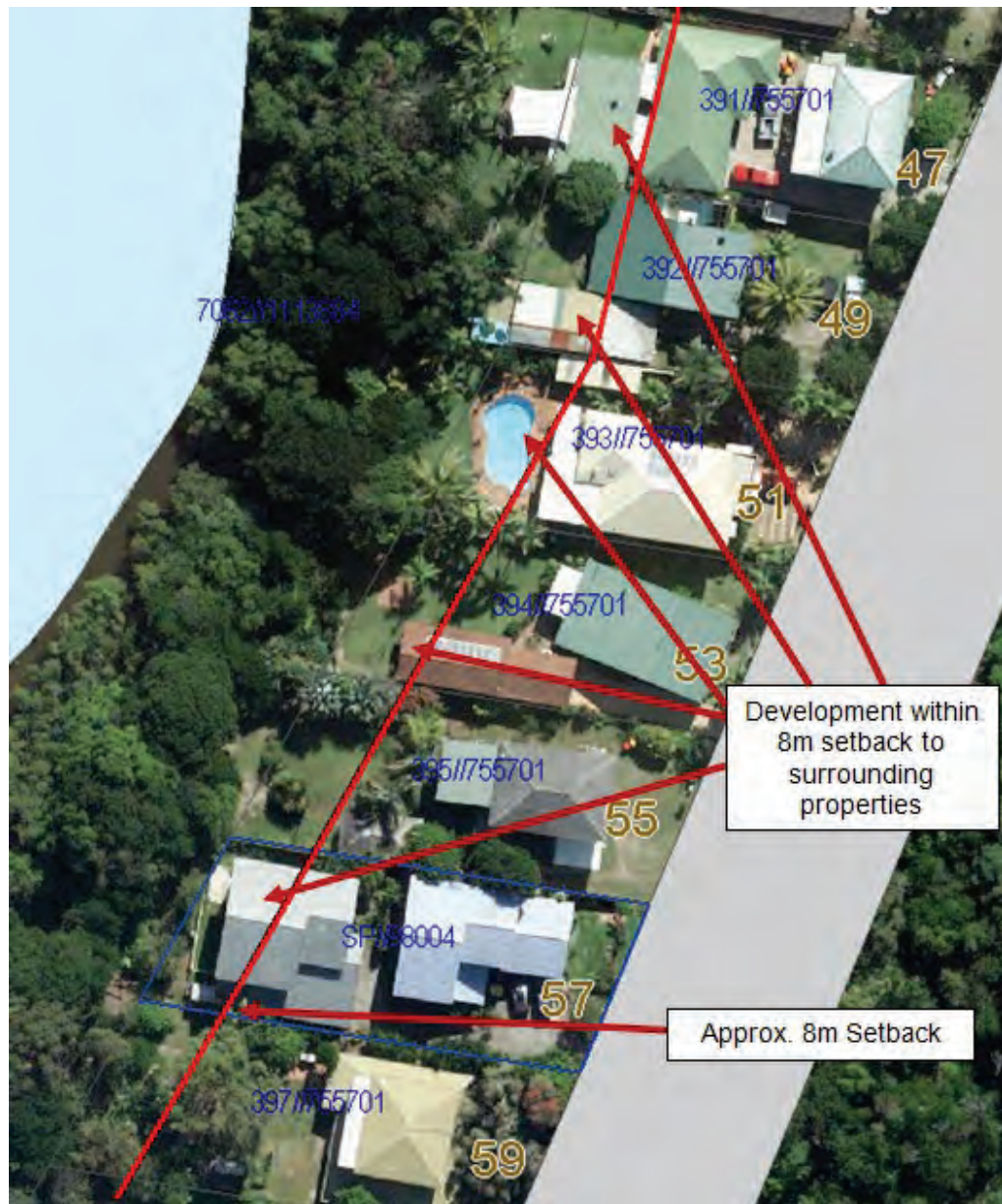


Figure 4: Development Within Rear Setbacks of Surrounding Properties

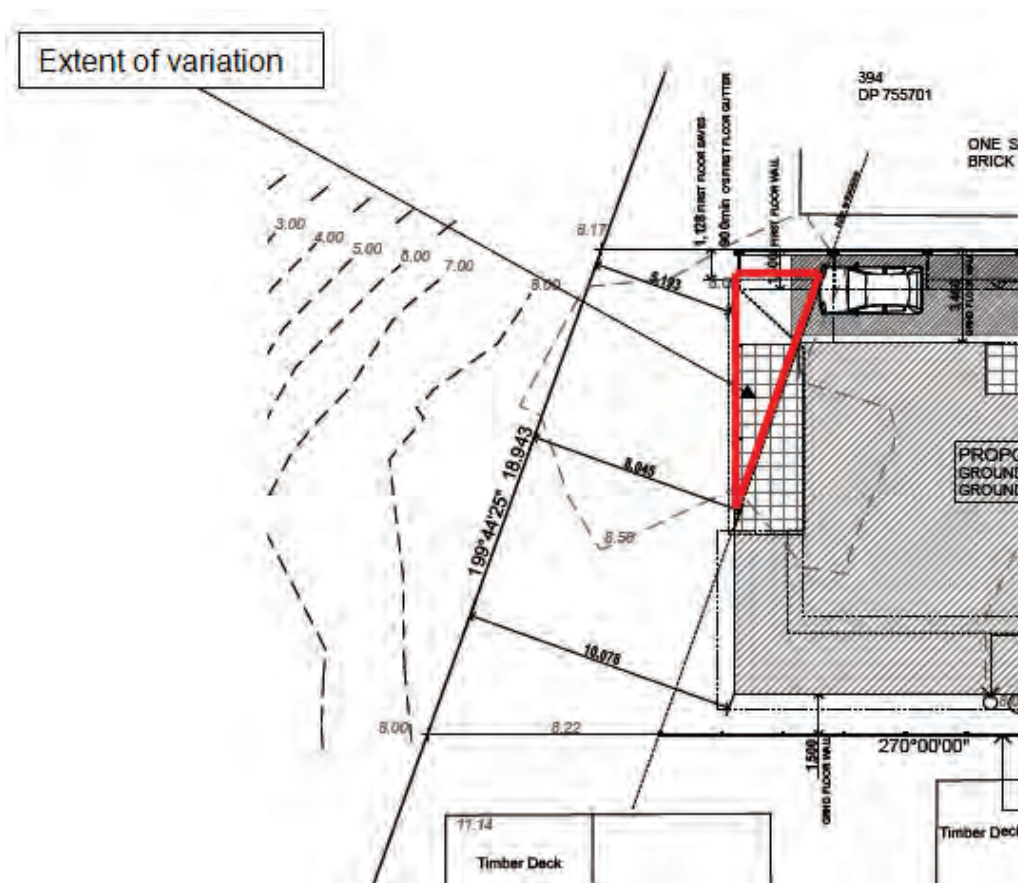


Figure 5: Extent of Rear Setback Variation

Section B23 refers back to Section A1 objectives, which state:

Objectives

- *To provide an area for private outdoor recreation and relaxation.*
- *To allow space for vegetation and mature trees.*
- *To separate dwellings to achieve privacy.*

The proposed minor variation is required due to the configuration of the allotment and is considered not to compromise the objectives outlined above. In particular the variation does not:

- Prevent the provision of a private outdoor recreation space, as it is considered that there is approximately 110m² of area maintained to the rear of the site for recreation purposes.
- Prevent the planting of appropriate landscaping, again due to the provision of a large area to the rear of the site.
- Result in a privacy issue, as the site does not adjoin another residential property to this boundary.

The proposal is considered to comply with the Section A1 Rear Setback objectives as outlined above and the proposed variation to DCP B23 is supported.

DC4 Car Parking & Access – Control c) &– DC4 Car Parking & Access – Control f);

Design Control 4- Carparking and Access objectives are referred back to DCP Section A1. However, there are additional controls for consideration under this DCP.

The A1 objectives are:

- *To provide on site car access, parking and manoeuvring areas.*
- *To minimise the physical and visual dominance of vehicles on sites.*
- *To minimise footpath and street reserve crossings.*

The proposed development results in a variation to controls c. and f. under this DCP.

Control c. states:

‘Car parking cannot be located within the front setback’

Control f states:

‘On grade car parking cannot occur within 12 metres of the street boundary’.

The proposal incorporates a visitor car parking space between Unit 1 and the front fencing and landscaping.

The proposed visitor parking space does not impact upon site access or manoeuvring area as garaged vehicles do not rely on this area to access the garages to turn around.

Furthermore, the proposal does not require any additional footpath crossing as a pedestrian pathway is located beyond this area nor result in the visual dominance of the streetscape from vehicle parking areas, due to the proposed front fencing and landscaping, which it is located behind.

The proposal is considered to comply with the Section A1 objectives for Carparking and Access and the proposed variation to DCP B23 is supported in this regard.

DC6 Height – Control c;

Section B23 Height objectives are:

- To design new development appropriate to the existing building scale in the street and the local area.
- To ensure new development maintains an appropriate residential character.

There are additional controls for consideration under this DCP for this development.

Control c. outlines that a carport is to have a maximum height of 2.7m for a flat roof structure. In this instance it is noted that the proposed carport would have a maximum height of 3.04m, resulting in a variation of approximately 0.34m.

The carport in question is an open structure, but is also an extension of the dwelling which has resulted in the additional height. It is noted that the proposal is compliant with the DCP A1 height requirement for carports. Whilst the applicant has not listed this variation in the submitted application, the carport height variation is not considered to compromise the provisions of these objectives and as such support of this variation is considered appropriate.

DC8 – External Building Elements – Fences and Walls: Front, Side and Rear – Control c) and

DC8 – External Building Elements – Fences and Walls: Front, Side and Rear – Control d);

External Building Elements - Fences and Walls: Front, Side and Rear objectives are referred back to Section A1. However, there are additional controls for consideration under this DCP. The A1 objectives state:

Objectives

- *To define the boundaries between public and private land.*
- *To define the boundaries between neighbouring properties.*
- *To contribute to the streetscape appearance.*
- *To enhance the usability of private open space.*
- *To offer acoustic and visual privacy on busy roads.*

Control c and d are varied as follows:

Control c. states:

*‘Above the solid wall the fence is to have a minimum openness ratio of 60%’
and*

Control d. states:

‘Front and return fences may be up to 1.2 metres if located on the Tweed Coast Road’.

The proposal is located on Tweed Coast Road which is identified as a designated road. The proposal includes a 1.8m high front fence constructed of rendered concrete block, combined with a lapped timber pedestrian gate and automatic sliding driveway gate. The fence has been proposed to provide acoustic mitigation from the adjoining Tweed Coast Road.

To compensate for the fence height variation the fencing has been articulated and setback from the front boundary line and would include landscaping to the front and behind to soften the interface to the street (please see Figure 6: 3D imagery below).



Figure 6: 3D Imagery of Front fence

It is to be noted that the old Section A1 permits the construction of a solid front fence of up to 1.5m, when located on an arterial road. Furthermore the new DCP A1 allows this to be extended up to 1.8m in height on an arterial road.

In addition to this it is considered that the proposed front fence will not visually dominate the streetscape at this location. This can be seen from the streetfront elevation (Figure 7 below) which demonstrates that the dual occupancy development will maintain an interface with the public domain.

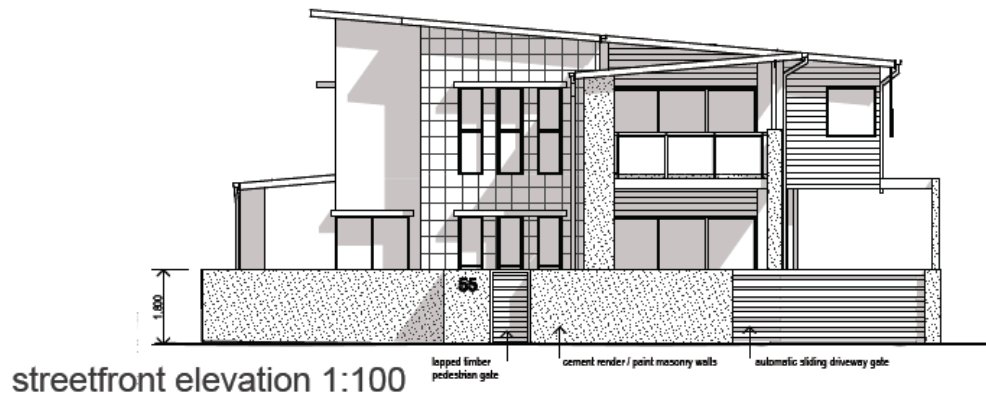


Figure 7: Streetfront Elevation

The applicant has submitted that the proposed front fencing:

*'Effectively defines the front boundary;
Through integrated landscaping that contributes positively to the streetscape,
Enhances the usability of the private open space within the front yard and
Offers acoustic and visual privacy from Tweed Coast Road.'*

The proposal is considered to generally comply with the relevant fencing objectives and the above variations are supported in this instance.

Conclusion

The proposed variations are not considered to result in a precedence being set for any of these variations elsewhere in the locality. Any future application received by Council which proposes to vary any of the controls of this DCP would be assessed on its merits.

The proposed Dual Occupancy represents a visually attractive and well designed development of the subject site. The proposal, including the proposed variations, is supported. Whilst the site configuration results in a number of constraints, it is considered that many of the proposed variations are either minor in nature or do not result in the detriment of the overall design of the proposal or the surrounding area, with the proposed development considered to result in a high quality development.

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

Clause 92(a) Government Coastal Policy

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises a two storey attached, medium density residential development on an appropriately zoned site. The development will not restrict access to any foreshore areas and whilst the proposal will result in overshadowing of foreshore area this has been determined as acceptable in this instance having regard to the SEPP No. 1 objection submitted with this application.

Clause 92(b) Applications for demolition

The demolition of the existing structures on site has been included as part of this application. Councils Building Unit have provided recommended conditions of consent with respect to demolition on the site.

Clause 94 Buildings to be upgraded

The subject application was referred to Councils Building Unit who have raised no objections with respect to the proposed development.

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

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is approximately 300m from the coastal foreshore and is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is adjacent to the Cudgen Creek, therefore this Plan applies. Appropriate conditions of consent have been applied to ensure that the proposal meets the aims and objectives of the Plan.

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

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.

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

Context and Setting

The proposed development is considered to be appropriate with the context and setting of the site as well as the general appearance of the area. The proposal is considered to be in keeping with the character of surrounding development.

Waste

The submitted Waste Management Plan for the proposed development was forwarded to Council's Waste Unit for comment. A response has been received advising that *'After reviewing the waste management plan for the abovementioned development application, the proposed waste and recycling practices are considered to be suitable.'* The application is therefore considered to be acceptable in this regard.

Construction and Demolition

The construction of the proposed development will be subject to standard conditions being included on any consent issued. It is noted that Council's Building Unit have reviewed the application and had no objection to its development subject to conditions. The development phase of the proposal will present some interruption to the ambience of the surrounding area but this is only temporary in nature and amenity can be adequately protected via conditions.

(c) Suitability of the site for the development

Availability of Utilities and Services

The subject site is serviced by Council's water, sewer and drainage services which are available to the proposal within Tweed Coast Road. As such the proposal is considered to be acceptable in this regard.

Flora and Fauna

The subject application was referred to Council's Natural Resource Management Unit as the subject site is partially mapped as having a high ecological status and containing koala habitat on Council's mapping system. A response has been received outlining that *'it is noted that the application proposes only the removal of non-native trees/palms and ornamental plants. As discussed, please apply Council's general conditions with regard to native tree removal and landscaping.'* Appropriate conditions are to be attached to any consent as per the above advice.

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

As outlined elsewhere in this report, no public submissions were received with respect to the proposed development. However, the application was also referred to the following agencies with responses received.

NSW Office of Water

The applicant was lodged with Council with an integrated referral to the NSW Office of Water (NOW) under Sections 89, 90 & 91 of the Water Management Act 2000. A response has been received from NOW outlining that the proposed development (being a dual occupancy) is exempt from a requirement for a controlled activity approval.

NSW Rural Fire Service

The proposed development was referred by Council officers to the NSW Rural Fire Service (RFS) for comment as the site is bushfire prone. The RFS responded with recommended conditions of consent which are to be included in any approval of the development application.

NSW Trade and Investment (Crown Lands)

The subject application was forwarded to Crown Lands for comment as the subject site adjoins Crown land comprising part of Tweed Coast Regional Crown Reserve to the west of the site. A response has been received from Crown Lands requesting that the proponent does not:

- *Encroach upon the Crown Reserve;*
- *Remove any native vegetation from the Reserve;*
- *Stockpile any materials or store any equipment, plant or machinery on the Reserve;*
- *Use the Reserve for vehicular access;*
- *Establish any asset protection zones on the Reserve; or*
- *Discharge stormwater or deposit wastes onto the Reserve.*

Whilst it is noted that the proponent has not proposed to undertake any of the above and would not have any rights to undertake same under this Development Application as it would involve encroaching onto an adjoining allotment, it is considered appropriate that a condition of consent be attached to any approval outlining the specific requirements of Crown Lands as detailed above in order to advise the proponent of this specifically.

(e) Public interest

Given the nature of the development, being for a dual occupancy development on an appropriately zoned site within an established and previously approved Council subdivision, it is considered that the proposal would be unlikely to impact on the public interest.

OPTIONS:

1. Approve the development application; or
2. Refuse the development application for specified reasons.

Council officers recommend Option 1.

CONCLUSION:

The subject application seeks consent for the demolition of the existing dwelling/structures on site and the construction of a dual occupancy development comprising two x three bedroom units. The proposed building is two storeys in height and provides for access off Tweed Coast Road.

It is considered that sufficient justification has been provided to support the SEPP No. 1 objections made in relation to minor overshadowing of the foreshore and the proposed variations to DCP A1 and B23.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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33 [PR-CM] Development Application DA12/0620 for Construction of an Awning over an Existing Outdoor Dining area at Lot 2 DP 521302 No. 13 Wharf Street, Murwillumbah ROAD 5900 Wharf Street, Murwillumbah

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0620 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council has received a development application for the construction of an awning over an existing and previously approved outdoor dining area at the Murwillumbah Hotel, a prominent historic building within the Murwillumbah town centre. The frame would be constructed of galvanised steel with waterproof fabric stretched over the rafters. The sides would remain open.

The applicant has advised that the relatively thin frame, whilst thick walled for strength, has been chosen to reduce the visual impact and to have proportional compatibility with the lightweight roofing fabric. The applicant has advised that the outdoor dining area is being used less frequently in the summer due to lack of shade and that the shade that the roof will provide will encourage the space to be used. The applicant advises that there will be no impact to traffic with the setback providing a suitable clearance from passing traffic.

Council's Traffic Engineer has not raised any concerns with the proposal from a traffic safety perspective. However, from a design perspective, shade structures attached to existing awnings have the capability to intrude on the fabric of the host building as well as impact on streetscape character. It is understood that this matter has been brought to Council previously as other businesses in the Murwillumbah Shopping Centre Precinct have sought to construct similar weather protection structures in association with their footpath dining areas (such as at the Court House Hotel).

When considered in isolation, the proposed structure is considered to be relatively light weight and unobtrusive and, in the absence of Council adopted design guidelines for such structures, as well as the presence of similar structures within the vicinity of the subject site, it would be difficult to refuse the proposal on the basis of design. However should the application be approved there are concerns about the cumulative impact of similar development within the locality, particularly given the Murwillumbah Main Street Conservation Area (MMSCA) status as defined within the Draft Local Environmental Plan (LEP) 2012.

Council's Environmental Health Unit has advised that the proposed shade structure has the capability to restrict Closed Circuit Television (CCTV) coverage from the camera located on the opposite side of Wharf Street to the licensed premises, therefore causing a security and public safety risk. Further, the Environmental Health Unit has advised that the proposed awning may have the potential to create a heavily shaded area which may reduce pedestrian safety through reduced light levels along the pedestrian footpath adjacent to the outdoor dining area. The applicant has provided further information in relation to CCTV camera restriction and light levels, however, Council's Environmental Health Unit considers that this additional information does not alleviate their concerns with this regard. The proposed awning structure is therefore recommended for refusal on this basis.

In the absence of a more comprehensive policy framework and design guidelines for such development, it is considered necessary to report the application to Council for consideration of the broader community benefit of such structures against any potential detrimental impacts to the heritage value of the host building and streetscape character as well as to public amenity and safety.

RECOMMENDATION:

That Development Application DA12/0620 for construction of an awning over an existing outdoor dining area at Lot 2 DP 521302 No. 13 Wharf Street, Murwillumbah; ROAD 5900 Wharf Street, Murwillumbah be refused for the following reasons:

- 1. The development would result in a security and public safety risk and would therefore be contrary to Clause 4, Clause 8 and Clause 11 of the Tweed Local Environmental Plan 2000.**
- 2. The development would detract from the heritage significance of the host building and the character and amenity of the Murwillumbah Town Centre and would therefore be contrary to Clause 4, Clause 8, and Clause 11 of the Tweed Local Environmental Plan 2000.**
- 3. The development would not protect or enhance the public domain and would therefore be contrary to the Murwillumbah Town Centre Development Control Plan - B22.**
- 4. The development would detract from the heritage significance of the Murwillumbah Main Street Conservation Area and would therefore be contrary to Clause 5.10 of the Tweed Draft Local Environmental Plan 2012.**

REPORT:

Applicant: Penplay Pty Ltd
Owner: Tweed Shire Council
Location: Lot 2 DP 521302 No. 13 Wharf Street, Murwillumbah; Road 5900 Wharf Street, Murwillumbah
Zoning: 3(b) General Business
Cost: \$7,000

Background:

On 28 December 2012 Council received a development application for the construction of an awning over an existing and previously approved outdoor dining area located within the road reserve adjacent to the Murwillumbah Hotel. The Murwillumbah Hotel is a prominent building within the Murwillumbah town centre and contributes toward the historic character of the locality. The existing dining area comprises a timber floor raised above the street surface to the level of the footpath, with a solid steel balustrade around three sides extending from the kerb line.

The Murwillumbah Hotel currently comprises Murrays public house, 'Next to Murrays' refreshment room, a barber and 'Jujus' cafe which are both accessed independently from the hotel itself. The outdoor dining area is located adjacent to the refreshment room, 'Next to Murrays'.



Outdoor dining area located within the road reserve adjacent to the Murwillumbah Hotel and location of proposed awning structure.

The awning would be constructed of galvanised steel posts and rafters and would be setback from the white line marking on the road surface by 450mm. Waterproof fabric would then be stretched over the rafters however it is advised that the sides of the structure would remain open. The applicant has advised that the relatively thin frame, whilst thick for strength, has been chosen to reduce the visual impact and to have proportional compatibility with the lightweight roofing fabric. The intention of the proposal is to provide shade over the existing outdoor dining area to encourage customers to utilise the space.

The development application has been referred to Council's Traffic Engineer who has raised no significant concerns from a traffic safety perspective, providing that the structure is set back a minimum of 450mm.

