



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

Councillors: M Armstrong (Deputy Mayor)
G Bagnall
C Byrne
K Milne
W Polglase
P Youngblutt

Agenda

Ordinary Council Meeting Thursday 15 August 2013

held at Murwillumbah Cultural and Civic Centre
commencing at 4.45pm

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

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CONFIRMATION OF MINUTES

- 1 **[CONMIN-CM] Confirmation of the Minutes of the Ordinary and Confidential Council Meetings held Thursday 18 July 2013**

SUBMITTED BY: Corporate Governance



Civic Leadership

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
-

SUMMARY OF REPORT:

The [Confirmation of the Minutes of the Ordinary and Confidential Council Meetings held Thursday 18 July 2013 are attached for information and adoption by Council.

RECOMMENDATION:

That:

1. **The Minutes of the Ordinary and Confidential Council Meetings held Thursday 18 July 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.

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 Ordinary Council Meeting held Thursday 18 July 2013 (ECM 3120704).
 2. Confidential Attach 2 Minutes of the Confidential Council Meeting held Thursday 18 July 2013 (ECM 3121608).
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SCHEDULE OF OUTSTANDING RESOLUTIONS

2 [SOR-CM] Schedule of Outstanding Resolutions



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
-

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.

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 in September/October 2013 following Workshop discussion with Councillors in August 2013.

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

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 8 August 2013.

16 MAY 2013

ORDERS OF THE DAY

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

266

**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 for future Council Meeting.

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

268

**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 has been issued for environmental assessment, which is yet to commence.

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

270

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

276

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: Second "Think Tank" scheduled for early August 2013. Community Summit to be scheduled for September/October 2013 and Council report to be prepared.

16 [NOM-Cr K Milne] Lot 490

280

**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.

Current Status: Workshop scheduled for 1 August 2013 was deferred due to other pressing Council commitments, now scheduled for 29 August 2013.

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

282

**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: Public consultation to begin in July 2013 with a view to a report to be submitted to September 2013 Council Meeting.

20 June 2013

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

NOTICE OF MOTION:

352

**Cr M Armstrong
Cr K Milne**

RESOLVED 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.
 - (b) community centre within the Banora Point/Tweed Heads area to potentially include:
 - Multipurpose community meeting and activity spaces
 - Government offices/spaces
 - Services for the homeless, youth, and/or other designated groups.
2. The report should provide details on:
 - Feasibility of the cultural precinct and community centre
 - Feasibility and costs for the potential sites
 - Feasibility and costs of staged development of the various facilities based on priorities
 - Timeframe for acquisition (If necessary), planning, and construction
 - Timeframe for completion of the cultural precinct and community centre
 - Costs benefit analysis for the establishment of a cultural precinct and/or separate community centre
 - Feasibility of repurposing existing council sites and facilities
 - Feasibility of either co-locating the precinct and community centre or separate sites for each of the cultural precinct and community centre
 - Existing and potentially available sources of funding.

Current Status: Brief has been prepared for consultancy engagement and report to be prepared for December 2013 Council Meeting.

9 [NOM - Cr Armstrong] Future Use of Murwillumbah Railway Station Building

NOTICE OF MOTION

356

**Cr C Byrne
C P Youngblutt**

RESOLVED that a report be prepared for the December 2013 meeting of Council regarding the future use of the Murwillumbah Railway Station building considering:

1. Retaining the building and part of the rail corridor between the Station and the closest access point to the Tweed River Regional Art Gallery as a public community asset;
2. The capacity of the building and/or site for community uses including, but not limited to, meeting space(s), exhibition space(s), performance space(s), rehearsal space(s), and terminus for Rail Trail activities and also the rail corridor to be used as a pedestrian access from the Station to the Tweed River Regional Art Gallery;
3. The feasibility of the building and/or site for use as a public community and/or cultural facility given the historical significance of the building; and
4. A cost benefits analysis for the use of the building and/or site as a public community and/or cultural facility socially for the people of Murwillumbah and economically for the wider Tweed Community.

Current Status: Report to be prepared for the December 2013 Council Meeting.

13 [NOM-Cr K Milne] Commercial Wakeboarding Operations

NOTICE OF MOTION:

367

**Cr M Armstrong
Cr K Milne**

RESOLVED that Council brings forward a report no later than the April 2014 Council meeting outlining a comprehensive planning proposal capable of adoption by Council to regulate commercial wakeboarding operations and events throughout the Tweed Shire.

Current Status: Report to be prepared.

18 July 2013

REPORTS FROM DIRECTOR PLANNING AND REGULATION

12 [PR-CM] Planning Reform Unit - Resourcing Implications for Council's Strategic Project Resolutions Post Adoption of the Unit's Work Program 2013/2016

465

Cr M Armstrong
Cr B Longland

RESOLVED that:

1. The report Planning Reform Unit - Resourcing Implications for Council's Strategic Project Resolutions Post Adoption of the Unit's Work Program 2013/2016 be received and noted; and
2. A Councillors Workshop be held to discuss the feasibility of advancing additional items to the adopted 2013/16 Planning Reforms Unit Work Program.

Current Status: Workshop scheduled for 12 September 2013.