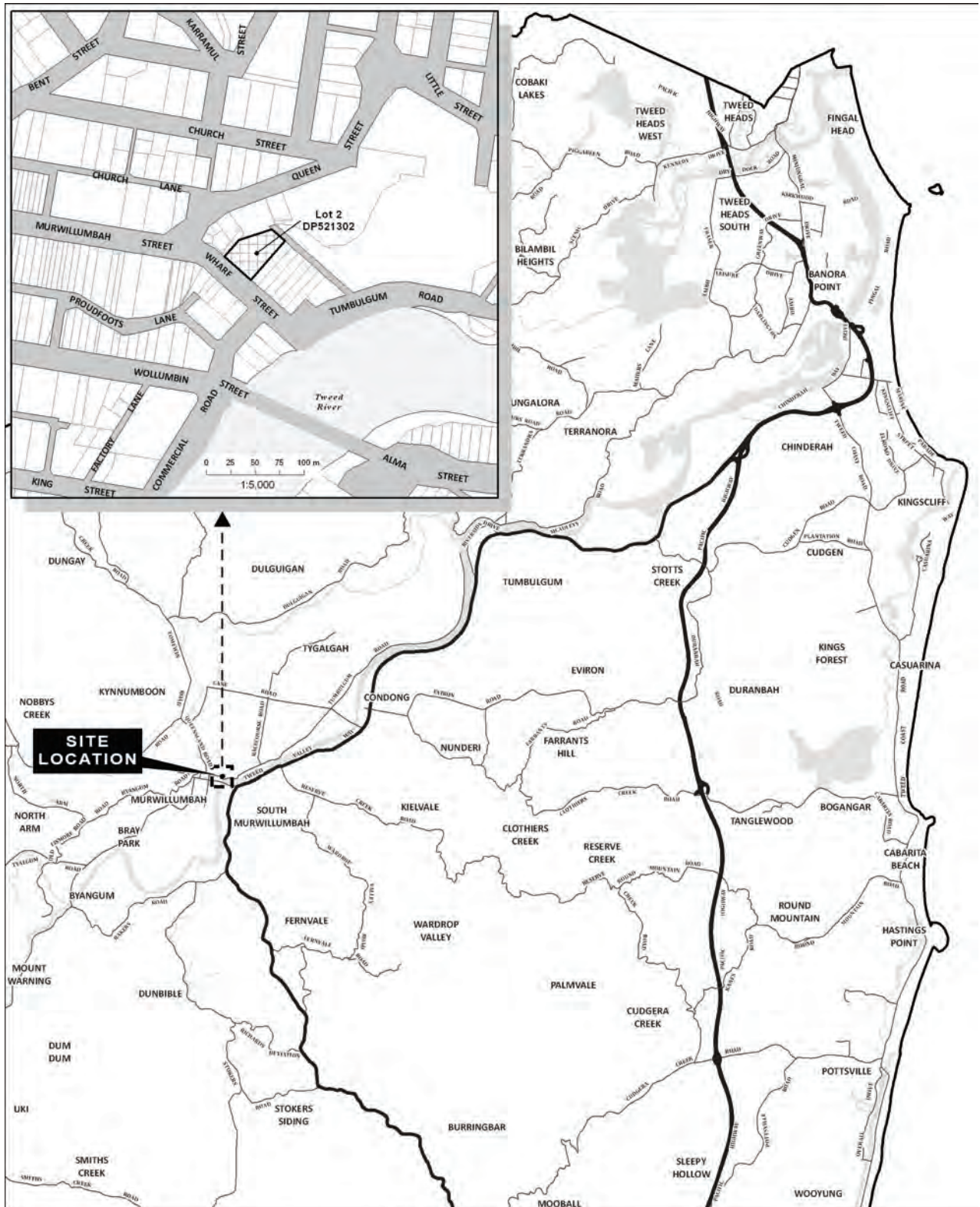
From a design perspective, shade structures attached to existing awnings have the capability to intrude on the fabric of the host building as well as impact on the amenity and appearance of streetscapes and the pedestrian environment. The proposed structure is considered to be relatively light weight and unobtrusive. At present, Council does not have any design guidelines or policy criteria in relation to such structures (such as awnings and additions to existing buildings). Therefore, Council Officers consider that the refusal of the proposal on the basis of design and visual impact would be difficult to substantiate.

However, there are concerns about the cumulative impact of such development within the locality, should the application be approved. Collectively such structures attached to existing awnings have the capacity to impact on the character of an area and erode the historic qualities of the building to which they are attached. This is particularly prevalent given the site is located within the Murwillumbah Main Street Conservation Area (MMSCA), within the Draft LEP 2012. As the Draft LEP 2012 is close to gazettal, greater weight can now be afforded to the protection of the historic character of buildings within the MMSCA, as well as to the protection of the character and appearance of the streetscape, which is dominated by buildings with distinctive parapets and cantilever style awnings and verandahs.

In addition, Council's Environmental Health Unit advises that the proposed shade structure potentially has the capability to restrict CCTV coverage from the camera located on the opposite side of Wharf Street to the licensed premises and would therefore pose a security and public safety risk. Further, the Environmental Health Unit advises that the proposed awning may have the potential to create a heavily shaded area which may reduce pedestrian safety through reduced light levels along the pedestrian footpath adjacent to the dining blister. Refusal of the development application is recommended on this basis.

In the absence of a more comprehensive policy framework for such development, it is considered necessary to report the application to Council for determination and to highlight the requirement and importance of establishing a heritage based DCP, particularly given the additional weight now afforded to the heritage and conservation value of the MMSCA.

SITE DIAGRAM:



Locality Plan

Lot 2 DP 521302

No.13 Wharf Street, Murwillumbah; ROAD 5900 Wharf Street, Murwillumbah

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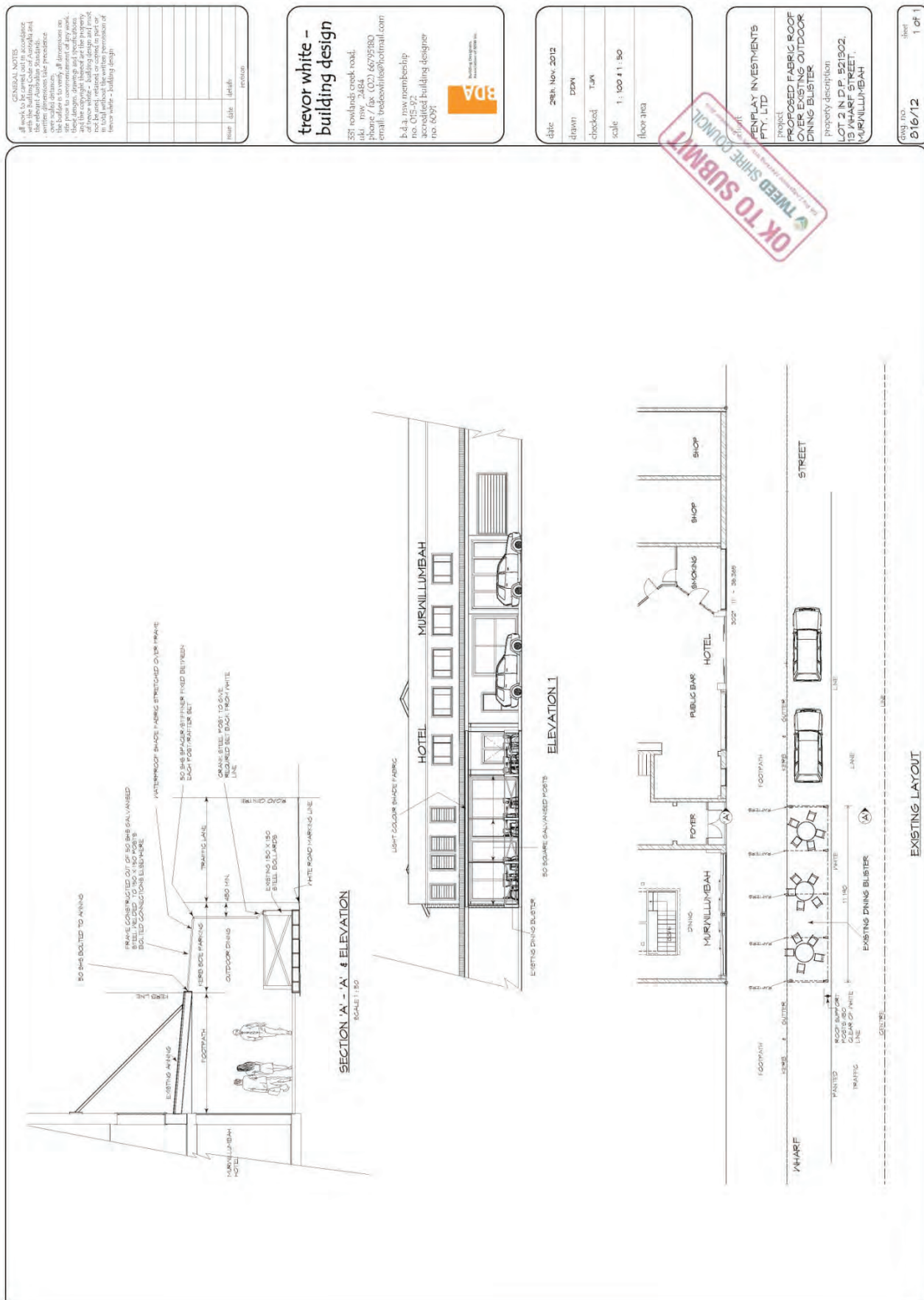
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56
Source: Bing/Baidu/Thomson/Esri/Mapbox

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TWEED
SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

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] to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

When considered in isolation, the proposed development is of a relatively minor nature and scale and is not likely to impact on the character of the Tweed as a whole. The requirement for weather protection within outdoor dining spaces is acknowledged and Council wishes to encourage the use of these spaces to create a vibrant streetscape and assist local businesses. However, it is considered that such structures should be of a high architectural quality, sensitive to both the building to which they are attached and that compliments the surrounding streetscape. Such structures should also provide adequate levels of lighting to footpaths and to ground floor spaces within buildings as well as maintain existing public safety and security levels, particularly outside of licensed premises.

Should the application be approved, it would set a precedent for such structures within the road reserve that collectively, may have a detrimental impact on the character and amenity of the Tweed as a whole.

Clause 5 - Ecologically Sustainable Development

The intent of this clause is to provide for development which is compatible with principles of ecological sustainable development (ESD) including the precautionary principle, inter-generational equity, ecological and environmental factors.

It is considered that the scale and nature of the proposed development would not conflict with principles of ESD.

Clause 8 - Consent Considerations

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

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

The subject site is located within the 3(b) General Business Zone and the proposal relates to the construction of an awning, in association with a previously approved outdoor dining area. For reasons detailed within this report, it is considered that the proposal would not be consistent with the primary objective of the zone, primarily on account of the restriction to CCTV surveillance and impact on light levels along the pedestrian footpath.

However, it is also considered that the awning may also impact on the architectural quality of the host building, which is a prominent heritage building within the Murwillumbah town centre. The approval of the awning structure may set a precedent for similar proposals within the Shire that collectively may impact substantially on streetscape character.

It is therefore considered that the proposal would not be consistent with this clause.

Clause 11 - Zone Objectives

The subject site is located within the 3(b) General Business Zone. The objectives of the zone are as follows:

Primary objectives:

- *To provide business centres in which the community's shopping, business, welfare and social needs can be met.*
- *To provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding areas.*

Secondary objectives:

- *To provide for tourist oriented development.*
- *To encourage upper floor residential or tourist accommodation.*

The proposed awning structure would be ancillary to the Murwillumbah Hotel and located over a previously approved outdoor dining area. The applicant considers that the structure is necessary to provide an area for outdoor dining in all weather conditions, thereby providing an attractive seating area for customers and creating a vibrant streetscape. Should this justification be accepted, it may be considered that any impact the structure may have from a visual or public safety point of view would be counteracted by the facilitation of a useable outdoor dining area.

The proposed awning structure would be attached to the existing awning located over the public footpath and would be constructed of steel supports and rafters with a shade fabric material. There is a concern that the design and use of materials would not be compatible with the scale and architecture of the host building and may impact on the heritage significance of both the Murwillumbah Hotel and the surrounding area.

It is important to note that there are a number of awnings located within the road reserve that have been approved by Council, such as at the Court House Hotel, at the Sugarbeat cafe and at the Noodle Bar located opposite to the subject site. It is noted that these structures do not enhance streetscape appeal and have the capacity to create a tunnelling effect along the section of the footpath in front of these buildings, particularly in the case of the Courthouse Hotel. There is a concern that the approval of this awning structure may lead to visual clutter and further erode streetscape character. There is also particular concern in the case of this application that the structure may restrict CCTV coverage and reduce light levels along the pedestrian footpath and is therefore considered to be a security and public safety risk.

It is considered that the proposed structure would not be compatible with the host building and would impact detrimentally on the character and amenity of the area. On this basis the proposed awning would not be consistent with the objectives of the zone.

Clause 15 - Essential Services

The primary objective is to ensure that development does not occur without adequate measures to protect the environment and the community's health.

The subject site has existing access to essential services and the proposed development does not raise any concerns with this regard.

Clause 16 - Height of Building

Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. Clause 16 of the TLEP provides a three-storey height restriction over the subject site.

The proposed structure would be attached to an existing awning and would have a maximum height of 3.25m. The proposal would be consistent with this clause.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality.

Given the minor nature and scale of the proposal a Social Impact Assessment is not required. However, in the absence of a policy framework for such structures in the road reserve, the determination of this application will set the precedent for similar development proposals which may have broader implications for the community.

There is a good deal of community interest in local business activities and the requirement to make such spaces more attractive to customers, by creating 'all weather' seating areas, is acknowledged. It is recognised that outdoor dining has the potential to add vitality to the town centre and Council wishes to support local business and encourage the utilisation of these spaces. However, this should not be at the expense of public safety and security or to the architectural qualities of the host building or to streetscape amenity.

State Environmental Planning Policies

There are no State Environmental Planning Policies of specific relevance to the proposed development.

SEPP (North Coast Regional Environmental Plan) 1988

Clause 36C: Conservation Areas of State and Regional Significance

The MMSCA is not included within the list of State or Regionally significant conservation areas.

Clause 47: Principles for Commercial and Industrial Development

Clause 47 provides a number of objectives to consider in the determination of development applications of a commercial or industrial nature. The development application relates to the construction of an awning in association with a previously approved outdoor dining area for a public house and refreshment room. In general it is considered that the proposal would be consistent with this clause.

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

Draft Tweed Local Environmental Plan 2012

B3 - Commercial Core

The Draft LEP has been on public exhibition and is yet to be gazetted. In this Draft the site is located within the B3 - Commercial Core. One of the objectives of the zone is to provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

In general, the proposal would be consistent with the objective of the zone. However, as detailed within this report, it is considered that the proposal may set a harmful precedent for such structures within the road reserve that may impact on the character and amenity, as well as public safety of the area.

Clause 5.10 - Heritage conservation [compulsory]

The subject site is located in the MMSCA within Draft LEP 2012. Clause 5.10 of this document seeks to conserve the heritage significance of conservation areas, including associated fabric, settings and views. It requests that the consent authority considers the effect of a proposed development on the heritage significance of a heritage conservation area. 5.10(5) states that the consent authority may request that a heritage management document is prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage conservation area concerned.

Whilst it is noted that there are similar structures attached to existing awnings within the locality, the impending future designation of the MMSCA is of key importance in the determination of this application. As detailed further within this report, these structures can detract from the heritage significance and architectural qualities of the buildings to which they are attached and impact on the amenity of the area. The Murwillumbah Hotel is listed amongst several buildings of individual and historic significance within the precinct. The Murwillumbah Hotel and other buildings such as the Police Station and Courthouse Group, the Westpac and National Banks, Regent Cinema and Imperial Hotel *'punctuate the architectural character of the MMSCA'*.

Council's Urban Designer has advised that the proposed form of the awning (being attached to the existing awning) and materials (modern, galvanised steel finish and fabric roofing) would not be complimentary to the host building or the surrounding MMSCA. As detailed further within this report however, improvements to the form of the proposal, from an urban and conservation design point of view, may have repercussions on issues relating to public safety and security.

In the absence of a heritage DCP or comprehensive design guidelines it was considered unreasonable in this instance to request that the applicant lodge a costly heritage management document for the proposed structure, particularly given the existence of similar awnings within the MMSCA. The determination of the proposal therefore requires consideration of the requirement for 'all weather' protection within these spaces, the existing built environment and the desired future character and amenity of the locality.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The existing outdoor dining area has already been approved and the loss of on street car parking has already been considered and accepted. Council's Traffic Engineer has advised that the proposed awning would not impact on site access or traffic.

A3-Development of Flood Liable Land

The subject site is located on flood prone land with a design flood level of 7.5m AHD. Having regard to the proposed development, for an open awning over an existing outdoor dining area, it is not considered that these works will adversely affect the flow of floodwater on the site and as such the proposal is in accord with this DCP.

A11-Public Notification of Development Proposals

The development application was notified for a period of 14 days in accordance with Council Policy. No submissions have been received.

DCP B22 – Murwillumbah Town Centre

The subject site is located within the parameters of the Murwillumbah Town Centre DCP. The purpose of the DCP is to contribute to the growth and character of the Murwillumbah Town Centre and protect and enhance the public domain. Specifically, this site is located within the Town Centre Core Precinct. It is intended that retail and commercial development be maintained and consolidated within this precinct in order to support a strong urban structure. The Murwillumbah Town Centre Vision is as follows:

'Build on Murwillumbah's lively hinterland village qualities to create a walkable, vibrant, mixed use centre with a successful main street and a balance between building scale and landscape character'.

In relation to awnings, Section 4.10 of the DCP states that '*awnings assist in providing a pleasant and comfortable pedestrian environment, weather protection and contribute to the creation of a pedestrian scaled environment*'. The objectives of Section 4.10 are to provide weather protection in areas of high pedestrian traffic and to encourage the use of consistent and continuous awnings within the Town Centre Core. One of the controls requires that where deep awnings occur, that natural light should be brought to the shop front.

The proposed awning would be located over an outdoor dining area, not an area of high pedestrian traffic. Further, it is considered that the awning would reduce light levels to the pedestrian footpath as well as to the ground floor of the Hotel. The impact on light levels would be particularly prevalent in this case given the awning would be located on the southern side of a two storey building.

It is acknowledged that outdoor dining can bring financial benefits and increased enjoyment for the community, as well as contribute toward a vibrant streetscape. However, as detailed within this report, it is considered that the proposed awning will reduce public safety and security and also has the capacity to impact detrimentally on the appearance of the host building as well as to streetscape character. It is therefore considered that the proposal would not be consistent with the DCP that seeks to protect and enhance the public domain.

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

There are no matters prescribed by the Regulations of relevance to this proposal.

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

Not applicable to the proposed development as the subject site is not located within the coastal zone.

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

Context and Setting

It is considered that awning structures should achieve a high degree of compatibility with the host building and should be uncomplicated to reduce visual clutter in the streetscape. Awnings over the pedestrian footpath are a prominent feature within the Murwillumbah Town Centre and help to define pedestrian space and provide pedestrian amenity by providing weather protection.

In relation to awning structures over outdoor dining areas within the road reserve, there are a number of similar structures to that proposed within the Murwillumbah Town Centre, as shown in the following photographs:



Outdoor dining area and awning outside the Noodle Bar, Wharf Street



Outdoor dining area and awning structure within road reserve at the Sugarbeat Cafe, Commercial Road



Outdoor dining area and awning outside of the Court House Hotel, Murwillumbah Street

Whilst the presence of these awnings located over outdoor dining areas is a material consideration, it is considered that these structures have had a significant impact on the architectural qualities of both the buildings to which they are attached and to streetscape amenity. This is particularly the case when, at a later date, side wind breaks and screens are added which can create a dark, tunnelling effect, restrict driver visibility and cause public safety and security concerns through restricted CCTV camera surveillance. Whilst it may be possible to apply a condition to any development consent to ensure that no additional structures, such as wind breaks or other enclosures, are constructed without Council approval, such structures are often installed without prior consent which can lead to compliance investigation and enforcement action.

To improve streetscape amenity it is considered that outdoor dining areas should have the appearance and feel of an outdoor dining area and not become extensions of the internal environment. From an urban design perspective, it is considered that awning structures over outdoor dining areas should be independent from the main building and existing awning and thereby be read as a separate entity. This would also assist in maintaining the dominant line of the awning (and building) to the street edge. In this case, the proposed awning would be attached to the existing awning structure and would therefore contravene this objective.

The difficulty is that, from a design perspective, it would be more appropriate to lower the structure below the existing awning line. This would allow natural light to penetrate through and make the space feel less enclosed. However, lowering the proposed awning would further reduce CCTV camera surveillance to the outdoor dining area and along the footpath, which in turn would not be acceptable from a public safety perspective. It is therefore considered that, in this instance, temporary structures such as umbrellas would be more appropriate. The visual appearance of the outdoor area could also be significantly improved with the installation of planter boxes.

In relation to materials, it is considered that awning materials should be of a high quality that are consistent with the host building as well as surrounding development. Council's Urban Designer has advised that exposed galvanised steel is not a preferred building material within the context of the MMSCA and that exposed hardwood or painted timber would be preferable and more in keeping with the recent renovation of the Hotel (with hardwood door frame and windows) and the town centre more broadly.

A fabric canopy may appear lightweight and an impermanent addition to the building however it would function as a sunshade but not for rain protection. Further, being located on the southern side of a two storey building, the area is in shade for much of the day, which brings into question of the extent to which sun protection is required. Council's Urban Designer has recommended that, if the intent of the structure is to provide all weather protection, it would be preferable to have a roof material that would be more in keeping with traditional building materials, such as metal sheet roofing and that to allow some natural light / sunlight permeation, polycarbonate panels could also be utilised. It would however be difficult to condition the use of more appropriate materials such as timber and metal sheeting, as these sorts of materials may further reduce CCTV camera surveillance and light levels to the pedestrian footpath.

Access, Transport and Traffic

Council's Traffic Engineer has not raised any concerns with the proposal, which would be set back from the white line road marking by a minimum of 450mm.

Provided that windbreaks or other permanent structures (screens or shutters), as defined under Council's 'Footpath Trading Policy', are not installed it is considered that the proposal would not pose any traffic safety issues. However, structures, such as screens or windbreaks, can restrict CCTV coverage and restrict driver and pedestrian sight lines and are therefore considered to be a public safety risk. There is a concern that should the proposed awning be approved, there may be a desire to install additional screens and wind breaks to the structure which may then cause additional burden on Council in relation to compliance investigation and enforcement action.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The presence of awning structures over outdoor dining areas within the Murwillumbah Town Centre has been discussed within the report and is a material consideration, particularly in the absence of a more comprehensive policy framework for such structures. However, the impact that these structures have in relation to reduced light levels, reduced public safety and security concerns (through CCTV camera restriction) are also important factors in the consideration of this application.

The heritage value of the building and the surrounding area is also now afforded greater weight with the impending adoption of the MMSCA. The general streetscape of the MMSCA is dominated by buildings with masonry facades featuring distinctive parapets with mouldings and projections, such as at the Murwillumbah Hotel, with cantilever style awnings and verandahs. The *Community Based Heritage Study and Management Plan (2012)* states '*in sheer numbers, the integrity of this period of development is impressive and has great potential to be consolidated and enriched*'.

Future development should protect and improve the heritage conservation value of the area, not detract from the overall character of the precinct.

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

No submissions have been received as a result of the notification process.

(e) Public interest

It is acknowledged that the use of outdoor dining areas can bring financial benefit to business owners as well as increased community enjoyment, particularly where they provide protection from sun and rain. This report has also considered that awning structures, in association with outdoor dining areas, can significantly impact on matters relating to public safety and security and reduced light levels. In addition, these structures can impact on the architectural qualities of the host buildings as well as the heritage value of the surrounding heritage conservation area.

In the absence of a broader policy framework for such structures it is considered necessary to report the application to Council to assess the broader implications to the public interest.

OPTIONS:

1. Refuse the development application on the grounds of impact to CCTV coverage and light levels; or
2. Refuse the development application on the grounds of impact to CCTV coverage, light levels and the impact of the proposed structure on the heritage value of the host building and the surrounding conservation area; or
3. Approve the development application.

Council officers recommend Option 1.

CONCLUSION:

The proposal seeks the construction of an awning structure to be located over a previously approved outdoor dining area. When considered in isolation, the proposed structure is considered to be relatively light weight and unobtrusive however there are concerns about the broader cumulative impact of similar development within the locality, should the application be approved, particularly given the MMSCA status as defined within the Draft Local Environmental Plan (LEP) 2012.

The impact of the proposed structure on matters relating to public safety (reduced light levels) and security (reduced CCTV camera surveillance) is not supported by Council Officers. The impact of the proposal with this regard is particularly prevalent given the subject site is a licensed premises. The applicant has provided further information in relation to CCTV camera restriction and light levels however Council Officers consider that this additional information does not alleviate their concerns with this regard. The proposed awning structure is therefore recommended for refusal on this basis.

In the absence of a more comprehensive policy framework and design guidelines for such development, it is considered necessary to report the application to Council for consideration of the broader community benefit of such structures against any potential detrimental impacts to the heritage value of the host building and streetscape character, as well as to public amenity and safety.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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34 [PR-CM] Development Application DA12/0605 for a Two Lot Subdivision at Lot 1 DP 775668 No. 217 McAllisters Road, Bilambil Heights

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0605 Pt1



Civic Leadership

SUMMARY OF REPORT:

On 21 December 2012 Council received a Development Application for a two lot subdivision at 217 McAllisters Road, Bilambil Heights.

The proposed subdivision was submitted to Council on 16 May 2013 recommending a refusal.

Council resolved to grant in-principle support for the proposal, and that officers bring back a further report to Council with draft conditions of development consent. As such the conditions below have been prepared in accordance with an urban subdivision.

As the proposed development was recommended for refusal a number of issues were not resolved during the assessment. In particular land contamination.

Clause 7(1)(a) of the State Environmental Planning Policy (SEPP) No 55 - Remediation of Land states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

The proposed development was referred to Council's Environmental Health Officers who provided the following comments dated 31/1/13:

"aerial photographs revealed evidence of cropping across the site. Agricultural/horticultural activities are listed in Schedule 1 of Council's Contaminated Land Policy due to the association of chemicals."

The Environmental Health Officer recommended that *'a Detailed Site Investigation that includes sampling of the site where required shall be prepared by a qualified environmental consultant in accordance with the NSW Office of Environment & Heritage's Contaminated Land Guidelines and submitted to Council's Environmental Health Officer for review'.*

As the proposed development was being recommended for refusal this information was not requested. As such a requirement of deferred commencement conditions would be required if Council seeks approval of this application.

As assessing officers do not have the information relating to site contamination Council cannot be satisfied that the deferred commencement condition(s) are capable of being satisfied by the applicant. Although consent may be issued for this use, the results of the contaminated land investigation may prohibit the development consent from commencing.

It should be noted that as both lots are not currently connected to water and sewer Section 64 charges for both lots are applicable.

RECOMMENDATION:

That Development Application DA12/0605 for a two lot subdivision at Lot 1 DP 775668 No. 217 McAllisters Road, Bilambil Heights be approved subject to the following conditions:

"DEFERRED COMMENCEMENT"

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

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.

1. Prior to any works being undertaken at the site, a Detailed Site Investigation that includes sampling of the site and a Remediation Action Plan (where required) shall be prepared by a qualified environmental consultant with experience in the assessment of contaminated land in accordance with relevant NSW Office of Environment & Heritage's Contaminated Land Guidelines and submitted to Council's General Manager or delegate for assessment and approval.

SCHEDULE B

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

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No 1 of 1 prepared by Landsurv Pty Ltd and dated 13/12/12, except where varied by the conditions of this consent.
[GEN0005]
2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.
[GEN0125]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.
[GEN0135]
4. Stormwater Management of the subdivision must be in accordance with Council's *Development Design Specification D7 - Stormwater Quality* and should incorporate water sensitive design principles where possible.
[GENNS01]

5. Prior to the release of the Construction Certificate and/or prior to commencement of any other subdivision works, the applicant is to undertake any remediation works recommended by the Remediation Action Plan required for the Deferred Commencement Condition. On completion of any required remediation works and prior to any further works being undertaken at the site, a Validation Report prepared by a suitably qualified environmental consultant with experience in the assessment of contaminated land shall be submitted to Council's General Manager or their Delegate for review and approval. Such Validation Report shall contain a statement advising that the land is suitable for the proposed use.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

[PCC0275]

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

[PCC0285]

8. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

9. Prior to the issue of a Construction Certificate for Civil Works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

(a) copies of compliance certificates relied upon

- (b) four copies of detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include (but are not limited) to the following, unless approved otherwise by Council:
- earthworks
 - roadworks/furnishings
- (c) Upgrade of McAllisters Road for the full frontage of the subject site to provide a 7.5m width bitumen sealed road with kerb and gutter on the development's side only, on an alignment endorsed by Council.
- (d) Construction of formed vehicular access to each lot to provide complying, sealed accesses in accordance with Council's DCP Section A2 - "*Site Access and Parking Code*" and Council's "*Driveway Access to Property - Part 1*" Design Specification June 2004.
- stormwater drainage
 - water supply works
- (e) Extension and upgrade (as applicable) of Council's existing reticulation main to deliver appropriate, reticulated potable water and a peak hour rate flow of minimum 20m head to each allotment.
- (f) Disconnection of any existing water meter not at the property boundary and private water pipe along McAllisters Road to the property.
- (g) New house connections to service the proposed allotments.
- sewerage works
- (h) Construction of a pressure sewer system from the existing gravity sewer near SPS2035, to service each allotment. All pressure mains shall be located in the road reserve with the Developer providing a Boundary Kit for connection for each lot to be serviced by the pressure sewer within each associated lot, in accordance with Council's standard specifications and drawings. The location of connection or the pressure main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- (i) The associated pressure mains will become the responsibility of Council. The main must be sized so as to permit neighbouring properties to be connected in the future.
- landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), *as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations*

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

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

[PCC1155]

11. Each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter (when improved by a dwelling) to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

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

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

The Legal Point Of Discharge for stormwater discharge from both allotments is the kerb and gutter drainage network to be constructed as part of this development application in McAllisters Road.

[PCC1195]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

14. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.

(c) WorkCover Regulations 2000.

[PCW0025]

15. Civil work in accordance with a development consent must not be commenced until:

(a) a Construction Certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the consent authority, or**
- (ii) an accredited certifier, and**

(b) the person having the benefit of the development consent:

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

C4: Accredited Certifier - Stormwater management facilities construction compliance

C6: Accredited Certifier - Subdivision road and drainage construction compliance

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

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,**
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and**
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.**

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

[PCW0815]

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

[PCW0835]

17. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area (where required) to the satisfaction of the Principal Certifying Authority. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

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

-

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0815]

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

[DUR0985]

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

[DUR0995]

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

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

[DUR1005]

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

[DUR1795]

26. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

27. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:

- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

28. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

29. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Final Practical Inspection - on maintenance
- (h) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final Practical Inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all civil works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

30. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

31. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

32. Prior to issue of a Subdivision Certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

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

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP3:	2.4 ET @ \$12150 per ET	\$29160
Sewer Banora:	2 ET @ \$5838 per ET	\$11676

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

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

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

[POC0675/PSC0165]

34. Section 94 Contributions

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

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$2860 per Trips **\$18590**

(\$2836 base rate + \$24 indexation)

S94 Plan No. 4

Sector4_4

(b) Open Space (Casual):

1 ET @ \$526 per ET **\$526**

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

S94 Plan No. 5

(c) Open Space (Structured):

1 ET @ \$602 per ET **\$602**

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

S94 Plan No. 5

(d) Shirewide Library Facilities:

1 ET @ \$816 per ET **\$816**

(\$792 base rate + \$24 indexation)

S94 Plan No. 11

(e) Bus Shelters:

1 ET @ \$62 per ET **\$62**

(\$60 base rate + \$2 indexation)

S94 Plan No. 12

(f) Eviron Cemetery:

1 ET @ \$121 per ET **\$121**

(\$101 base rate + \$20 indexation)

S94 Plan No. 13

(g) Community Facilities (Tweed Coast - North)

1 ET @ \$1352 per ET **\$1352**

(\$1305.6 base rate + \$46.4 indexation)

S94 Plan No. 15

(h) Extensions to Council Administration Offices

& Technical Support Facilities

1 ET @ \$1812.62 per ET **\$1812.62**

(\$1759.9 base rate + \$52.72 indexation)

S94 Plan No. 18

(i) Cycleways:

1 ET @ \$460 per ET **\$460**

(\$447 base rate + \$13 indexation)

S94 Plan No. 22

(j) Regional Open Space (Casual)

1 ET @ \$1064 per ET **\$1064**

(\$1031 base rate + \$33 indexation)

S94 Plan No. 26

(k) Regional Open Space (Structured):

1 ET @ \$3730 per ET **\$3730**

(\$3619 base rate + \$111 indexation)

S94 Plan No. 26

[POC0395/PSC0175]

- 35. Prior to the issue of a Subdivision Certificate a Defect Liability Bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Plan of Subdivision is registered. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

- 36. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.**

[PSC0725]

- 37. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.**

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;**
- (b) the plans accurately reflect the Work as Executed.**

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

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

[PSC0825]

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

[PSC0830]

40. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
 - (b) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.
 - (c) Positive Covenant over the subject land for the installation and maintenance of single property pump stations.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right Of Carriageway or Easement shall make provision for maintenance of the Right Of Carriageway or Easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis (as applicable).

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

[PSC0835]

41. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each new lot in the deposited plan.

[PSC0845]

42. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

- 44. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Drainage

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

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

[PSC0925]

- 46. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and gravity sewerage systems installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

- 47. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation (including household connections) shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

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

[PSC1115]

48. A pressure sewer system shall be available to service those lots that cannot be serviced by conventional gravity sewers.

Only those lots which are demonstrated to the satisfaction of the Director Community and Natural Resources not to be serviceable by conventional gravity sewers may be served by a pressure sewer system.

Prior to the issue of the Subdivision Certificate, for each lot serviced by the pressure sewer system, a capital contribution of \$14,800 shall be paid by the Developer to Council for the installation of individual pressure sewer pump stations at a suitable location within each lot at the time of construction of the dwelling on that lot.

[PSC1135]

49. A Positive Covenant in relation to each lot to be sewered by a pressure sewer system shall be created pursuant to Section 88B of the Conveyancing Act to provide Tweed Shire Council with rights to construct, install and maintain the pressure sewerage infrastructure in accordance with the following terms:

TERMS OF PUBLIC POSITIVE COVENANT

1. Pressure sewerage reticulation infrastructure is to be constructed within the land referred to herein and such infrastructure will comprise a pump station, valve pit, control panel and associated pipelines excluding gravity house connections and plumbing.
2. Such infrastructure is to be supplied by Tweed Shire Council at commencement of construction of a dwelling on the land referred to herein.
3. All costs in relation to the installation of the pressure sewer reticulation infrastructure within the land referred to herein will be borne by Tweed Shire Council.
4. The control panel for the pumping station is to be wired into the household switchboard by a registered electrician and all electricity to operate the control panel and pump station shall be supplied from the household switchboard. All costs in relation to the running of the pressure sewerage reticulation are to be borne by the registered proprietor.
5. The pressure sewer infrastructure will at all times remain the property of Tweed Shire Council to be inspected, serviced, repaired and maintained in good working order only by Tweed Shire Council.

6. **Tweed Shire Council shall have the right to enter upon the land referred to herein with or without equipment, at all reasonable times to inspect, construct, repair, service and maintain in good working order all pressure sewerage reticulation infrastructure in or upon the said land pursuant to "Power of Entry" provisions under sections 191 and 191A of the NSW Local Government Act, 1993. This right to enter is restricted to the land in which the pressure sewerage infrastructure is placed for the time being and includes any points of egress or ingress to or from the said land.**
7. **The registered proprietor of the land referred to herein shall not construct any type of development, including external buildings, swimming pools or permanent structures which may interfere with the sewerage reticulation infrastructure, or impede access to any part of the sewerage reticulation infrastructure for the purposes of repair, maintenance and service.**
8. **If at any time it becomes necessary to relocate any part of the sewerage reticulation infrastructure for the purposes of construction of external buildings, swimming pools or building extensions and/or modifications Tweed Shire Council will not object to the relocation of the existing sewer pump station or associated pipeline providing that the registered proprietor makes the necessary application to Tweed Shire Council as the consent authority to modify the existing sewerage reticulation infrastructure and upon the registered proprietor obtaining development consent to do so. The registered proprietor will bear all costs in relation to the application and the re-location which is to be carried out by Tweed Shire Council.**
9. **The registered proprietor shall be responsible for notifying Tweed Shire Council when maintenance, repair, relocation or service is necessary on the sewerage reticulation infrastructure.**
10. **Should any part of the sewerage reticulation infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.**
11. **The registered proprietor shall indemnify Tweed Shire Council and any adjoining landowners against any damage and injury to their land, property or person arising from the failure of any component of the sewerage reticulation infrastructure due to the negligent use or misuse of the sewerage reticulation system by the registered proprietor or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor.**
12. **Tweed Shire Council shall indemnify the registered proprietor against all damage and injury to property and person (including any damage to the land referred to herein and any land adjacent to the land referred to herein) arising from the failure of any component of the sewerage reticulation infrastructure and its construction, inspection, repair, service and maintenance and or in entering upon and occupying the subject property for such purposes.**
13. **Any reference to Tweed Shire Council, excepting as consent authority, means its employees, agents, contractors, servants.**

[PSC1145]

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

[PSC1165]

51. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity has been provided adjacent to the front boundary of each allotment; and

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

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

[PSC1185]

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

1. The development proposal is to comply with the subdivision layout identified on the drawing prepared by Landsurv Pty Ltd numbered 37979 as submitted in Appendix A of Planit Consulting "Bushfire Safety Authority" report dated December, 2012.
2. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 12, to a distance of 10 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
3. Any new water, electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
4. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

REPORT:

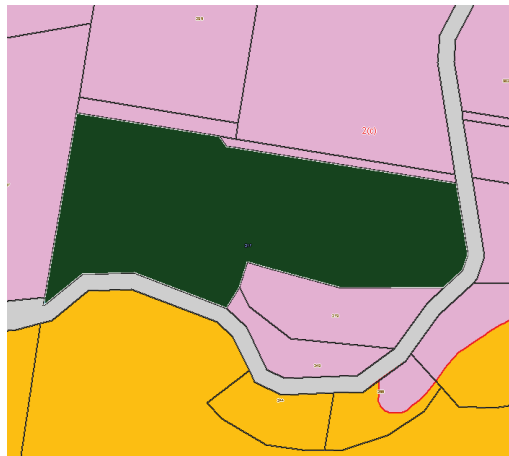
Below is an extract of the report which was submitted to the Council meeting of 16 May 2013.

Applicant: Landsurv Pty Ltd
Owner: Mrs Alina E Lech
Location: Lot 1 DP 775668 No. 217 McAllisters Road, Bilambil Heights
Zoning: 2(c) Urban Expansion
Cost: Nil

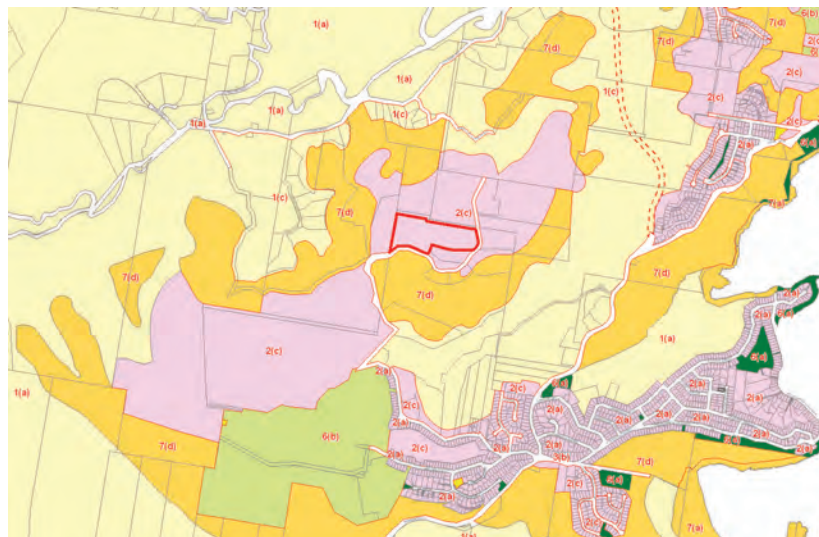
Background:

The Subject Site

The subject site is located on the northern and western side of Howards Road currently comprises a total area of 8.017 hectares. It comprises one parcel of 2(c) Urban Expansion zoned land.



Lot 1 DP775668



Subject site within Bilambil Heights Urban Release Area

The Proposed Development

The application seeks consent to subdivide the 2(c) zoned land (which comprises one allotment) to create two allotments.

The existing allotment comprises:

- Lot 1 DP 775668 with a total site area of approximately 8.017ha.

The proposed layout is as follows:

- Proposed Lot 11 with a total area of approximately 4.009 ha with frontage to McAllister's Road. This allotment would be vacant but would have the benefit of a dwelling entitlement; and
- Proposed Lot 12 with a total area of 4.009 ha with no frontage to McAllister's Road. It is proposed to utilise the existing, unformed access for proposed Lot 12.

History

Upon review of the submitted detail Council responded to the applicant with the following information request:

"1. *The application is requested to be amended to show compliance with Section A5.4.13 Infrastructure – CRITERIA of Council's DCP A5 Subdivision Manual, which states that the following infrastructure is required;*

- *All lots created in urban areas for private occupation must be fully and individually serviced with sealed road (equipped with kerb and gutter both sides of the road) frontage, water supply, sewerage, underground electricity and telecommunications.*
- *A drainage system that provides Q100 immunity from local stormwater flooding and must have surface levels above the Q100 flood levels of regional river/creek flooding.*
- *Utilities and services are to be designed to minimise long term maintenance and ownership costs.*
- *Urban subdivision infrastructure must be provided in accordance with Table A5-10.*

The submission and assessment of this requested documentation may result in additional Request for Information letters being required.

The above services are required to be provided by the developer in accordance with Council's DCP A5."

As a result of the information request the applicant sought legal advice in regards to the need to provide the infrastructure. The following is correspondence received from McCartney Young Lawyers on 28 March 2013:

"Summary of Advice

The provisions of the "Tweed Shire Development Control Plan 2008" (DCP) identified in Council's letter are irrelevant to this DA. The DA should be determined without regard to those provisions of the DCP.

Development permissible in accordance with the provisions of the LEP

The DA proposes a two lot subdivision of the Land. The DA form notes that the area of the Land is approximately 8 ha: the consent will permit the creation of two lots of approximately 4 ha each.

The Land is zoned 2(c) under clause 11 of the LEP. Subdivision is permitted within the 2(c) zone.

Subdivision is controlled by Part 4 of the LEP. Clause 19 (which is in Part 4) provides that subdivision of land requires consent in accordance with the provisions of Part 4 of the LEP. There are no provisions in Part 4 that particularly control the subdivision of land in the 2(c) zone (other than provisions pertaining to strata subdivision which are not relevant here).

The SEE states:

"The subdivision of the land will not diminish the ability to satisfy the Primary and Secondary objectives of the Zone and continue to provide suitable sized holdings for the grazing of livestock or other agricultural pursuits until the Master plan and future development takes place."

In summary, the proposed subdivision is development within the 2(c) zone that is permissible with consent.

Development not constrained by the operation of the DCP Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 requires Council to "take into consideration" such provisions of the DCP "as are of relevance to the development the subject of the development application".

The DCP applies to all land in the Tweed Shire. The Land is not a "specific site" in the DCP and thus does not have specific development standards applicable to it.

Section A5 of the DCP is titled "Subdivision Manual". There are a number of components to the Manual which I do not review here as such a review is unnecessary.

Chapter A5.4 is titled "Urban Subdivision Design Guidelines & Development Standards".

Clause 5.4.13 is titled "Infrastructure" and this is the clause referred to in Council's letter of 12 February 2013.

If the DCP is not relevant to the DA, then it should not be taken into account. To take into account an irrelevant consideration is an error of law (*Parramatta City Council v Hale* (1982) 47 LGRA 319; *Centro Properties Limited v Hurstville City Council & Anor* [2004] NSWLEC 401).

Chapter A5.4 does not apply to this development. It is irrelevant. I note the following matters.

The Chapter, on its own terms, does not apply

Chapter A5.4 commences with the following words (page A5-13 of the Chapter A5):

"This chapter provides guidelines for urban master planning and subdivision design which elaborate on the principles and policies of Council's Strategic plan and provide the overall framework for neighbourhood and subdivision design in Tweed Shire."

I appreciate that the future potential development of the Land includes urban subdivision of a "neighbourhood" design. However this is not the development that is the subject of the DA. A simple subdivision of Land is proposed, from one lot (of 8 hectares) into two separate lots (approximate 4 hectares). There is no component of the DA that relates to "urban master planning and subdivision design" These provisions of the DCP are simply irrelevant to the DA.

"Urban Areas"

The first bullet point of clause A5.4.13 contains the phrase: "All lots created in urban areas...". Thus the rest of that bullet point (concerning services to the lots) should be read to only apply to lots created in urban areas.

The term "urban areas" is not defined in clause A5.4.13 nor is it defined within Chapter A5.4. I am unable to locate a definition of "urban areas" provided in the DCP. In these circumstances, a Court would be obliged to give the words "urban areas" their normal meaning.

The lots that are proposed in the DA are not in an urban area. To define "urban area" as meaning any area in which residential development can be undertaken (which would include land in the 2(c) zone) would be unreasonable. The 2(c) zone is land that is not currently "urban" but rather earmarked for future urban expansion. It has the character of "rural residential" land. Accordingly, the first bullet point in A5.4.13 does not apply to the proposed subdivision.

"Urban Subdivision"

The final bullet point of clause A5.4.13 contains the words:

"Urban subdivision infrastructure must be provided in accordance with Table A5-10."

(This is also the final dot point in Council's letter.)

As with urban areas, the term "urban subdivision" is not defined in clause A5.4.13 nor is it defined within Chapter A5.4. I am unable to locate a definition of "urban areas" provided in the DCP. In circumstances where the phrase "urban subdivision" is not defined, a Court would be obliged to give these words their usual meaning.

The DA does not seek consent for an "urban subdivision". This is because, as noted above, you are seeking a simple subdivision of land that is more appropriately described as rural residential land.

Furthermore, Chapter A5.4 is titled "Urban Subdivision Design Guidelines & Development Standards" and accordingly clause AS.4.13 should be construed as applying only to "urban subdivision". An urban subdivision is a subdivision which has the characteristics that are the focus of much of this chapter of the DCP: that is, a subdivision to undertake residential development of a particular density and lot size that is characteristic of a residential area (see Table AS-9.1 to Table AS-9.4). Your proposed subdivision of an 8 hectare lot into two 4 hectare lots does not exhibit any of the characteristics one would reasonably expect of an "urban subdivision", particular the type anticipated in this DCP.

The DA does not seek consent for an "urban subdivision". The provisions of Chapter A5.4 do not apply.

Conclusion

A consideration of the LEP and the DCP leads to the following conclusions:

- 1. The subdivision proposed by the DA is development permitted within the 2(c) zone of which the Land is a part.*

2. *Chapter A5.4 of the DCP, and in particular clause A5.4.13 "Infrastructure", do not apply to the proposed subdivision. These provisions of the DCP are clearly intended to apply to development that is of an "urban" nature which requires "urban master planning". The Land is not "urban" and the subdivision proposed is a simple development that cannot be characterised as urban residential development of the density and lot size anticipated by these provisions. My clients will not provide the information requested in Council's letter of 12 February 2013. Furthermore my clients request that Council proceed to determine the DA without delay."*

Summary

Having regard to relevant statutory controls in particular Section 79C Clause 1(a)(iii):

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(iii) any development control plan

The proposed development is located in the 2(c) Urban Expansion zone which is intended for future urban development. As such, an assessment against the provisions of the urban subdivision objectives of Council's Development Control Plan Section A5 was deemed appropriate. Council does not agree with the representations made above which will be addressed in greater detail throughout this report. The proposed development was assessed against the Tweed LEP 2000 and other relevant statutory controls and it was determined that the proposed two lot subdivision is not considered suitable. The proposed development is recommended for refusal.

Strategic Plans

Clause 4 of the Tweed Local Environmental Plan 2000 states the following:

(c) to give effect to and provide reference to the following strategies and policies adopted by the Council:

- Tweed Shire 2000+ Strategy

An assessment has been undertaken in regards to Council's Strategic plans. There are three (3) strategic plans which will be addressed with the Tweed Shire 2000+ Strategy and the Tweed 4/24 Strategic Plan being superseded plans and the most recent plan in force being the Community Strategic Plan 2011/2021. Although the earlier plans have been superseded they are still important in outlining the overall strategic plan for the Bilambil Heights area and the direction Council has been working towards strategically for the area. Each of the plans have been assessed below.

Tweed Shire 2000+ Strategy

The Strategic Plan for Tweed 2000+ which has now been superseded was adopted on 17 December 1996. The Plan provides the broad directions for future planning in the Tweed. Within the policies and actions section, references specifically to Bilambil Heights are made as follows:

114. Long Term Urban Release - *The Bilambil Heights Release Area has major infrastructure impediments and requires a comprehensive multi-ownership planning approach. No development approvals for the release of land for residential development will be granted until such time as the Tugun Bypass and Cobaki Parkway are commenced to provide appropriate access to the regional road network. Council resolution 17 May 2000.*

120. Bilambil Heights - *The detailed planning for Bilambil Heights is to include the following principles:*

- *Commitment by the landowners for funding of Scenic Drive Diversion (to the Piggabeen Road intersection).*
- *Water and sewerage provisions so that there is no unnecessary duplication of mains and pump stations.*
- *Completion of investigation into clearway provisions for Kennedy Drive.*
- *Defined areas of potential dual occupancy and medium density development.*
- *Collector road access to all properties.*
- *Consideration of current 1(c) zoned land for urban density development if land is hazard free, if it can be economically serviced with water and sewer, and if there are no unacceptable impacts on water quality and scenic values.*
- *Houses not permitted on prominent ridgelines.*
- *Commitment to the funding of Kirkwood Road and Lakes Drive Bridge.*

From the information above it can be seen that there are a number of strategic directions for the Bilambil Heights area. It identifies a number of issues which need to be addressed prior to the release of the urban land including *major infrastructure impediments and requires a comprehensive multi-ownership planning approach*. If this subdivision was to be approved it would create a situation where there are increased numbers of owners and therefore this would make it increasingly difficult to strategically plan the area. The cumulative impact of approving this application could be that a number of other land owners in the locality undertake similar subdivisions thereby increasing the number of owners substantially. The approval of this subdivision would create an undesirable precedent for the area. It is therefore considered that the proposed development should be refused.

Tweed 4/24 Strategic Plan

The Tweed 4/24 Strategic Plan which has now been superseded was adopted in September 2004. A key element of the strategy is as follows:

Urban Development. *Implement current plans for urban expansion including Cobaki and Bilambil Heights. Complete assessments of Terranora 'Area E' and Kings Forest. Retain green belts or buffers between settlements.*

Furthermore, Part 7 - Managing Urban Development outlines the following:

Continued urban expansion over the next two decades is inevitable. Substantial areas of land at Cobaki Lakes, Bilambil Heights, Kings Forest and elsewhere have been zoned for development for many years. Population growth has slowed somewhat in recent years, but remains strong.

Further urban development depends on improved infrastructure, including roads, water and sewerage, drainage and flood control, parks and a wide range of community facilities (education, health, police etc). Whilst some of this infrastructure is Council's responsibility, State and Federal governments, the private sector and community organisations all have important roles to play. Adequate funding and effective coordination are essential.

Challenges and Opportunities - Council's investigations indicate few physical infrastructure impediments to planned release areas except for road access to Cobaki Lakes and Bilambil Heights. Other necessary road and traffic management improvements include on-ramps to the Tweed Heads Bypass at Kirkwood Road and upgrading of Minjungbal Drive.

Strategic Directions - Council will liaise with developers to seek the timely release of zoned urban land to meet market needs. Master Plans for Kings Forest, Bilambil Heights (subject to adequate road access) and 'Area E' at Terranora (subject to rezoning) will be completed as quickly as possible.

Four-Year Priorities Urban Planning - Review the likely capacity and timing of proposed urban release areas (Cobaki Lakes, Kings Forest, Terranora 'Area E' and Bilambil Heights) taking into account:

- Housing demand and affordability
- Infrastructure, road access and environmental issues
- Redevelopment potential in existing areas
- Needs for land for non-residential uses
- Possible alternative locations for development.

Complete essential improvements to major road links including access to Cobaki Lakes and Bilambil Heights, and upgrading of Minjungbal Drive at South Tweed Heads.

It can be seen from the information above that Bilambil Heights is still regarded as an area for future urban development. A number of infrastructure improvements need to be completed before this can happen. It puts the onus on not only Council but landowners in the area. If the urban release is to go forward then Council needs to take a coordinated approach to the development. If this subdivision was to go forward then there would be an increase in land owners which could make it increasingly difficult to plan the area.

It is considered that urban land release cannot be undertaken until such time that adequate infrastructure has been provided for the area. This is reliant on a number of areas in the Tweed Heads West and Cobaki area. Council at a meeting held on 22 April 2008 decided on a number of recommendations in regards to the Distributor Road network planning for Tweed Heads West, Cobaki and the Bilambil Heights areas. An extract from the report is as follows:

Bilambil Heights Urban Land Release Area

This area is identified as future urban release land in the Tweed Development Program 1996 (TSC) and the Far North Coast Regional Strategy (Department of Planning) 2006. It is expected that approximately 9,000 people will be accommodated in this area in approximately 4,000 dwellings.

A major constraint to development of this area is current road network capacity. In the absence of the Scenic Drive Diversion and Cobaki Parkway any development in this area would rely on traffic capacity on Kennedy Drive which is restricted as discussed in Part 3.

The Cobaki Parkway is currently being constructed but there is no definitive date for which this will be complete as a number of infrastructure services still need to be provided. The Scenic Drive Diversion will not be undertaken until the Cobaki Parkway is complete and operational. The Kennedy Drive traffic capacity which is currently at 150.5 trips still has enough capacity to cater for development however it is considered that there would be a negative cumulative impact if this subdivision was to be approved. It would set a precedent for the area of possibly a number of other owners doing the same type of subdivision. These trips would be significantly impacted upon if similar subdivisions were to go ahead. It is therefore considered appropriate to refuse the application based on the cumulative impact.

Community Strategic Plan 2011/2021

The Strategic Plan 2011/2021 is the current plan and was adopted by Council on 14 December 2010. *The Tweed Community Strategic Plan 2011/2021 is the community's 10-year vision for the Tweed, to protect the qualities that make the Tweed a great place to live and to create communities which are strong and well connected. This plan creates a framework to implement Council's four-year Delivery Program and annual Operational Plan, which will align the community's aspirations with the necessary strategy development, planning and resourcing required to achieve the long-term vision and deliver the outcomes.*

The Community Strategic Plan outlines a number of other plans and policies which are to be used in conjunction with the Plan. These include the [Tweed Urban and Employment Land Release Strategy 2009 which was implemented on 17 March 2009](#). This document is intended to examine growth options that would guide Tweed Shire towards 2031. Section 11 and 13 of this Plan relates to the directions for urban land development and implementation. Council could take a range of planning approaches or a combination of planning approaches to deal with growth and change over the next 25 years. A number of these are outlined as follows:

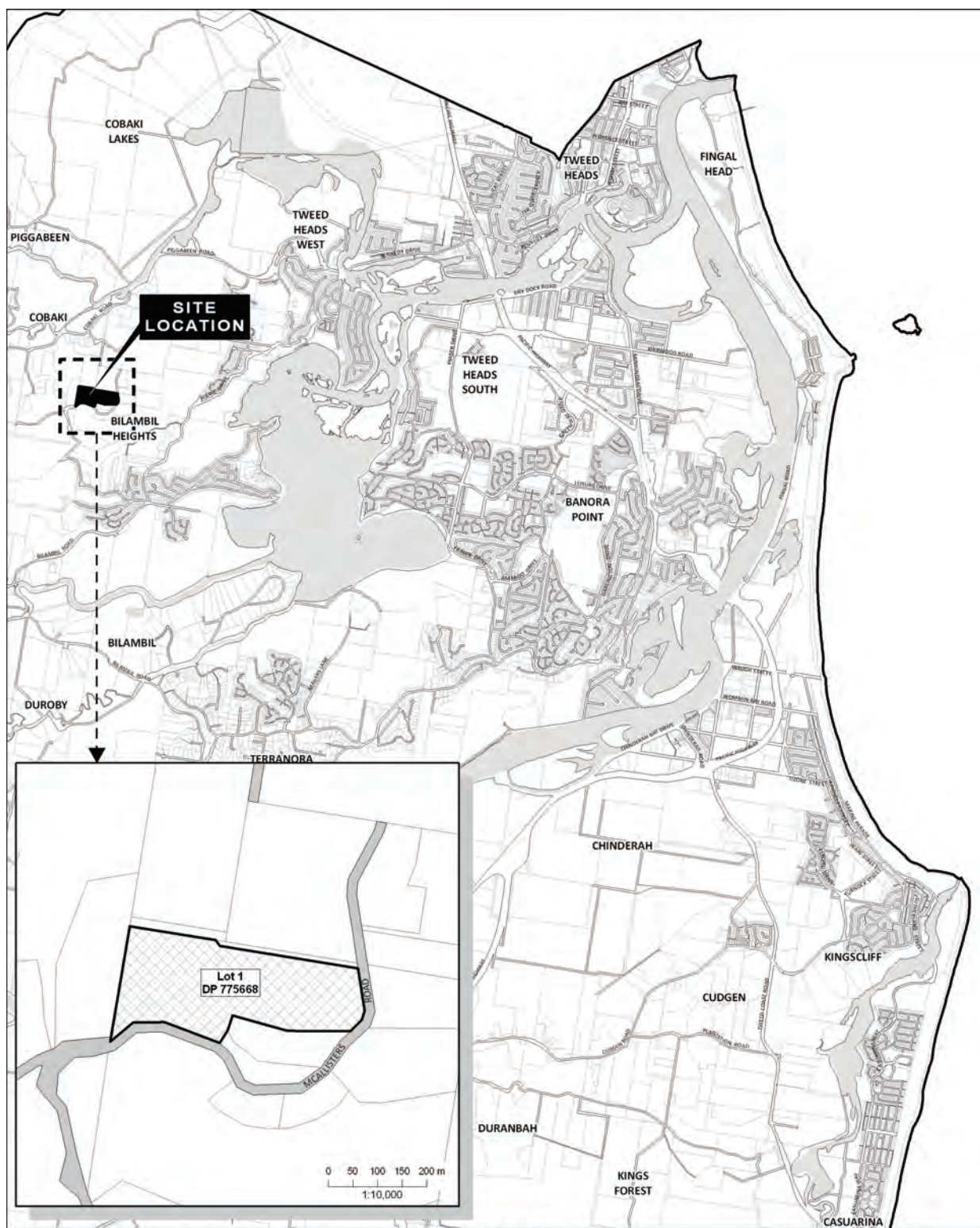
11.1 Rely on Existing Zoned Areas - *This option would see Council not rezone any more land for residential development over the life of the Strategy (till 2031) relying on existing zoned land to meet the demands of the market. Given the amount of land that Council has already zoned and the predicted growth rates, it is an option that would have some advantages. These would include allowing Council to concentrate on servicing the existing established areas and current zoned lands with infrastructure and social services; allow Council to focus on urban design issues; and allow Council to review existing planning controls (particularly DCP's) to better address local issues.*

13.1.3 Land Release - *The potential urban release lands nominated in this Strategy are considered in a short, medium and long term land release program based on a 0-10 year, 10-20 year and 20+ year time frame. This Strategy recognises the large existing supply of zoned land located predominantly at Kings Forest, Cobaki Lakes, Bilambil Heights, Area E and West Kingscliff and the role that these lands will play in supplying the residential needs of the Tweed over the next 10 years in particular.*

Bilambil Heights is still considered to be a major land release area identified within the strategic plan for Tweed Shire. For effective urban planning to be undertaken it is considered that the fragmentation of urban expansion zoned land should be limited. If this subdivision is approved it will set a precedent for other land owners to undertake similar types of developments reducing Council's ability to move forward with its urban release of the area.

Based on the above strategic plans outlined for the Bilambil Heights area it is considered that the proposed development would have a negative cumulative impact on the surrounding locality. It is therefore recommended that the proposed subdivision be refused.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 775668
No. 217 McAllisters Road, Bilambil Heights

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Cadastral 19/04/2013
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Boundaries shown should be considered approximate only.

0 0.5 1 1.5 Km
1:60,000 @ A4 Portrait
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1984
(GDA) Map (94 of Australia, Zone 56)

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484

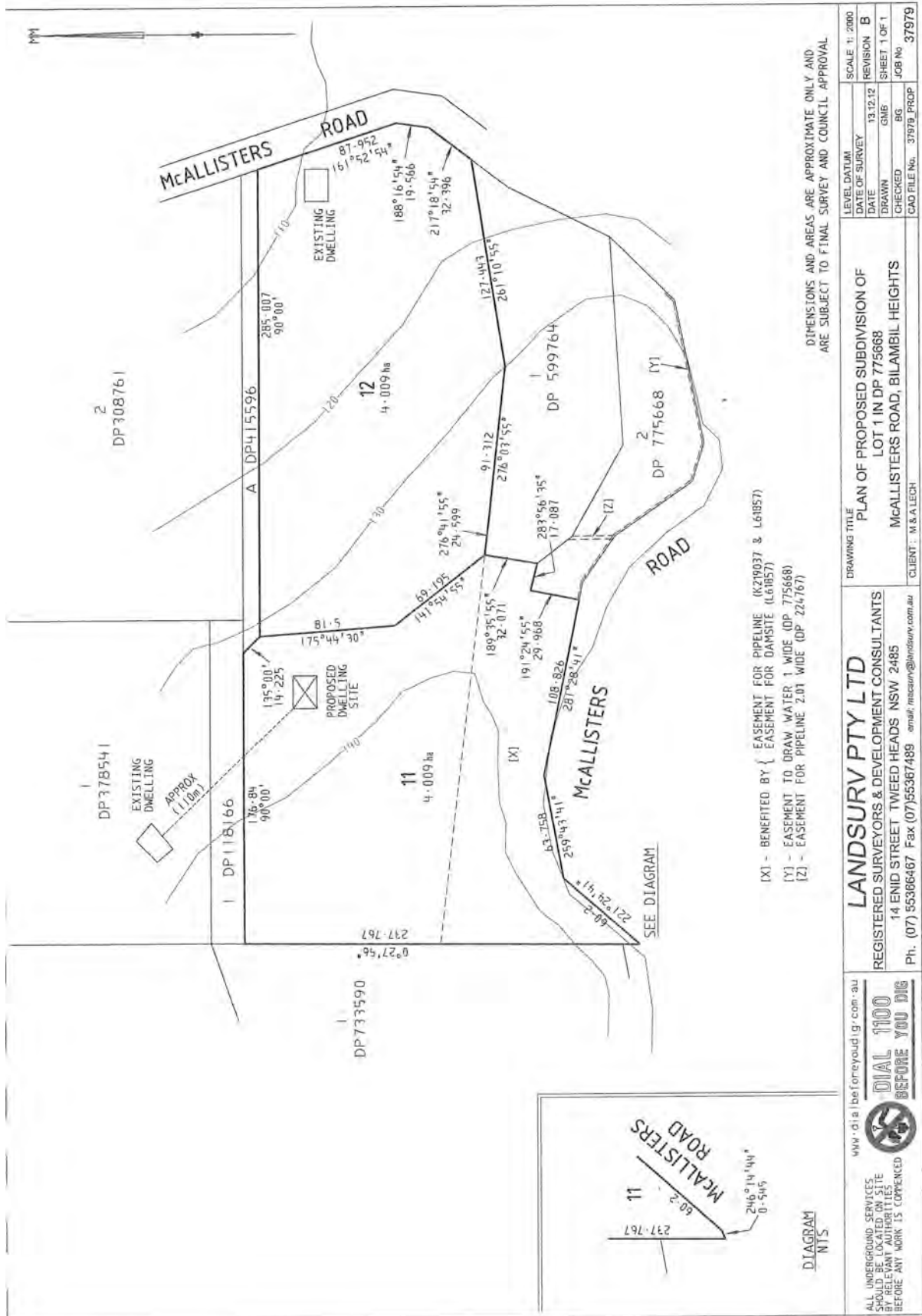
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TWEED
SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:

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

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

The aims of this 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 Shire 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 proposed development is not considered to be consistent with the aims of the TLEP 2000. The proposed development is not considered to be consistent with the vision of the shire “to manage growth so that the unique natural and developed character of the Tweed Shire is retained.” The proposed development is for a two lot subdivision which does not comply with the primary objective of the zone as seen below, and the consent considerations contained within the TLEP 2000.

Tweed Shire 2000+ Strategy has been superseded through by both Tweed 4/24 and the adoption of the Community Strategic Plan 2011/2021. All three documents include references to Bilambil Heights' urban release and have been assessed above.

The proposed development is non-compliant with the TLEP 2000 in terms of creating negative cumulative impacts being that it creates a precedent for other similar types of development to go ahead in the area. It is considered not to be in keeping with the aim of the plan in particular, that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

Clause 5 - Ecologically Sustainable Development

Clause 5 aims to promote development that is consistent with the four principles of ecologically sustainable development, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

As there are no physical changes to the subject site it is considered that intergenerational equity and conservation of biological diversity and ecological integrity will not be impacted.

Clause 8 - Consent Considerations

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

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

The land is within the 2(c) zone and the proposed subdivision is not consistent with the primary objective of the zone which is as follows:

"to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake."

It is considered that the proposed subdivision does not ensure optimum utilisation of the land. A secondary objective of the zone is to:

"enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan."

As the proposed development does not comply with Council's Development Control Plan Section A5 - Subdivision Manual as detailed later in this report it is considered that it also does not meet the secondary objective of the zone.

The proposed development if approved may result in unacceptable cumulative impacts. The creation of a freehold lot may encourage, or allow for further subdivision development in the surrounding locality. The subject site is within the 2(c) Urban Expansion zoned land and has been identified for future urban development. Allowing this subdivision could create a negative cumulative effect being the first subdivision in the urban expansion area of Bilambil Heights which is underutilised and not serviced by the essential services outlined in Council's Development Control Plans (DCPs). It could lead to a number of other residents within the locality applying for similar subdivisions and hence reducing the likelihood of the area to be strategically planned for its future urban purposes. It is therefore recommended that the application be refused.

Clause 11 - Zone Objectives

The subject land is zoned 2(c) Urban Expansion. The objectives of the 2(c) zone include:

Primary objective

- *Identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.*

Secondary objectives

- *To allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- *To ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*
- *Enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.*

The proposed subdivision is to create an allotment for the purpose of creating an additional lot for residential purposes. The proposal has not ensured its optimum utilisation as the zone is for future urban development. It is considered that the intent of the proposed subdivision does not satisfy the objectives of the Tweed LEP as both proposed lots will not be serviced in accordance with council's Development Control Plan. Additionally, the subdivision may lead to establishing land use which conflicts with the future urban expansion and strategic planning for the Bilambil area.

The proposal is therefore not consistent with the relevant zone objectives and recommended for refusal.

Clause 15 - Essential Services

Council's Strategic and Asset Engineer has provided the following:

Sewer

No sewerage is available to this area at present and it is unlikely to be available until the whole area zoned 2(c) is in a position to develop as urban. At present, there are a number of other infrastructure issues preventing urban development in this area.

Water

The Statement of Environmental Effects states that "The allotments are presently serviced by ... Tweed Water." However it doesn't currently have a water meter and the water meter that used to serve this property was split off to service an adjoining property in March 2007. Water charges associated with this property ceased in 2007. In addition, the meter serving the adjoining lot was removed in June 2007.

The meter itself was located at the water main and not at the property boundary, indicating that there must be a private water pipe along McAllisters Road to the property. Such private water mains are no longer permitted to be installed as the Works Unit (Asset owner of roads) doesn't want a proliferation of private mains in road reserves.

As there is no current water service and no water main at the frontage of either of the proposed blocks, it is considered that water is not currently available at the lots.

The applicant was given the opportunity to provide additional information in regards to servicing the allotments although has provided a letter from a solicitor outlining that they will not supply any additional information.

Electricity services are currently provided to the area via Essential Energy infrastructure.

Telecommunication services are currently provided to the area via Telstra infrastructure.

As the proposed development cannot provide the essential services as required by Council it is considered appropriate to refuse the application.

Clause 16 - Height of Building

Not applicable. There are no new dwellings proposed.

Clause 17 - Social Impact Assessment

An assessment under DCP A13 – Socio-Economic Impact Assessment has revealed that a Social Impact Assessment is not necessary for this type of development and accordingly Clause 17 is deemed satisfied.

Clause 22 - Development near designated roads

McAllisters Road is classified as a Council Designated Road. As per the Objectives of Clause 22 of Council's LEP, in isolation, it is considered that the proposed development is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road. However, the cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, there would be a significant impact.

Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP 2000 requires Acid Sulfate Soils (ASS) management in relation to development where such is likely to be impacted upon. Part of the subject site exhibits Class 5 ASS however, due to the nature of the development being no excavation it is considered that ASS will not be impacted.

Clause 39A - Bushfire Protection

The subject site has a portion which is identified as being bushfire prone land. The proposed development was referred to the NSW Rural Fire Service who responded on 6 February 2013 with 4 conditions of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

State Environmental Planning Policies (SEPPs)

SEPP (North Coast Regional Environmental Plan) 1988

SEPP No 71 – Coastal Protection

SEPP 71 applies to land within the 'coastal zone' which is defined as having the same meaning as in the *Coastal Protection Act 1979*. The subject land is located within the coastal zone and the provisions of SEPP 71 therefore apply to the proposed development. Clause 7(b) of SEPP 71 requires the matters for consideration in clause 8 to be taken into account by a consent authority when it determines a development application to carry out development on land to which the policy applies. A Master Plan is not required for the site as the subdivision is not located within a sensitive coastal location and is under 25 allotments.

It is considered the proposed development does not offend or compromise the intent or specific provisions of State Environmental Planning Policy No.71 – Coastal Protection.

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

The Draft Tweed Local Environmental Plan 2012 relates to the subject site and zones the land R1 - General Residential. Within the R1 - General Residential zone the minimum subdivision size is 450m². The proposal complies with this minimum allotment size.

Clause 1.2 - Aims of Plan provides the following:

(2) *The particular aims of this Plan are as follows:*

(a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents.*

The greater strategic plan for the area is for future urban development as per Council's Strategic policies outlined above. It is considered that the proposed development is not consistent with the aims of the Draft LEP 2012 and is recommended for refusal.

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

Tweed Development Control Plan

A5-Subdivision Manual

The subject application was referred to Council's Development Engineering Section who provided comment on the application against the provisions of DCP A5. Further information was requested in relation to a number of DCP A5 issues including the provision of sewer and water reticulation to the site.

Council's Strategic and Asset Engineer has provided the following:

"This application is for the division of one lot into two 4.09 ha lots in an area that is essentially rural but is zoned in LEP2000 as 2(c) Urban Expansion.

No sewerage is available to this area at present and it is unlikely to be available until the whole area zoned 2(c) is in a position to develop as urban. At present, there are a number of other infrastructure issues preventing urban development in this area as well as an apparent lack of a coordinated approach from land holders.

The nearest water main to the site is in McAllisters Road approximately 120m west of the western boundary of the site. It is a 100mm reticulation main that supplies various rural properties and a group of tanks that supply an area on Cobaki Road.

The Statement of Environmental Effects states that "The allotments are presently serviced by ... Tweed Water." However it doesn't currently have a water meter and the water meter that used to serve this property was split off to service an adjoining property in March 2007. Water charges associated with this property ceased in 2007. In addition, the meter serving the adjoining lot was removed in June 2007.

The meter itself was located at the water main and not at the property boundary, indicating that there must be a private water pipe along McAllisters Road to the property. Such private water mains are no longer permitted to be installed as the Works Unit (Asset owner of roads) doesn't want a proliferation of private mains in road reserves.

As there is no current water service and no water main at the frontage of either of the proposed blocks, it is considered that water is not currently available at the lots.

The water main in question also cannot provide a fire flow in accordance with Council's standard D11 due to the length of the main and its diameter which results in a high head loss at the fire flow rate, even though its current static head is adequate.

It is recommended that the applicant provide a submission either justifying why the lots created should not be serviced as required by DCP Section A5 or how it is proposed to service the lots in accordance with DCP Section A5."

The existing water service can be used to supply the existing allotment, but as a subdivision, it is required that the development provide water reticulation to service both allotments. It is noted by Council's Engineer that at a minimum this would entail construction of approximately 120m of reticulation main from the nearest connection point subject to required Council Standards.

The current site is not provided with sewerage reticulation and previous approval had allowed for an on-site sewage management system to service the site. Under Section A5 of this DCP the subdivision would require connection to sewerage which is not envisaged in the near future.

Following further correspondence with the applicant and a meeting with members of Council's Development Engineering Section, it was considered that it is unlikely that the applicant would be willing to provide information in relation to the number of issues raised in the Request for Further Information letter in relation to the provision of separate water and sewer facilities for each site. It is therefore

considered appropriate to assess the application based on the information on the file.

The proposed development is considered to be in contravention of DCP A5, in particular Section A5.4.13 Infrastructure, and as such should be refused.

It is noted that Council's Water and Wastewater Strategic and Assets Engineer did make the comment that *"If the subdivision is allowed, it is likely, subject to satisfactory soil and slope conditions, that both sites could be serviced by on site sewerage management systems and there would be adequate room for sufficient rainwater tanks to be provided for water supply, meaning that provision of reticulate water supply and sewerage could be obviated for this particular application, but this would have to be justified by submission of appropriate reports for Council's consideration. Otherwise, strict enforcement of the requirements of DCP Section A5 would require conditioning of Water Supply and Sewerage connections and Section 64 Water and Sewer contributions for each lot created."*

Such justification has not been provided by the Applicant, but this would only be applicable if Council decided to assess the application as a rural subdivision. A table has been included outlining the differences in requirements between urban and rural subdivisions.

Key Item/Description	Urban	Rural
Road Upgrade	Yes Will be required to provide kerb and gutter for the developments frontage to McAllisters Road	No.
Access Upgrade	Yes The existing unformed accesses would need to be upgraded to provide a sealed access in accordance with Council standards. Tree clearing within the road reserve may be required to achieve adequate sight distances to the south.	Yes The existing unformed accesses would need to be upgraded to provide a sealed access in accordance with Council standards. Tree clearing within the road reserve may be required to achieve adequate sight distances to the south.
Water Retic supply (and fire fighting requirements)	Yes The proposed lots are required to be connected to Council's reticulation network.	No The proposed lots could rely on water tanks or bore water.
Sewer Retic	Yes The proposed lots are required to be connected to Council's reticulation network.	No The proposal could rely on On-Site Sewage Treatment, provided acceptable, supporting documentation was submitted.
Electricity	Yes Must be underground	Yes Can remain above-ground
Telecommunications	Yes Must be underground	Yes Can remain above-ground

Drainage Upgrade	Yes Must provide major & minor drainage. As per above kerb and gutter is required along frontage.	May be required as Council's DCP Section A5 states that the road drainage must be sufficient to eliminate any adverse upstream or downstream impacts on other land and property. The existing concrete and earth V drains fronting the subject allotments along McAllisters Road may be sufficient. This could be conditioned accordingly and assessed at CC stage.
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Based on the information provided and the Council's strategic planning direction it is considered that the application is required to comply with the urban standards of this section of the Development Control Plan. The application is therefore recommended for refusal.

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

Clause 92(a) Government Coastal Policy

The proposed development is consistent with the objectives and strategic actions of the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

No demolition is proposed with the application.

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

The site is not located within a coastal zone management area.

Tweed Shire Coastline Management Plan 2005

The site is not affected by the Tweed Shire Coastline Management Plan 2005. No further assessment is required.

Tweed Coast Estuaries Management Plan 2004

The site is not affected by the Tweed Coast Estuaries Management Plan 2004. No further assessment is required.

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

The site is not affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater. No further assessment is required.

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

Context and Setting

The proposed subdivision whilst considered minor in nature by itself. However looking at the precedent it could start it would cause a negative cumulative impact upon the locality. As outlined previously, the subdivision is located within the Bilambil Heights Urban Release Area. If this application was to be approved it would create a precedent for a number of other similar applications to come in creating a large number of smaller allotments with numerous landowners making it difficult to strategically plan the area. A number of infrastructure issues need to be rectified before this happens.

Access, Transport and Traffic

There will be only one additional allotment if this application was to be approved and would be considered minor in nature. Although, as stated above, the cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, there would be a significant impact. It is therefore recommended that the proposal be refused.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development is located within the Bilambil Heights Urban Release Area. The surrounding sites are currently of a similar size as the subject site and utilised for rural residential purposes. The sites are located within the 2(c) Urban Expansion zone and are earmarked for future urban development. The fragmentation of land zoned urban expansion in the area should be limited until such time that the urban release is going to be undertaken. The cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, would be significant.

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

Public Submissions

The proposed development was not required to be notified or advertised in accordance with the Act and Regulations. As such there were no submissions received.

Rural Fire Service

The proposed development was referred to the NSW Rural Fire Service who responded on 6 February 2013 with 4 conditions of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

(e) Public interest

The proposed two lot subdivision is of a relatively minor scale and nature however should the application be approved, it would set a harmful precedent for the continued urban release of the area. As such it is considered that the proposal is not in the public interest.

OPTIONS:

1. Refuse the application as per the previous recommendation; or
2. Approve the application as per the draft deferred commencement consent and conditions; or
3. Approve with other specified conditions.

Option 2 is recommended.

CONCLUSION:

The application is now supported provided it is assessed and determined as a urban subdivision with appropriate conditions for an urban subdivision.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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- 35 **[PR-CM] Development Application DA13/0065 for Dwelling Additions Including Creation of Second Storey and Detached Double Garage with Carport with SEPP No.1 Objection at Lot 3 DP 712922; No. 13 Dalton Street, Terranora**

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA13/0065 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council has previously considered this report at its meeting of 16 May 2013, at which time the matter was deferred to seek amended plans to require the carport being relocated with respect to the setback conditions. It is understood that a number of Councillors have since visited the subject site, and spoken with the applicant. The applicant has not submitted any additional information to address these concerns. Therefore, the application has been re-submitted to Council for further consideration, with the officers' original recommendation for approval of the application, subject to certain conditions.

Original Report:

An application has been lodged to carry out alterations and additions to an existing single storey dwelling house on the subject allotment comprising a first floor addition, roofed verandahs and a detached double garage with carport.

The land is zoned 1(c) Rural Living, encompasses an area of 5000m², and contains an existing single storey dwelling house.

The allotment has vehicular access from Dalton Street, however also fronts Terranora Road which, under the provisions of Tweed Local Environment Plan 2000, is a designated road.

The required setback of any residential or ancillary structure to a designated road, specified in part 5, clause 24 of the Tweed Local Environment Plan 2000 (*TLEP2000*), is 30m.

The existing dwelling house has a building alignment to Terranora Road of about 15m however, the proposed additions will extend to within 11.60m of this property boundary and the proposed garage/carport will observe a setback to Terranora Road of 11.00m. The applicant has included an objection statement to the planning controls as permitted under State Environmental Planning Policy No. 1 (SEPP No. 1) in respect of the above proposed encroachments within the 30m building alignment. As the extent of the building line variation exceeds 10% the objection as permitted under SEPP No. 1 is referred to Council for determination in accordance with previous directions of the NSW Department of Planning and Infrastructure.

The SEPP1 objection is considered to be worthy of support by Council. It is therefore recommended that Council supports the application, subject to conditions.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 24 of Tweed Local Environmental Plan 2000 regarding setbacks to designated roads be supported and the concurrence of the Director-General of the Department of Planning be assumed.
- B. Development Application DA13/0065 for construction of a first floor addition and roofed verandahs to an existing dwelling house and detached double garage with carport at Lot 3 DP 712922 No. 13 Dalton Crescent, Terranora be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 4625- cover sheet & sheets 4-10 & 17 prepared by Stuart Osman Building Designs and dated 26/03/13, except where varied by the conditions of this consent.
[GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.
[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.
[PCC0285]
5. The footings to the dwelling additions and floor slab to the garage/carport are to be designed by a practising Structural Engineer and details shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.
[PCC0945]
6. A construction certificate application for works that involve any of the following:
 - connection of a private stormwater drain to a public stormwater drain
 - installation of stormwater quality control devices
 - erosion and sediment control workswill not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

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

[PCC1145]

- 7. Prior to the issue of a construction certificate for the dwelling house additions the Principal Certifying Authority shall be provided with written confirmation from a practising Structural Engineer that the existing dwelling house is structurally adequate to support the proposed first floor additions.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

- 9. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and

- (ii) notified the principal certifying authority of any such appointment, and
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

11. Residential building work:

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

[PCW0235]

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

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

[PCW0245]

13. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

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

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

21. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

22. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

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

[DUR0905]

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

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

[DUR1005]

25. No portion of the structure may be erected over the existing easements along the eastern property boundary.

[DUR1945]

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

[DUR2185]

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

- (a) Internal drainage, prior to slab preparation;
- (b) Water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) External drainage prior to backfilling.

(d) Completion of work and prior to occupation of the building.

[DUR2485]

28. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.**
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.**

[DUR2495]

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

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- * 50°C in all other classes of buildings.**

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

[DUR2555]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0205]

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

[POC0435]

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

[POC1045]

33. Prior to the issue of an occupation certificate the existing dwelling shall be provided with smoke detectors in accordance with the provisions of part 3.7.2 of the Building Code of Australia and which comply with the provisions of Australian Standard AS 3786.

[POCNS01]

USE

34. The garage is not to be used for any habitable, commercial or industrial purpose without prior approval of Council.

[USE0455]

REPORT:

Applicant: Mrs JA Drew and Mr M Drew
Owner: Mr Mervyn W Drew & Mrs Jeanette A Drew
Location: Lot 3 DP 712922; No. 13 Dalton Street, Terranora
Zoning: 1(c) Rural Living
Cost: \$199,828

Background:

An application has been lodged to construct a first floor addition and roofed verandahs to the existing dwelling house, and a new detached double garage and carport on the subject allotment with the proposed development standing wholly within the required 30m setback.

The subject land is zoned 1(c) Rural Living, is 5000m² in area and the allotment has a moderate slope from Dalton Street to Terranora Road. The proposed roofed deck as part of the dwelling additions is to be setback 11.60m from Terranora Road and the detached garage and carport will have a rear setback to Terranora Road of 11m.

Vehicular access exists from Dalton Street and the proposed development will not impact upon the streetscape of Terranora Road as there will be no vehicle access to Terranora Road.

The detached garage will be obscured from the Terranora streetscape by existing mature landscaping and the neighbouring dwelling house.

The first floor additions to the existing dwelling house comprise two bedrooms with en-suites, living area and covered verandahs to the northern, eastern and southern sides of the additions.

The garage/carport will be 10m x 9m with colorbond walls and have a low pitched metal roof. It will be located in the north eastern corner of the allotment utilising the existing vehicular entrance to the site.

Adjoining property owners were notified of the proposal due to the SEPP No. 1 variation and one objection was received in relation to impacts of coastal views due to the design of the dwelling house roof.

In response to this objection the Applicant submitted an amended roof design which reduced the impact of the roof on the views from the objector's residence and maintains a substantial coastal view including the ocean-horizon interface.

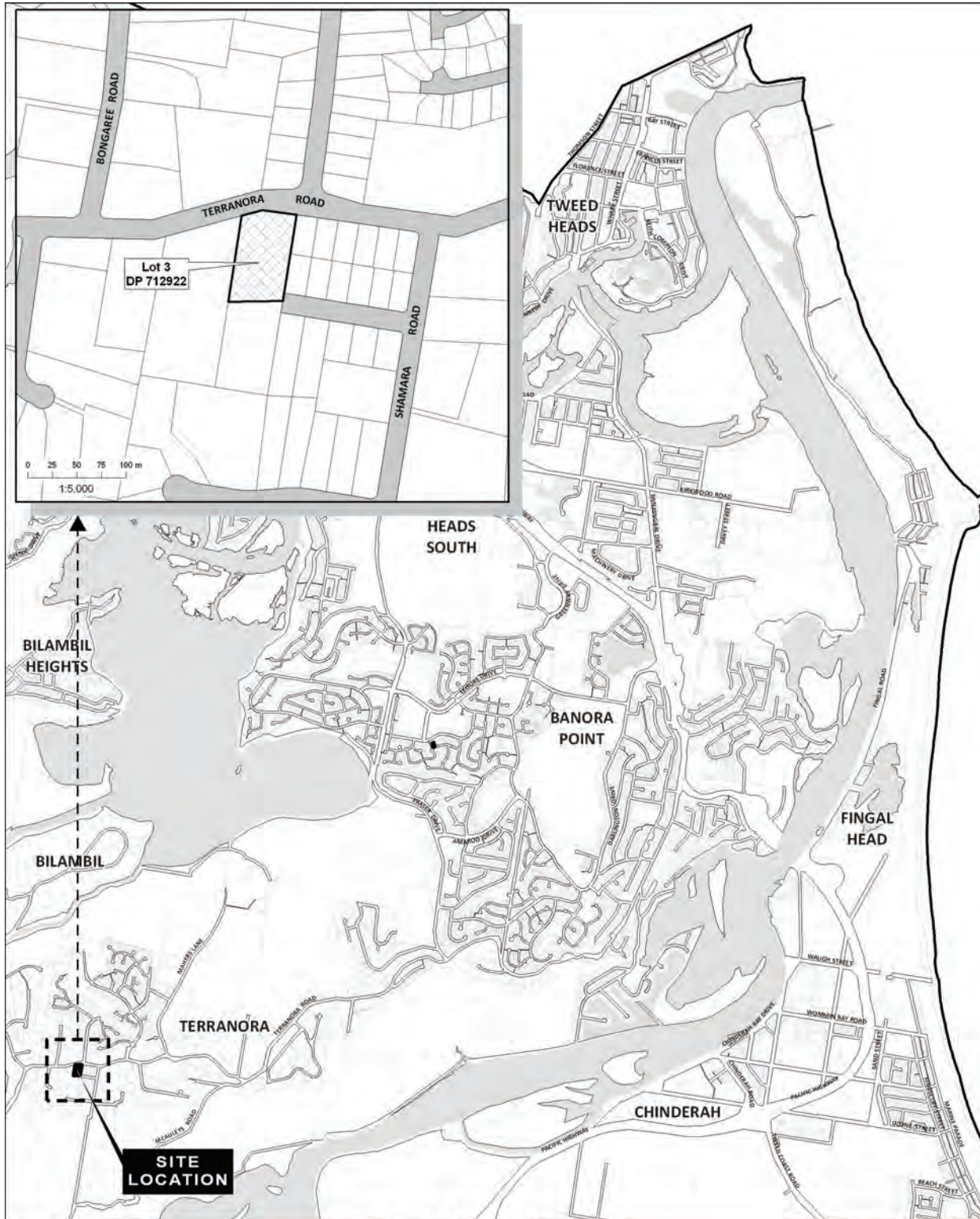
The objector's residence is located about 120m from the subject dwelling house and this spatial separation accompanied by the modified roof design is considered to satisfactorily reduce the dominance of the roof to the objector.

The first floor addition will still have some impact on the coastal views currently enjoyed by the objector however as stated above due to the spatial separation of the objector's dwelling from the subject dwelling house the objector will still have a panoramic view available which is considered to be acceptable and satisfies view sharing principles.

As Terranora Road is classified as a designated road under the Tweed Local Environmental Plan (TLEP2000) Part 5, Clause 24 prescribes a 30m building setback. The applicant has provided a SEPP No. 1 objection statement detailing the reasons for a request to vary the 30m setback requirement to Terranora Road.

Due to the above amended roof redesign, the large size of the allotment and the zoning of the property (large lot residential) it is considered that the proposed development is comparable to existing approved development in the area and the additions and alterations and detached garage and carport will not adversely affect the amenity of the local environment, the streetscape or public domain of Terranora Road and Dalton Street.

SITE DIAGRAM:



Locality Plan

Lot 3 DP 712922
No. 13 Dalton Street, Terranora

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Cadastral 01/05/2013
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TWEED
SHIRE COUNCIL

Project: 2-ENVIRONMENTAL/TEMPLATE/BAU/DP/712922-13-10000000_00000000_00000000

Author: B0000000 - Drawing: B0000000

File Name: 01 May 2013

DEVELOPMENT/ELEVATION PLANS:



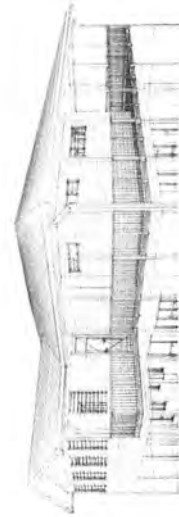
STUART OSMAN
BUILDING DESIGNS

PROPOSED EXTENSION FOR

DREW

No. 13
DALTON STREET
TERRANORA

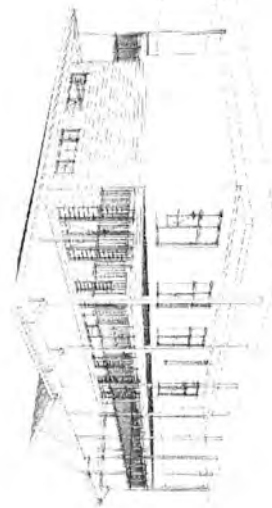
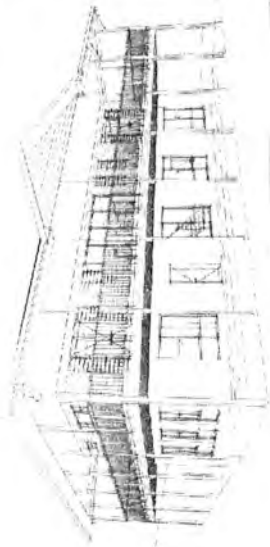
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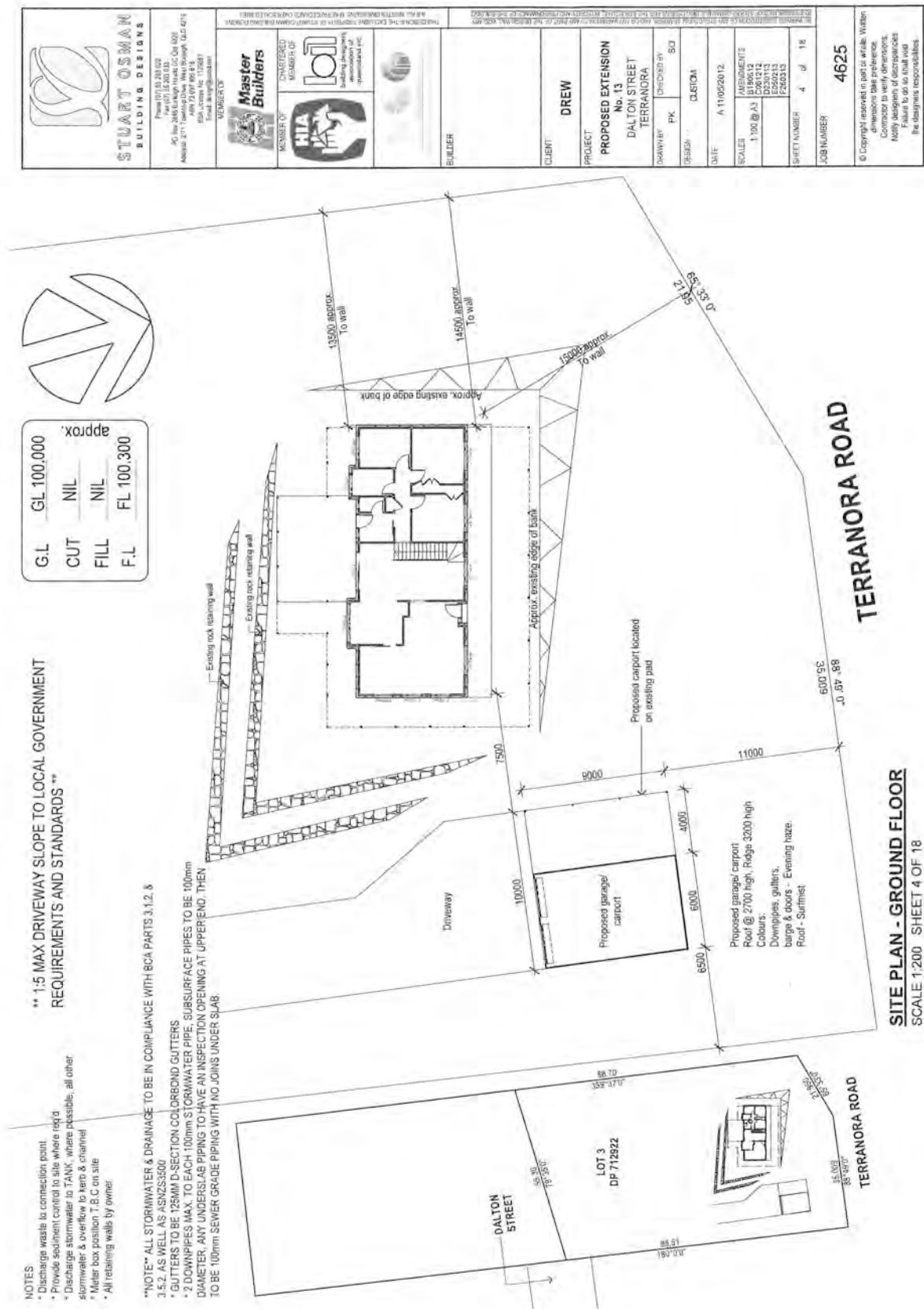



NOTES:
* IMAGES ARE DIAGRAMATIC ONLY
* REFER TO ELEVATIONS FOR DETAILS



ENDORSED
Stuart Osman Building Designs









STUART OSMAN
BUILDING DESIGNS


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MEMBER OF
Master Builders
AUSTRALIAN
MASTER BUILDER
ASSOCIATION



MEMBER OF
HIA
Housing Industry Association



BUILDER

CLIENT

DREW

PROJECT
PROPOSED EXTENSION
No. 13
DALTON STREET
TERRANORA

DRAWN BY
PK

CHECKED BY
SO

DESIGN
CUSTOM

DATE
A 11/05/2012

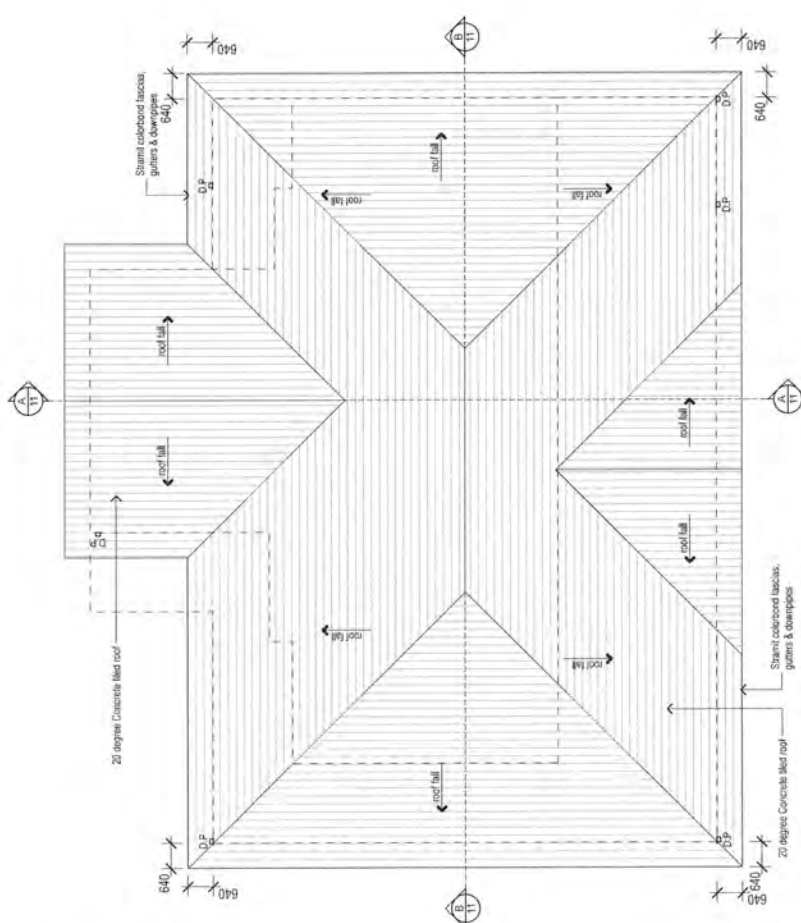
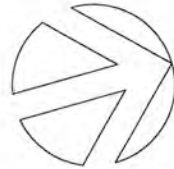
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INSTRUMENTS
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C081112
E080013
F080013

SHEET NUMBER
8 of 18

JOB NUMBER
4625

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Contractor to verify annotations.
Notwithstanding to whom issued, the designer's responsibility shall remain with the designer.



- NOTES
- All off hangers to RVC door as per BCA 3.3.3
 - All external doors to have RVC door
 - All External and internal doors & windows to be measured on site and confirmed by builder
 - Sarking to external walls
 - Insulation to ceiling (living only) R2.5 batts
 - All windows & S&GD to be fitted with double glazed units with natural ventilation
 - All shower roses to be A44 rated
 - Maximum water supply pressure not to exceed 500kpa at any outlet
 - Hot water system shall be heat pump, solar or gas
 - Hot water supply shall be from RVC tank
 - Hot water system shall be 1000mm above finished floor level
 - All handrails to be 1000mm above finished floor level














ELEVATIONS

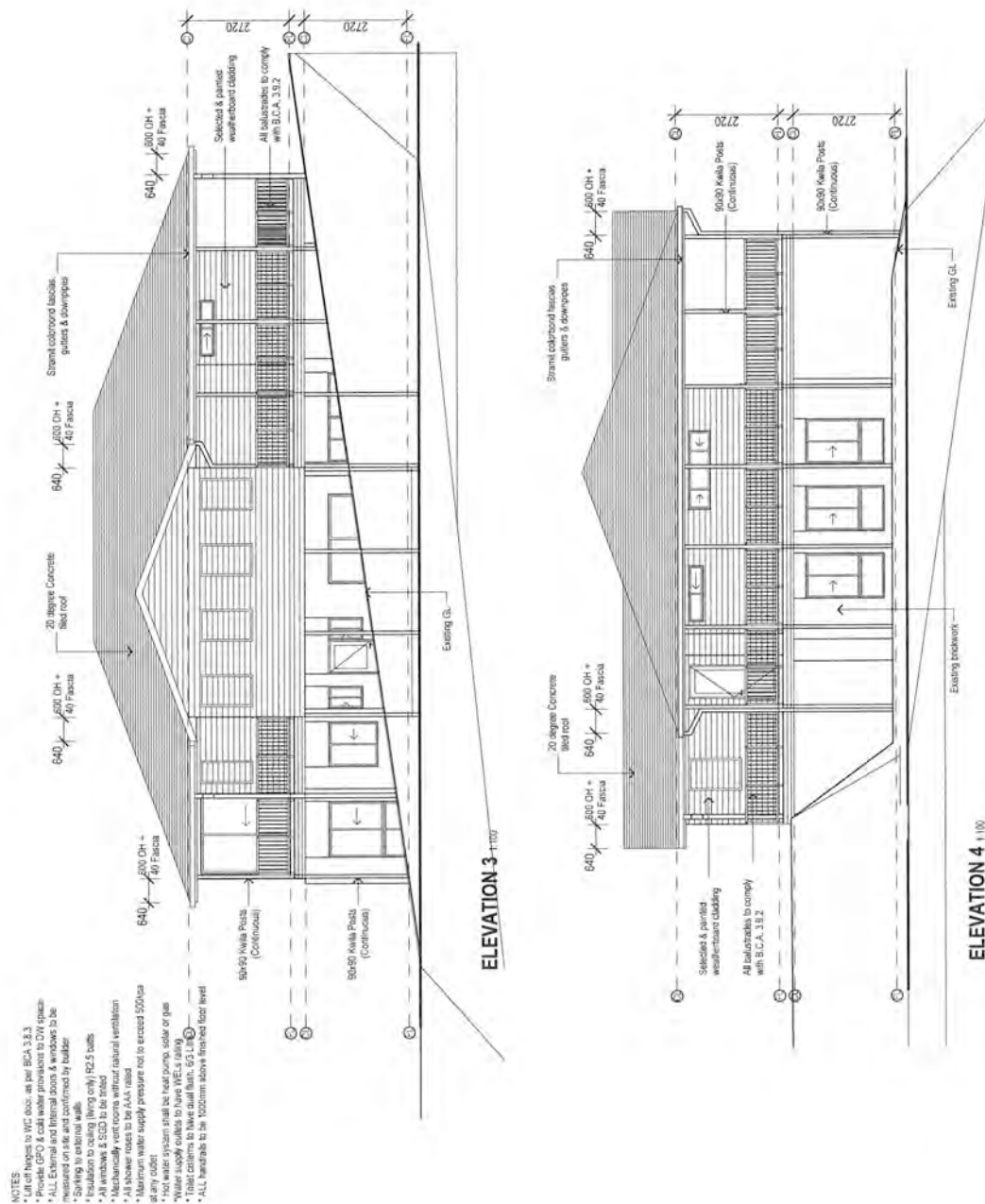
ROOF PLAN

SCALE 1:100

NOTES

- 1. Air in hedges in WC door as per BCA 3.6.3
- 2. Provide CPCU cold water provisions to CW pipes
- 3. A/E External and Internal doors & windows to be measured on rise and confirmed by builder
- 4. Siding to external walls
- 5. Insulation to ceiling living only R2.5 suits
- 6. All windows & S&D to be sealed
- 7. Mechanically vented rooms without natural ventilation
- 8. All shower rooms to be AAA rated
- 9. Maximum water supply pressure not to exceed 250kPa
- 10. All wall and floor slabs
- 11. Hot water system shall be heat pump, solar or gas
- 12. Water supply controls to have WEA rating
- 13. Toilet systems to have seal flush, 60 litre
- 14. All plasterboard to be 1000mm above finished floor level

 STUART OSMAN BUILDING DESIGNS	Phone: 916.232.1332 Fax: 916.232.0331 PO Box 2468 Buena Vista, CA 94025 Website: 2011 www.stuartosman.com E-mail: stuart@stuartosman.com E-mail: cathy@stuartosman.com		HIA MEMBER OF  Master Builders MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF  HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF HIA MEMBER OF		HIA MEMBER OF 	
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Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is in keeping with ecologically sustainable development principles and is in line with community expectations for the site having regard to the zoning provisions, development control plan provisions and the limitations of the site.

Clause 8 - Consent Considerations

The development will be consistent with the primary objective of the zone, all relevant aims and objectives of the plan and will be unlikely to have any adverse cumulative impact on the community or locality.

Clause 11 - Zone Objectives

The proposal will be consistent with the objectives of the zone.

Clause 15 - Essential Services

All necessary services are available and adequate.

Clause 16 - Height of Building

The height of the dwelling house addition will satisfy the controls of DCP A1.

Clause 17 - Social Impact Assessment

The proposed first floor additions and garage are considered to be unlikely to result in any adverse social impact due the large area of the allotment, spatial separation between dwellings on adjoining properties and existing mature vegetation.

Clause 35 - Acid Sulphate Soils

The allotment is subject to class 5 Acid Sulphate Soils however the building works are unlikely to have any adverse environmental impact in relation to this matter.

Other Specific Clauses

Not applicable.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

A SEPP No. 1 objection has been received from the applicant in relation to the 30m setback to Terranora Road, (*a designated road*) which is required by clause 24 of the TLEP2000. A copy of this objection has been reproduced below:

"Clause 24 - Setbacks to Designated Roads

Clause 24 of the LEP requires 'other/ development to have a setback of 30m to a designated road, This Development Standard is unnecessary and unreasonable in this instance, and an Objection under State Environmental Planning Policy No. 1 is submitted to this Development Standard for the following reasons:

- *The site and surrounding sites are of a residential nature. Enforcing a 30m setback to Terranora Road is unreasonable as it would render it inappropriate for additions to an existing dwelling.*
- *The site contains an existing dwelling and it would be unreasonable to restrict the upgrading of the dwelling and the garage/carport due to the 30m setback requirement. The subject application does not intensify the development of the site (remaining at 1 detached dwelling), and the development standard is therefore unreasonable.*
- *There are many dwellings erected along Terranora Rd in close proximity to the subject site. These dwellings are within 30m of Terranora Rd, It would be unreasonable to restrict the subject development, when there are numerous precedents for development closer than 30m to the Designated Road.*
- *Approximately 20m to the north and east the zoning changes to a Village zoning (on the opposite side of Terranora Rd). Houses are permitted to be constructed to within 6.0m of Terranora Rd within the Village zoning.*
- *The application is to extend the existing dwelling and to erect a garage/carport. Adequate setback will be retained. As such the setback requirement is unreasonable in this instance.*
- *The dwelling additions and garage/carport wouldn't be highly visible or visually obtrusive when viewed from Terranora Road due to the presence of treed vegetation adjacent to the Terranora Rd boundary of the site.*

For the above reasons, Council is requested to support the objection under SEPP 1 to allow the development with 30m of the Designated Road.

Clause 22 - Designated Roads

Clause 22 applies to the proposed development as the site has frontage to a designated road (Terranora Road)' The consent authority must consider the listed matters in Clause 22 (4), as follows:

- (a)** *The development (because of its nature, appearance cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

Comment: *The site is located within an area with a residential character, with access from Dalton Street. The site contains an existing dwelling, and the proposed development would not increase traffic flows from the site. The development would not cause a traffic hazard or reduce the capacity or efficiency of the road.*

- (b)** *The location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

Comment: *the development would be serviced by an existing driveway from Dalton Street. The driveway crossover has been designed so that access to/from the property is convenient and meets*

safety requirements. No delays would occur to through traffic, as the road is a cul de sac.

- (c) *The development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*

Comment: *The development is not located where it would prejudice any future road improvements or realignments*

- (d) *Where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*

Comment: *Not applicable.*

- (e) *The development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*

Comment: *the development involves dwelling additions and a garage/carport. Numerous residential dwellings exist along Terranora Road. The Terranora Road environment is not unsuited to residential development'*

- (f) *The development would not detract from the scenic values of the locality, particularly from the point of view of road users, and where practicable, access to the land is provided by a road other than the designated Road.*

Comment: *The development will not detract from the scenic values of the locality'*

- (g) *Where practicable, access to the land is provided by a road other than the designated road.*

Comment: *Access is provided via Dalton Street, and not from Terranora Road".*

SEPP No 71 – Coastal Protection

The subject site falls within the coastal protection zone as identified under SEPP 71 however referral to the Department of Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from sensitive coastal locations. Potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, wildlife corridors, the suitability of the site for the development and any measures to reduce other adverse environmental impacts have been considered and having regard to these items, the property distance from any waterway or foreshore; and the existence of developments of similar design and scale on nearby and adjoining properties, Council is of the opinion that the proposed development is consistent with the matters for consideration under SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

Basix Certificate A 156086 has been submitted in support of the application.

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

The draft Tweed LEP 2010 is nearing adoption and the provisions of this draft plan raise no implications for the proposal. The proposal is still permissible with consent.

The proposed Tweed LEP 2010 does not identify designated road and once this instrument is adopted applications such as the subject application will be considered without the need for a SEPP No. 1 variation or referral to Council for determination.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed first floor addition will satisfy the provisions of DCP A1, whereas the garage and carport do not have to satisfy this instrument due to the zoning of the allotment.

A11-Public Notification of Development Proposals

The proposal was notified due to the encroachment into the 30m building alignment to Terranora Road.

One objection was received concerning obstruction of views due to the gable roof shape of the first floor addition.

In response to this objection the applicant modified the roof design to a hipped roof in order to reduce the bulk of the roof and thereby reduce the overall impact.

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

Clause 92(a) Government Coastal Policy

The proposed alterations and additions to the dwelling and garage/carport will have no adverse impact on the aims & objectives of the policy.

Clause 92(b) Applications for demolition

Removal of the roof to the dwelling house will occur however this will be controlled by the necessity to comply with relevant building standards.

Clause 93 Fire Safety Considerations

The existing dwelling, as well as the first floor addition, will be required to install smoke detectors which comply with the provisions of the Building Code of Australia and Australian Standard AS 3786.

Clause 94 Buildings to be upgraded

The existing dwelling house will require certification from a practising Structural Engineer that it is structurally capable of supporting the first floor addition.

Certain structural elements may require upgrading depending on the Engineers recommendation.

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

Not applicable.

Tweed Shire Coastline Management Plan 2005

Not applicable.

Tweed Coast Estuaries Management Plan 2004

Not applicable.

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

Not applicable.

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

Context and Setting

The dwelling house additions will be consistent with the prevailing residential nature of the locality.

Access, Transport and Traffic

Vehicular access to the site exists from Dalton Street and the proposed alterations and additions will not require any new access to the allotment.

Flora and Fauna

Minor land clearing will be required for the construction of the garage/carport however this is unlikely to result in any significant adverse impact on fauna and flora.

(c) **Suitability of the site for the development**

Surrounding Land uses/Development

The proposal will be consistent with surrounding land uses.

Flora and Fauna

No fauna or flora will be affected by this proposal.

Topography

Allotment is gently sloping.

Site Orientation

Site is oriented to north.

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

In response to the neighbour notification process one written objection to this proposal was received.

The objection related to the impact of coastal views by the roof of the first floor addition to the dwelling house.

In response to this objection the Applicant modified the roof design to reduce the impact on the views from the objector's dwelling house.

The objector's residence is located about 120m from the subject dwelling house and this spatial separation accompanied by the modified roof design is considered to satisfactorily reduce the dominance of the roof to the objector. And protect coastal views.

(e) Public interest

The proposed first floor dwelling house addition and freestanding garage/carport is considered to be unlikely to be against the public interest.

OPTIONS:

1. Approve the application with conditions; or
2. Refuse the application.

Council's Officers recommend option 1.

CONCLUSION:

The proposed first floor addition to the dwelling house and freestanding garage/carport are considered to be an acceptable development for this allotment.

Notwithstanding that the additions and garage/carport will encroach into the 30m building alignment to Terranora Road it is recommended that the SEPP No. 1 objection to this setback be supported by Council as the requirement for such a setback is considered to be unnecessary and unreasonable in this location.

The existing dwelling house already stands within the 30m setback and the construction of a first floor addition to this dwelling house will have no adverse impact on Terranora Road and minimal impact on adjoining properties or the locality generally.

Similarly the construction of a garage/carport is consistent with the local area and will have no adverse impact on the streetscape.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Refusal of the application may result in an appeal by the applicant in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

36 [PR-CM] Development Application DA12/0498 for the Demolition of Existing Dwelling and Construction of a Three-Storey Dwelling at Lot 1 DP 214686 No. 4 Marine Parade, Kingscliff

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA12/0498 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council has previously considered this report at its meeting of 16 May 2013, at which time the matter was deferred at the request of the applicant, so they could address the planning concerns raised by Council's Building and Environmental Unit to the proposed development. The applicant has made a written request seeking a further deferral of this matter to enable matters to be addressed. The application has been re-submitted to Council with the officers' original recommendation for refusal of the application.

Original Report:

An application has been received to demolish an existing two storey dwelling house at No. 4 Marine Parade, Kingscliff and construct a new three storey dwelling house with a total floor area of 325m². The property has a site area of 417m², is located on the west side of Marine Parade, is zoned 2(b) Medium Density Residential and is currently subject to a two storey height limit.

The application was notified to adjoining property owners and three submissions were received to the proposal. The objectors' main concerns were the loss of privacy and amenity, non-compliance with two storey height limit, the lift and spa/swimming pool on the roof will be visually offensive, and the potential destabilisation of the hillside. After consultation with key parties the proposal was modified by the applicant and re-notified with one submission being received reiterating previous concerns.

The amended design removed the lift shaft from the roof deck, lowered the spa and indented the balustrading away from the edge plane of the building. A further late amendment to the design was received on 29 April 2013 which attempts to address the noise nuisance concerns by the inclusion of an 'acoustic green screen' on the back edge of the roof top deck. Those latest plans are now the subject of this report.

The proposal is a three storey building in a two storey height limited area that incorporates a large roof top entertainment area that is likely to have an adverse impact on the amenity of the occupants of the elevated dwelling to the rear. The building exceeds the maximum building height prescribed by the current Development Control Plan and the draft Tweed Local Environmental Plan 2012. The roof top deck which has 118 square metres of usable outdoor living area may result in an undesirable precedent for development on the lower part of a hillside where higher level dwellings can be affected.

On the balance of the assessment of the relevant planning matters, it is considered that the proposed development is not suitable for approval and should be refused.

RECOMMENDATION:

That Development Application DA12/0498 for the demolition of existing dwelling and construction of a three-storey dwelling at Lot 1 DP 214686; No. 4 Marine Parade, Kingscliff be refused for the following reasons:

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated that compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards:**
 - The impact of the additional storey incorporating a roof top deck has not been adequately justified.**
- 2. Pursuant to Section 79C(1)(b) the development proposal has not demonstrated acceptable impacts on the built environment:**
 - The development is considered to have negative impact on the amenity of the adjoining property to the southwest.**
- 3. Pursuant to Section 79C(1)(a)(iii) the development has not demonstrated compliance with Tweed Shire Council Development Control Plan 2008 Section A1 in particular:**
 - The development proposal exceeds the nine (9) metre height limit.**

REPORT:

Applicant: Mrs K Carter and Mr R Carter
Owner: Ms Kristine A Carter
Location: Lot 1 DP 214686; No. 4 Marine Parade, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$1,225,000

Background:

The property is zoned 2(b) Medium Density Residential under Tweed Local Environmental Plan 2000 and is located on the western side of Marine Parade Kingscliff, is 417 m² and currently subject to a two storey height limit.

An application has been received to demolish an existing two storey dwelling house at 4 Marine Parade, Kingscliff and construct a new three storey dwelling house with a total floor area of 325 m². The application was notified to adjoining property owners and three submissions were received to the proposal. The objectors' main concerns with the proposal were the loss of privacy and amenity, not consistent with two storey height limit, the lift and spa/swimming pool on the roof will be visually offensive and the potential destabilisation of the hillside. A letter dated 3 December 2012 summarising the concerns and objections of the neighbours and council's assessing officer, was sent to the applicants, care of their planning consultant. In addition, an email was sent by the assessing officer to the applicants dated 7 December 2012 which read:

"Hi Brock & Mr Mrs Carter,

I have read the SEE (Statement of Environmental Effects) submitted and reviewed the plans and visited all the surrounding properties.

My impression is that the proposal is pushing the limits by designing the roof top deck on a three storey building that is in a two storey zone and does not comply with the height limits, rear setbacks, front setbacks and FSR.

The use of the roof top deck will have an adverse impact on the rear property occupants and it is hard to justify this impact when it is largely the result of the other variations above.

It is my feeling that the roof top deck should be removed from the design.

The SEE needs to provide further argument in relation to the 2b zone objectives, provide some justification for the increase in wall plate height, and the front fence does not comply with the DCP regarding openness and driveway sight lines do not comply.

It is requested that you include a response to the above in your response to Council's letter dated 3/12/12."

After consultation with key parties the proposal was modified from the original submission and re-notified with one submission from the owner of 34 Hungerford Lane being received reiterating previous objections.

The amended design removed the lift shaft from the roof deck, lowered the spa and indented the balustrading away from the edge plane of the building. A further late amendment to the design was received on 29 April 2013 which attempts to address the noise nuisance concerns by the inclusion of an 'acoustic green screen' on the back edge of the roof top deck. Those latest plans are now the subject of this report.

The applicant has provided photo montage images which show that the proposed building is well designed in context with the streetscape and fits well with the scale of the two adjoining three storey dwellings. There will be no significant loss of views from any surrounding properties as a consequence of the proposed development.

The inclusion of the roof top deck on the proposed three storey building is the primary concern in this development. It raises the level of outdoor living area to a level and position that will impact on the residents of at least one property above. Noise and potential evening illumination will impact on their amenity. Acoustic advice by CRG Acoustic Consultants has been provided and is noted as conservative but suggests that to be fully effective an acoustic screen would need to be 4.5m high and return half way along the sides of the building and as an alternative recommends conditions to control the hours of use and to prevent music being played on the deck.

A geotechnical report has been submitted which concludes that the development could proceed without destabilising the surrounding properties.

The applicant has been given clear indication of the concerns with this development primarily being the roof top deck and has proceeded to seek Council's determination of the proposal without further amendment.

SITE DIAGRAM:



Locality Plan
1 DP 214686
No. 4 Marine Parade, Kingscliff

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Cadastral 24/04/2013
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Boundaries shown should be
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0 0.5 1 1.5 Km
1:60,000 @ A4 Portrait
COPY ONLY - NOT CERTIFIED



Map Projection: Universal Transverse Mercator
Horizontal Datum: Geoidetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

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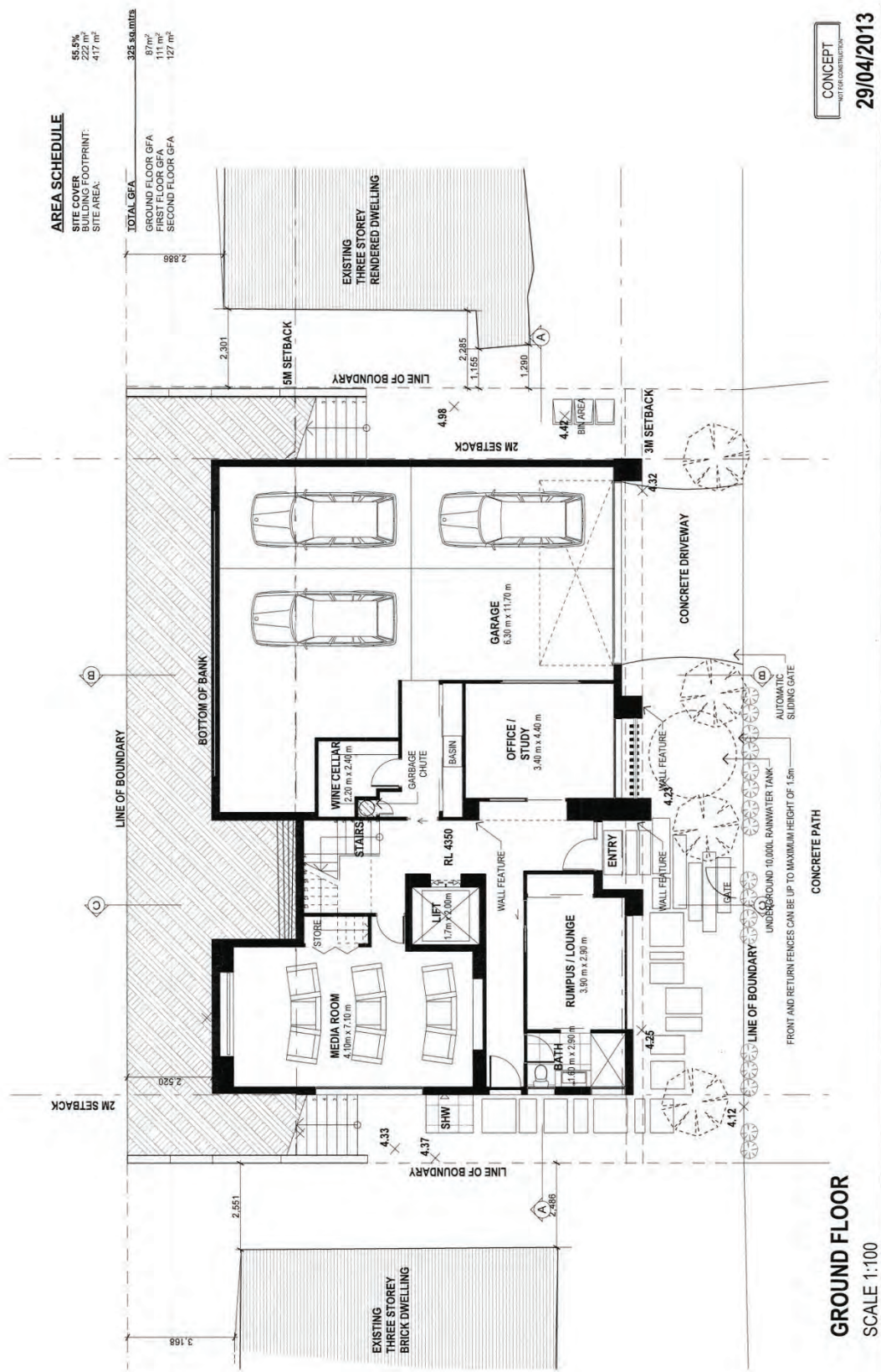
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TWEED
SHIRE COUNCIL

Site Print 1 - 14 April 2013

DEVELOPMENT/ELEVATION PLANS:

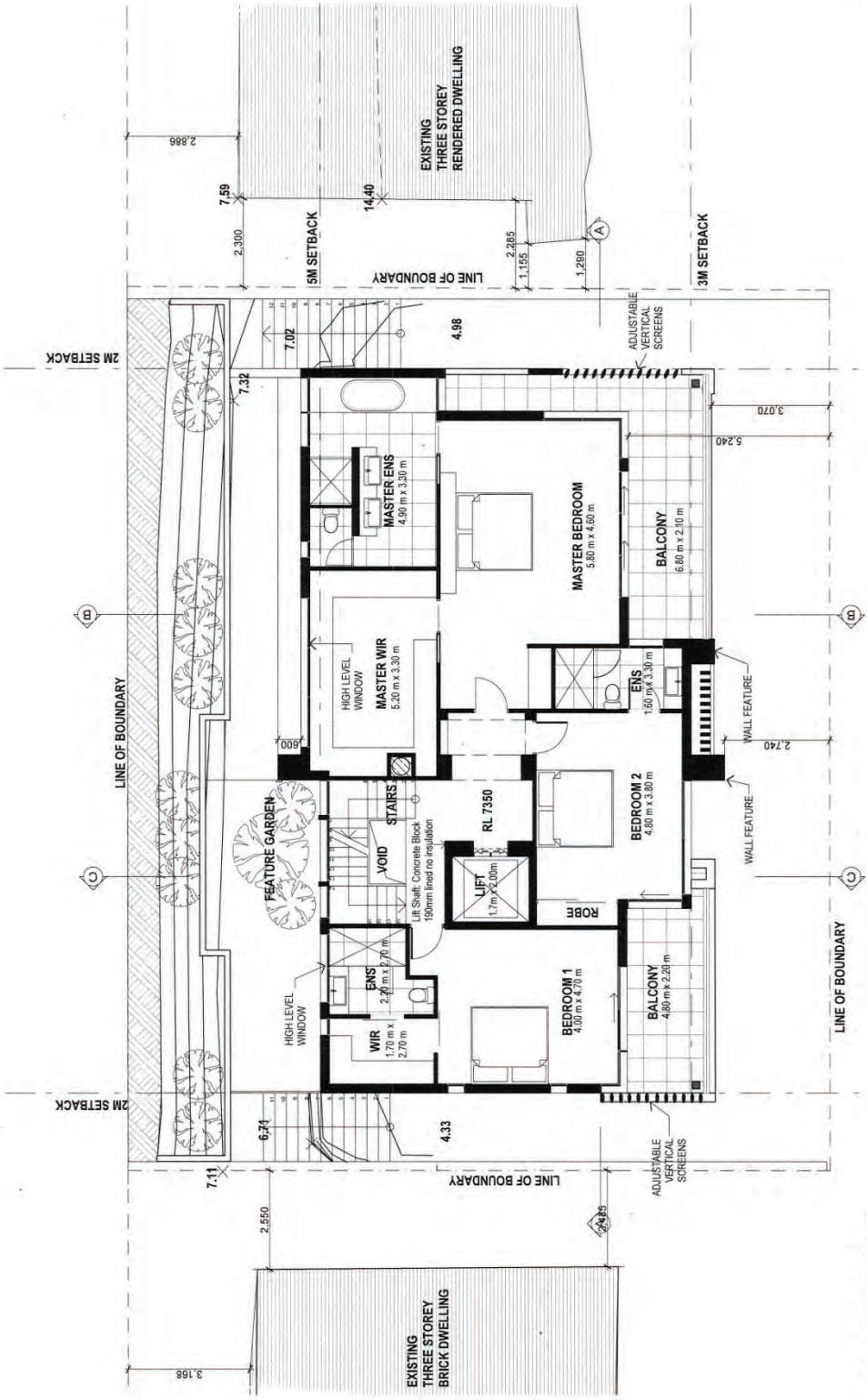


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dwg no: 01
issue date: 29/04/2013
scale: 1:100 @ A3

RAUNIK
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ABN 19 807 805 845

RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER



FIRST FLOOR
SCALE 1:100

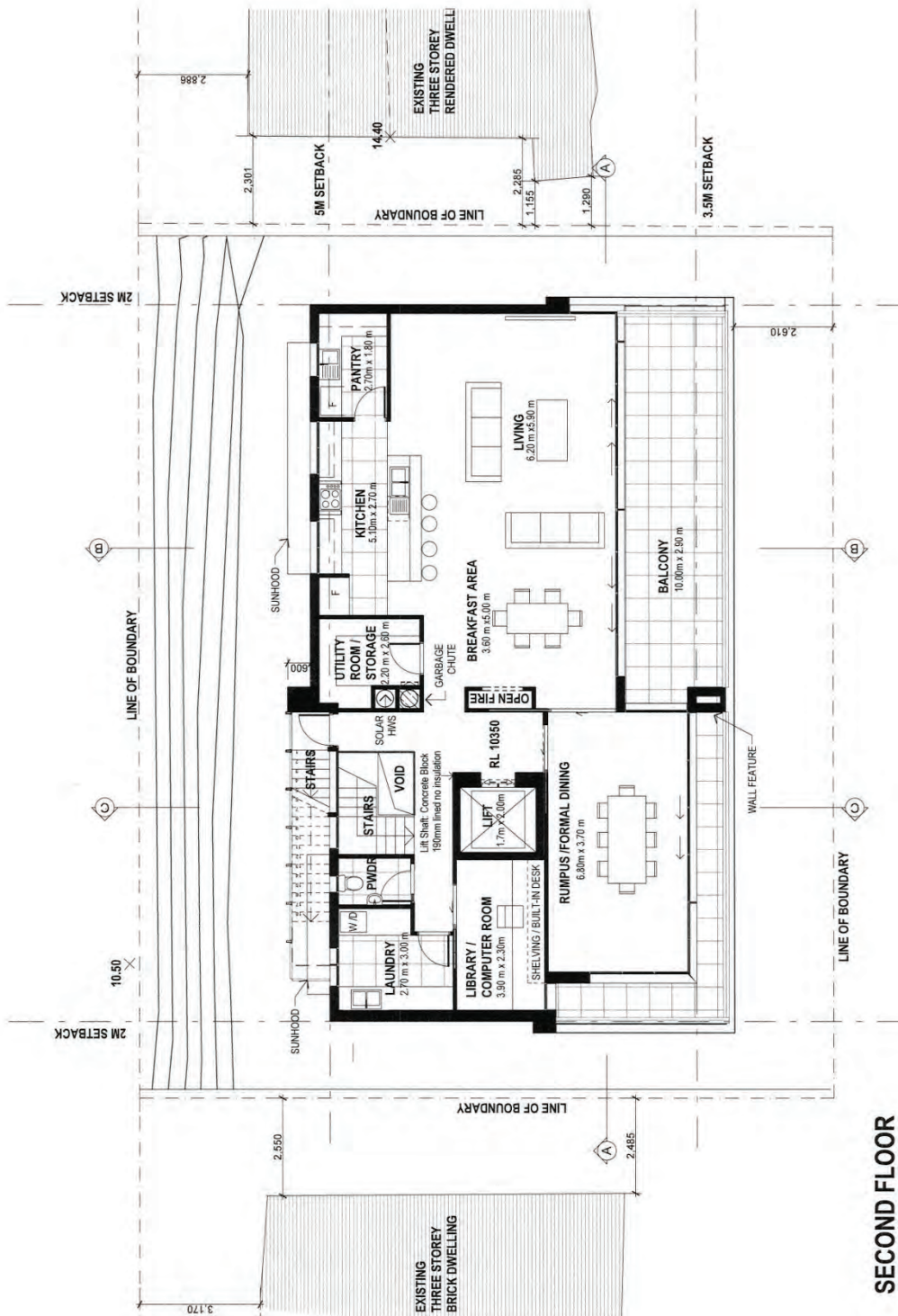
CONCEPT
NOT FOR CONSTRUCTION
29/04/2013

project no: 12656
dwg no: 02
issue date: 29/04/2013
scale: 1:100 @ A3

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RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER



SECOND FLOOR
SCALE 1:100

CONCEPT
NOT FOR CONSTRUCTION

29/04/2013

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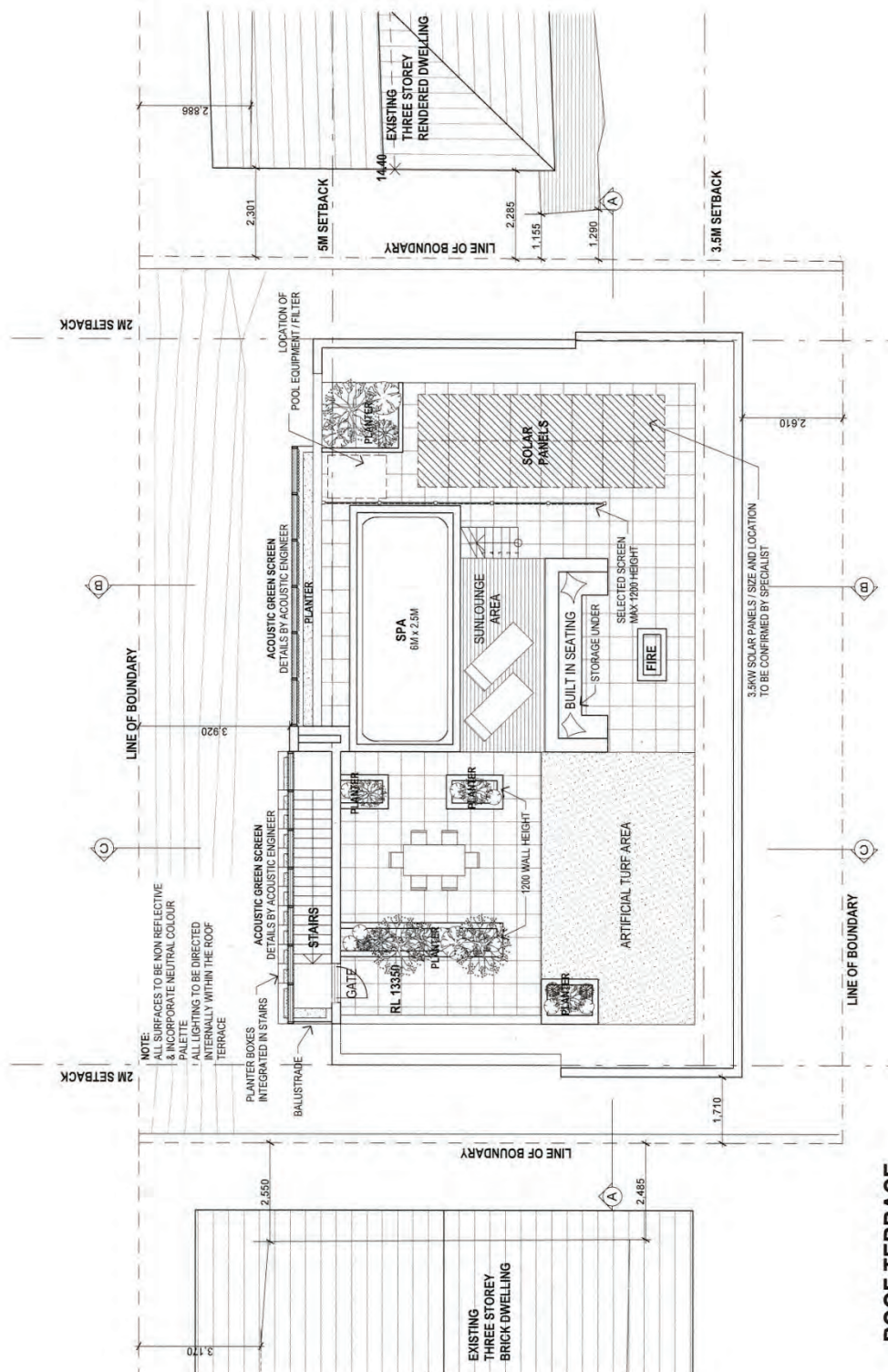
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RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 03
issue date: 29/04/2013
scale: 1:100 @ A3



Registered QLD 2963



ROOF TERRACE
SCALE 1:100

CONCEPT
—NOT FOR CONSTRUCTION—

29/04/2013

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design group

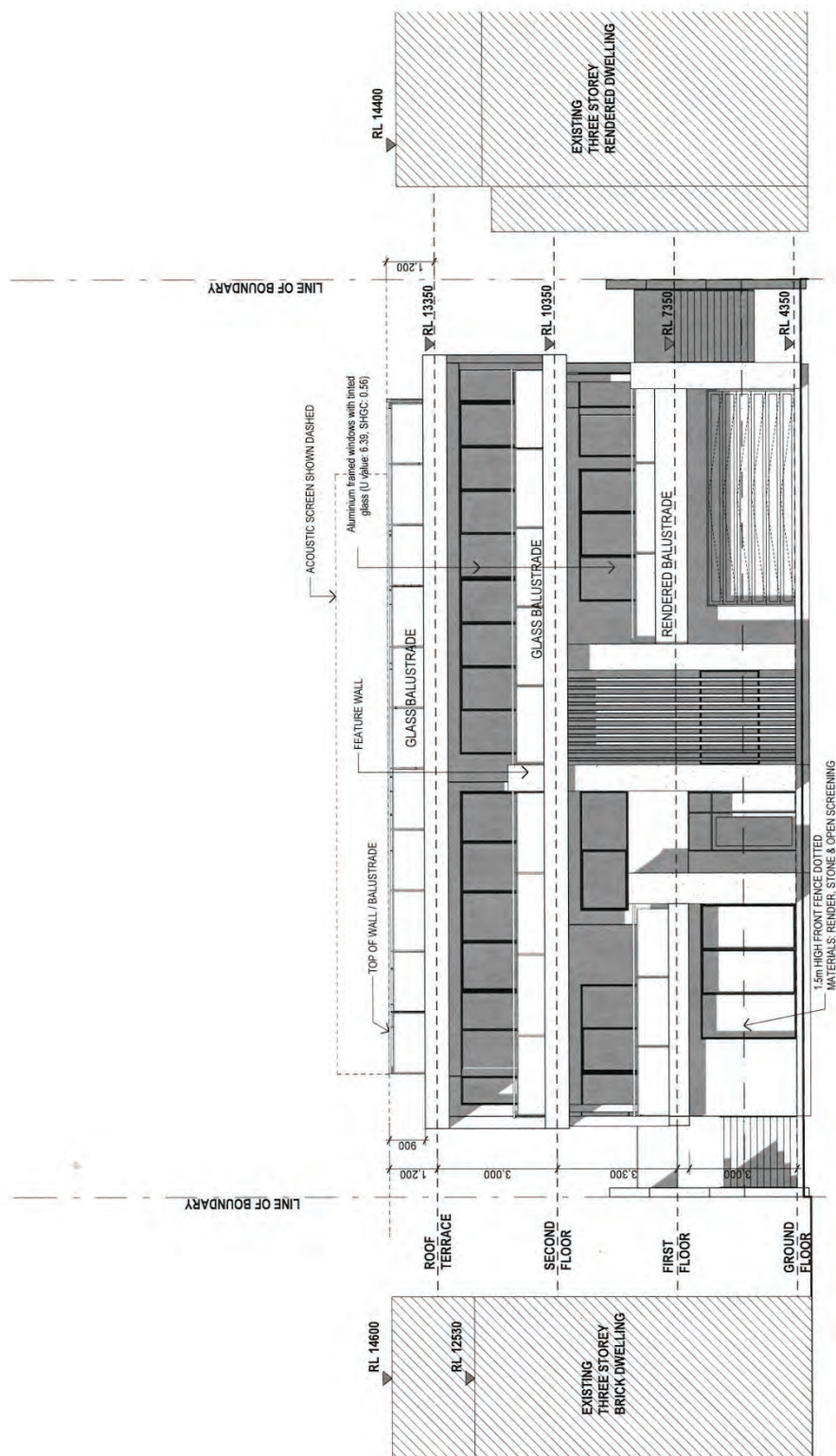
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**RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER**

project no: 12656
dwg no: 04
issue date: 29/04/2013
scale: 1:100 @ A3





ELEVATION NORTH-EAST

SCALE 1:100

CONCEPT
NOT FOR CONSTRUCTION

29/04/2013

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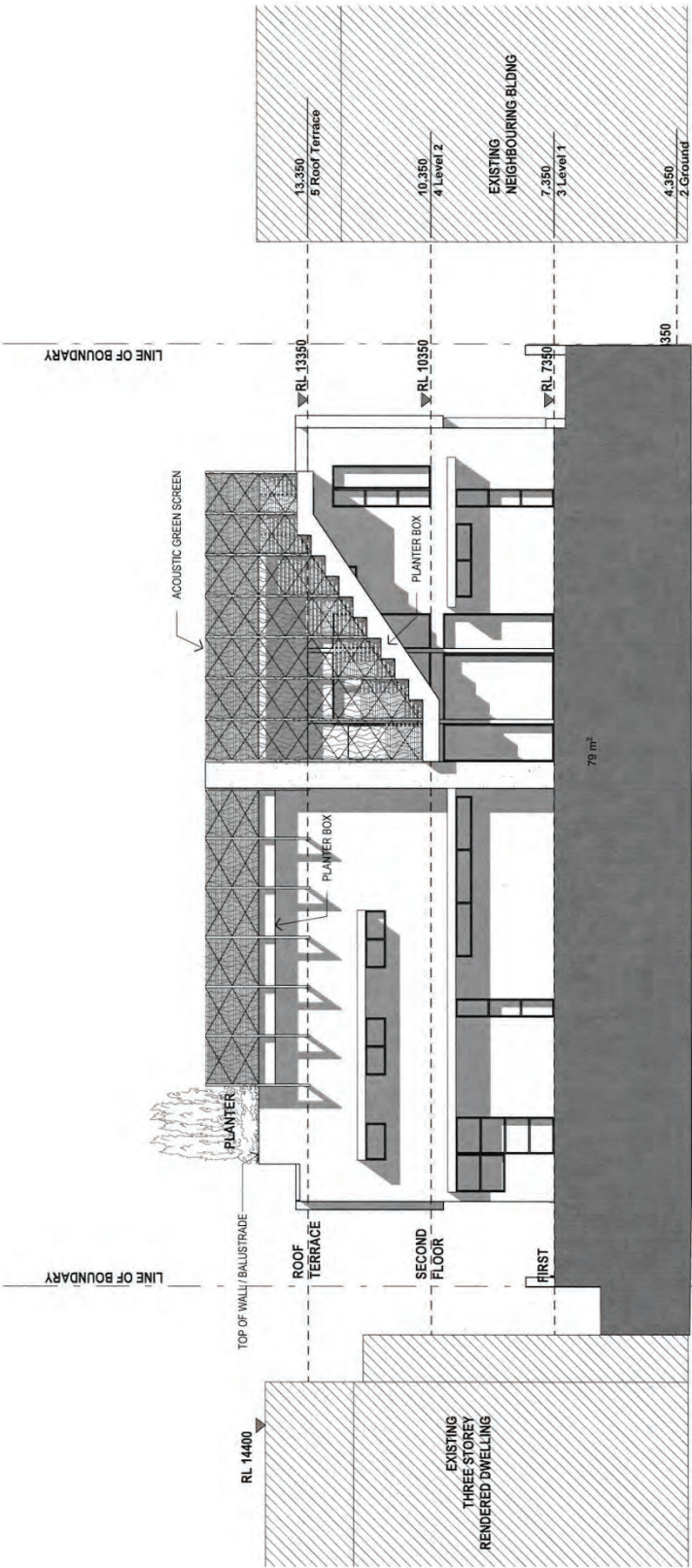
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RESPONSE TO RFI - Proposed Residence for Rob and Kristine CARTER

project no: 12656
dwg no: 07
issue date: 29/04/2013
scale: 1:100 @ A3



Registered QLD 2843



ELEVATION SOUTH-WEST
SCALE 1:100

CONCEPT
NOT FOR CONSTRUCTION
29/04/2013



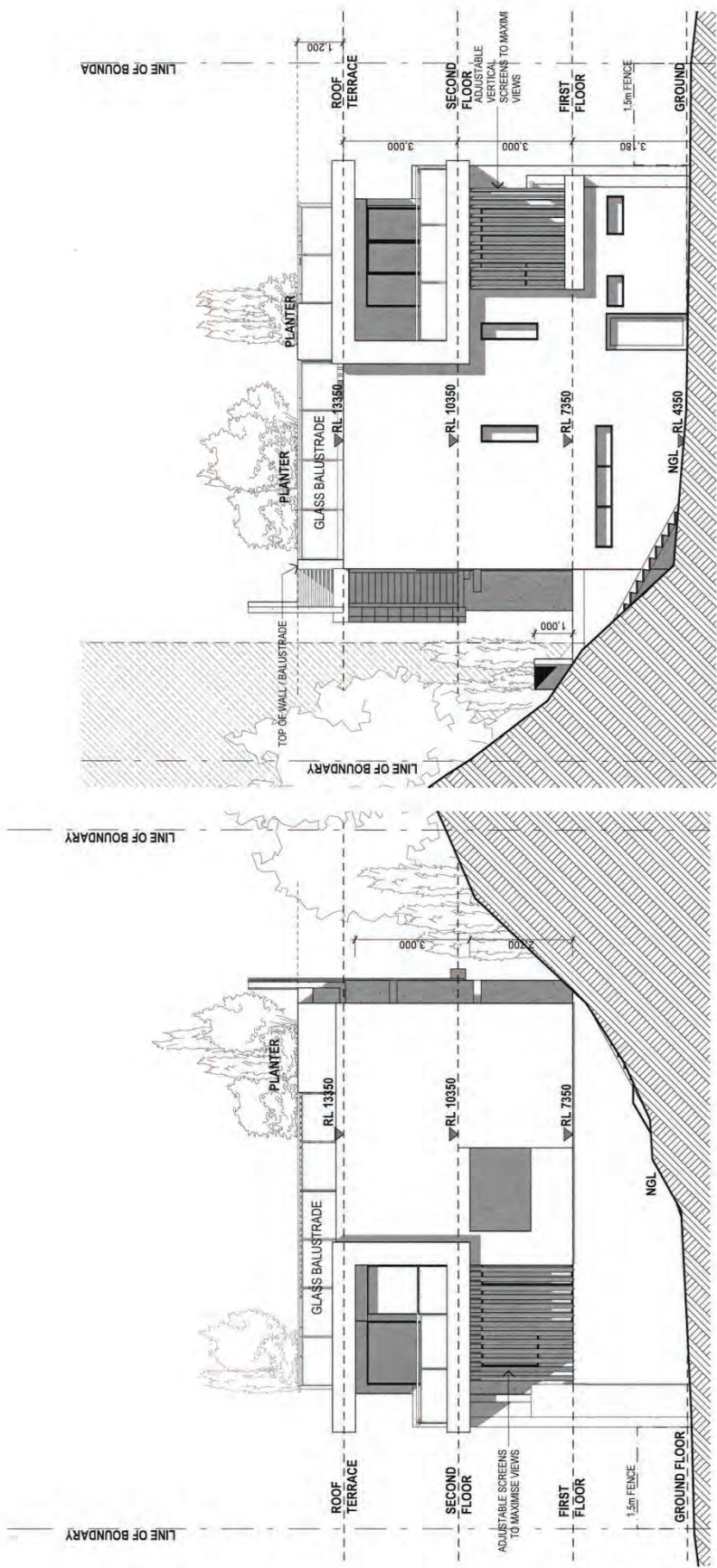
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RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 08
issue date: 29/04/2013
scale: 1:100 @ A3



Registered QLD 2843



29/04/2013

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RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 09
issue date: 29/04/2013
scale: 1:100 @ A3

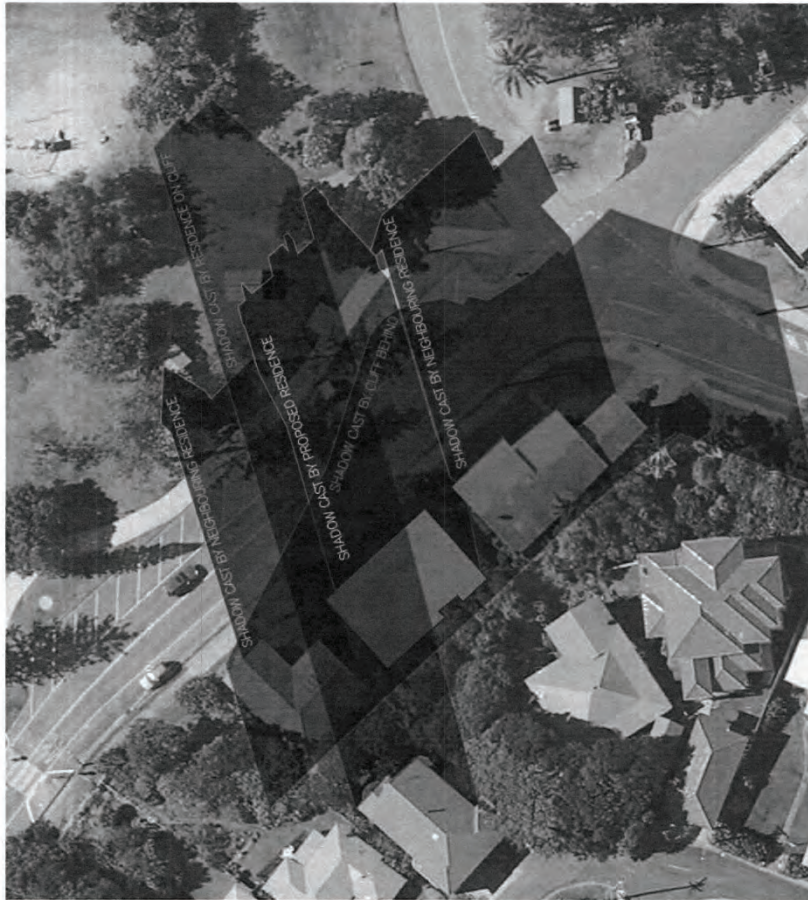




SUMMER SOLSTICE 9AM



SUMMER SOLSTICE 3PM



SUMMER SOLSTICE 6:30PM

LEGEND

- SHADOW CAST BY PROPOSED RESIDENCE
- SHADOW CAST BY CLIFF BEHIND

- SHADOW CAST BY NEIGHBOURING RESIDENCES
- SHADOW CAST BY RESIDENCE ABOVE CLIFF

CONCEPT
NOT FOR CONSTRUCTION

29/04/2013

SUMMER SHADOWS

project no: 12656
dwg no: 10
issue date: 29/04/2013



RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

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RAUNIK
design group



WINTER SOLSTICE 9AM



WINTER SOLSTICE 12PM



WINTER SOLSTICE 3PM

SHADOW CAST BY PROPOSED RESIDENCE

WINTER SHADOWS

project no: 12656
dwg no: 11
issue date: 29/04/2013



CONCEPT
NOT FOR CONSTRUCTION

29/04/2013

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RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

The following photo is provided of the site taken by Council's assessing officer.



Northern view from rear affected dwelling at 34 Hungerford Lane across subject site.



Street montage view of proposed dwelling



Example provided by applicant of a 'green screen'

ASSESSMENT:

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

As a part of the assessment process numerous site visits by Council's assessing officer have been undertaken to all of the surrounding properties and involving many hours. Impacts have been discussed by phone with the objectors and concerns raised have been discussed in meetings with the applicant planning consultant.

The assessment also utilised the expertise of Council Senior Urban Design Planner who gave assistance in gauging the impact of the development in the context of streetscape and design merit of the building relative to the adjoining buildings and constraints of the site.

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Consent Considerations

Zone Objectives

The subject site is zoned 2(b) Medium Density Residential. The primary objective of the zone is to encourage development for the purpose of medium density housing that achieves good urban design outcomes. The secondary objectives relate to allowance for non residential and tourist development and to discourage the under-utilization of the land for residential purposes, particularly close to the Tweed Heads sub region area.

The proposed development is not consistent with the primary objective of the zone but it has been argued by the applicant that there are a number of constraints to the site that justify the single dwelling being proposed. The allotment is small, with an area of 417 m², and is only 17m in depth from front to rear making the potential for medium density difficult. Also, the applicant points out that this could be categorised as small lot housing being on a lot less than 450m² which is an alternative form of medium density.

Cumulative Impacts

The proposed building at three storeys is consistent with other buildings in the area and is unlikely to be dominant amongst the Kingscliff hill.

There is an argument for cumulative impact on the locality in that the building does not comply with the two storey height limits of current Local Environmental Plan (LEP). This is somewhat countered by the existing three storey development along Marine Parade. In addition, the draft Tweed LEP 2012 seeks to remove the reference to number of storey and instead limit the height in this area to 9 metres. The proposed development will have a total height of 10.2m (RL 14550) measured to the top of the roof top deck balustrade.

Clause 11 - Zone Objectives

As discussed above.

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

In this case a State Environmental Planning Policy No. 1 objection to the number of permissible storeys has been included in the application.

The proposed dwelling exceeds the two storeys permissible and exceeds the total height of 9m contained in the current DCP part A1 by 1.2m. It should be noted however that the proposed 'acoustic green screen' complies with the height provisions of the LEP and DCP because the site rises steeply at the rear and therefore measuring from existing ground level at that point shows compliance.

The proposed building at three storeys is consistent with other buildings in the area and is unlikely to be dominant amongst the Kingscliff hill.

The roof top deck associated with the extra storey will result in an adverse impact on the amenity of residence of at least one rear adjoining property.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The site is classified as having the potential for Class 5 soils under the Acid Sulphate Soils mapping. The works proposed are not likely to impact on the affected soils zone.

Clause 39A – Bushfire protection

The site is mapped as bushfire prone however the vegetation resulting in the mapping no longer exists and therefore no further consideration is required.

Other Specific Clauses

None apparent.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause controls development which could impede public access to a foreshore or overshadow the foreshore before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

It is recognised throughout all coastal areas that existing urban areas will have some impact in regards to the shadow of the foreshore.

In this case a State Environmental Planning Policy No. 1 objection has been included in the application and the facts and argument presented are acceptable.

The extent of the shadow is minor and is in fact intercepted by the shadow cast by the hillside and vegetation behind. The applicant describes the shadow as 'invisible' because of the hillside at the rear and there is no significant adverse impact resulting on the foreshore parkland to the east of Marine Parade.

Clause 43: Residential development

The proposed development is consistent with the objectives of the North Coast Regional Environmental Plan 1988 Division 2 for Urban Housing requiring broader consideration of roads, access to services, transport, site erosion and of maximising density.

Clause 81: Development adjacent to the ocean or a waterway

Extract

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
 - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
 - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
 - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*
- (2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

The proposed development does not impact on the available foreshore open space, accessibility or amenity of the waterway.

SEPP No. 1 - Development Standards

An objection to development standard contained in the Council's LEP regarding number of storeys and the standard contained in Clause 32B of the North Coast Regional Environmental Plan have been lodged with the development application and have been addressed under separate headings.

SEPP No 55 – Remediation of land

There is no evidence or past land use activity that would suggest that the land is contaminated.

SEPP No 71 – Coastal Protection

The development is generally consistent with the specific provisions and intent of Clause 8 of SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

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

NSW Coastal Policy, 1997

The proposed dwelling is not inconsistent with the Coastal Policy

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

Council staff are working on a Draft Tweed Local Environmental Plan 2012 which proposes similar controls to the site as currently exist with the exception of one significant variation. The Draft Plan proposes to remove the two storey height limit and instead apply a maximum building height of 9m.

The proposed building has a height of 9m to the floor level of the roof top deck and has balustrading a further 1.2m higher again. The proposed development would not comply with the height controls of the draft plan unless the roof top deck use was removed and therefore not require the balustrading and spa pool.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Variation to A1 have been sought for the height of the building, wall plate height, rear deep soil zone, front building line, rear setback and the floor space ratio requirement.

Council's recently adopted amendment to DCP part A1 version 1.5 has effectively removed or minimised some of the non-compliant aspects of this development. Wall plate height and floor space ratio have been removed. Deep soil zone requirements a relaxed and setbacks are also reduced and the consequence is that there are fewer variations to the DCP applicable to the development.

A2-Site Access and Parking Code

Complies generally.

If approved, a condition requiring separate approval for front fencing incorporating driveway sight clearances has been included.

A11-Public Notification of Development Proposals

The application was notified in accordance with policy. Please refer to a further section in the report to view a summary of the submissions and the officer's response to those submissions.

B9-Tweed Coast Strategy

The proposal does not contradict any parts of the Tweed Coast Strategy.

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

Clause 92(a) Government Coastal Policy

The proposed dwelling is not inconsistent with the Coastal Policy.

Clause 92(b) Applications for demolition

Australian Standard 2601 is referred to in the demolition work plan and will be reinforced by conditions should the application be approved.

Clause 93 Fire Safety Considerations

Not applicable.

Clause 94 Buildings to be upgraded

Not applicable.

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

The proposed building is outside the 2100 erosion escarpment line and no specific development controls need to be applied.

Tweed Shire Coastline Management Plan 2005

This plan does not apply to the subject site.

Tweed Coast Estuaries Management Plan 2004

The proposed development will not adversely impact on the Cudgen Creek water quality as the proposal will discharge roofwater only into the existing street stormwater system.

Coastal zone Management Plan for Cobaki and Terranora Broadwater

This plan does not apply to the subject site.

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

Context and Setting

An infill development is proposed, within an established residential subdivision which has been specifically created for residential development. The proposed development is of a design generally in keeping with the architectural style and residential character of the area taking into account the redevelopment occurring overall in the area, with the exception that the roof top deck which has 118 square metres of usable recreation area may result in an undesirable precedent for development on the lower part of a hillside where higher level dwellings can be affected.

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

Site design and Internal design

The roof top deck will have adverse impact on the amenity of the residents of the property to the rear No. 34 Hungerford Lane.

The inclusion of the roof top deck on the proposed three storey building is the primary concern in this development. It raises the level of outdoor living area to a level and position that will impact on the residents of at least one property above. Noise and potential evening illumination will impact on their amenity. The design now incorporates a 2.5m high 'acoustic green screen' on the back edge of the deck which is likely to reduce a little of the noise impact and provide for some greater visual privacy particularly in relation to the position of the spa/pool. It is to be noted that the total height of the building measured from natural ground level at the point of the 'acoustic green screen' does comply with the 9m maximum height requirements of the DCP.

Acoustic advice by CRG Acoustic Consultants has been provided and is noted as conservative but suggests that to be fully effective an acoustic screen would need to be 4.5m high and return half way along the sides of the building. That would be unsightly and contribute further to the non compliant height of the building.

It is difficult to evaluate the frequency of use of the proposed roof top deck which needs to be taken into account when considering what is reasonable. The design of this deck at 118 square metres of usable floor area and a spa/pool would suggest frequent use.

Other than the concern about the roof top deck the building is considered to be of reasonable design taking into account the relationship with the adjacent buildings on either side. The external finishing is mixed and provides good architectural merit. The design provides four off street car parking spaces and includes privacy screening to the second floor balconies to minimise impact on adjoining residences either side.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposal is consistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing residential area and utilities including reticulated water, public sewer and power are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the dwelling is considered to be in keeping with the existing residential character of the area.

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

Topography

The site rises steeply at the rear of the allotment and the geotechnical reports submitted state that the development could proceed without destabilisation of the adjoining properties.

Site Orientation

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

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

The application was notified to surrounding properties when first received and again after the first amendment. During the initial notification, three (3) written submissions were received. After notification of the amended plans a single submission of objection was received. The main issues raised have been summarised below:

Issue	Objection Comment	Assessment
Loss of privacy to the residents of 34 Hungerford Lane	The proposed roof top deck will impact on privacy as it is clearly visible and raised to the yard level of the of the rear property.	The deck will be visible by the residence of the property at the rear but will be partially screened by some of the existing vegetation. In addition the applicant has made a late inclusion of a 2.5m high 'acoustic green screen' which will further improve visual privacy concerns.
Loss of amenity to the residents of 34 Hungerford Lane	The proposed roof deck is elevated to within 6m height and 15m distance from the lower balcony of 34 Hungerford Lane and will therefore transfer noise and light spill.	There is likely to be considerable noise transfer from the use of the substantial roof deck. Its elevation due to the third storey contributes to the impact. The inclusion of the spa/swimming pool and barbeque intensify the potential use of the area and this will impact on the rear properties. The frequency of use of the upper deck is an unknown and makes it difficult to quantify the impact to occasional or regular. The small nature of the site makes it good sense to utilize the roof area as additional outdoor recreation space but given the increase in height and number of storeys it is not reasonable to justify.
Height and setbacks are non-compliant	Height and rear setbacks do not Comply with LEP or DCP A1 and impact on streetscape and amenity.	Impacts of height in relation to amenity have been discussed above. The reduced setback to Marine parade is not considered to have any significant impact on the streetscape given the openness of the area and articulation used in the design of the building.
Possible instability of the adjacent property and structures	Hillside is steep and has existing instability	A geotechnical report has been provided which states that the development could proceed without de-stabilisation of adjoining properties and structures.

Issue	Objection Comment	Assessment
Additional shade structures are likely on the roof deck.	Due to the sun and wind it is likely that additional roof shade structures will be erected creating four storeys.	Consideration of what someone might do in the future is not grounds to influence the determination of the application presented. However if the development was to be approved it would include conditions to preclude any roof structures other than basic not permanent shade umbrellas.

(e) Public interest

The development will not have an adverse impact or compromise public interest.

OPTIONS:

1. Council refuses the development application; or
2. Council supports in principle the development application and that a report be brought forward to the next Council meeting providing recommended conditions of consent.

Council officers recommend Option 1.

CONCLUSION:

The proposed development exceeds the number of storeys permitted by the current LEP and the use of the roof as a deck necessitates the provision of a balustrade which then creates non-compliance in the height of the building of 1.2m. It is these two variations that will result in the adverse impact on the amenity of the residents behind and although there is uncertainty in the likely frequency of use of the deck it is considered that these variations are not justified and the proposal should be refused.

COUNCIL IMPLICATIONS:**a. Policy:**

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court which would incur financial costs to Council in defence.

Should the applications be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application which would incur financial costs to Council in defence.

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)
- 1.1.1.3.1 Assessment in accordance with the sustainability objectives of the Environmental Planning and Assessment Act 1979 and other relevant legislation

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