MAYORAL MINUTE

3 [MM] Mayoral Minute for the Period from 3 July to 1 August 2013

SUBMITTED BY: Cr B Longland, Mayor



Civic Leadership

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
-

Councillors

COMMITTEE MEETINGS

Attended by the Mayor

- 3 July 2013 - Murwillumbah Community Centre Management Committee - Red Cross Centre, Knox Park, Nullum Street, Murwillumbah (Warren Polglase also attended).
 - 11 July 2013 - Local Traffic Committee Meeting - Mt Warning Room, Murwillumbah Civic Centre.
 - 17 July 2013 - Destination Tweed - Board room at Santai, 9 Dianella Drive, Kingscliff.
 - 25 July 2013 - Murwillumbah Community Centre Management Committee Meeting - Murwillumbah Community Centre, Nullum Street, Murwillumbah.
-

INVITATIONS:

Attended by the Mayor

- 4 July 2013 - Retirement of Bernie Gabriel, Unit Commander of Marine Rescue Point Danger (MRPD) - MRPD, Coolangatta.
 - 6 July 2013 - Murwillumbah Football Clubhouse Opening - Murwillumbah Football Clubhouse, Jim Devine Field, Mooball Street, Murwillumbah (also attended by Cr Bagnall).
-

- 6 July 2013 - Wrap Party for CAMP Film Cast and Crew hosted by Matchbox Pictures - Babalou, Marine Parade, Kingscliff.
- 7 July 2013 - NAIDOC Week Opening Ceremony and Flag raising - Minjungbal Cultural Museum, South Tweed Heads.
- 7 July 2013 - Donate Life cycle event to promote awareness of organ and tissue donation - Faulks Park, Marine Parade, Kingscliff.
- 8 July 2013 - Murwillumbah Rotary Club, Greenhills on Tweed, River Street, Murwillumbah.
- 9 July 2013 - Citizenship Ceremony for 45 new citizens - Tweed Heads Civic Centre Auditorium, Corner Brett and Wharf Streets, Tweed Heads.
- 10 July 2013 - Kenyan Cycling Team Meet and Greet - Murwillumbah Civic Centre, Council Chambers Foyer, Tumbulgum Road, Murwillumbah.
- 11 July 2013 - Lions Club of Cabarita & Pottsville, Changeover Dinner - Ripples Restaurant, North Resort, 1 Coast Rd, Hastings Point.
- 11 July 2013 - Murwillumbah Chamber of Commerce Business Networking Evening "Reach for the Stars" - Summergrove Estate, 363 Carool Road, Carool.
- 12 July 2013 - NAIDOC Street March - Tweed Heads Civic Centre, Brett Street, Tweed Heads.
- 12 July 2013 - NAIDOC Week Dinner Dance - Tweed Heads Civic Centre, Brett Street, Tweed Heads.
- 14 July 2013 - Cabarita Beach Bowls and Sports Club 50th Anniversary Lunch - Club Restaurant, Cabarita Road, Bogangar.
- 14 July 2013 - Official Welcome of Danish Study Tour Program - Kingscliff TAFE, Cudgen Road, Kingscliff.
- 15 July 2013 - Tweed Shire Seniors Committee Meeting re Seniors Week and Expo - Autumn Club, Tumbulgum Road, Murwillumbah.
- 15 July 2013 - Murwillumbah Rotary Club, Greenhills on Tweed, River Street, Murwillumbah.
- 16 July 2013 - Kingscliff Chamber Business Breakfast - Kingscliff Beach Bowls Club, Marine Parade, Kingscliff.
- 16 July 2013 - Surfing Australia Announcements, including the building expansion of the Hurley Surfing Australia High Performance Centre (HSAHPC) and the launch of the organisation's broadcasting future - HSAHPC, 7 Barclay Drive, Casuarina Beach.
- 16 July 2013 - Sustain Tweed Steering Committee - Mt Warning Rm, Tweed Shire Council Offices, Murwillumbah.

- 20 July 2013 - Welcome Morning Tea for the Philippine Consul (The Hon Marford Angeles) as part of the Philippine National Day celebrations in June and 10th Anniversary of the Tweed Filipino Support Group - Council Chambers Foyer.
- 20 July 2013 - Filipino Support Group 10th Anniversary Celebration - Coolangatta and Tweed Golf Club, Soorley Street, Tweed Heads South.
- 22 July 2013 - Murwillumbah Rotary Club, Greenhills on Tweed, River Street, Murwillumbah.
- 24 July 2013 - Justine Elliot's Announcement of Federal Funding to be used by Council for the revitalisation of the Tweed Central business district - Intersection of Bay and Wharf Street.
- 25 July 2013 - Wollumbin High School MADD Concert - Murwillumbah Civic Centre Auditorium, Tumbulgum Road, Murwillumbah.
- 29 July 2013 - Opening of Anytime Fitness - Corner Minjungbal and Machinery Drives, Tweed Heads South.
- 30 July 2013 - Tweed Byron and Ballina Community Transport Volunteer Celebration, Christmas in July - Ocean Shores Country Club, Orana Road, Ocean Shores.
- 01 August 2013 - Local Government Week event, "Meet the Mayor", School representatives hosted for the morning by the Mayor - Murwillumbah Civic Centre, Tumbulgum Road, Murwillumbah.

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

- 28 July 2013 - Book Launch of "Tyalgum Illustrated" and Afternoon Tea - Tyalgum Community Hall, Coolman Street, Tyalgum (Cr Byrne advised her attendance).
- 01 August 2013 - Launch of the Windmill Project hosted by the Dutch Australian Festival Inc. - Babalou Restaurant, Marine Parade, Kingscliff (Acting General Manager, Troy Green, attended as no Councillors were available).

Inability to Attend by or on behalf of the Mayor

- 5 July 2013 - Under 15 Boys Queensland State Hockey Championships - Barrie Smith Fields, Brisbane Street, Murwillumbah.
-

REQUESTS FOR WORKSHOPS:

Date of Request	Requested by	Topic	Councillors For	Councillors Against	Proposed Workshop Date
13/07/13	Cr Milne	Rail Trail Workshop for the TOOT community group to address council.	Milne Polglase Longland Armstrong Youngblutt	Bagnall Byrne	To be advised

CONFERENCES:

Conferences attended by the Mayor and/or Councillors

Councillors did not attend any Conferences in the period from 3 July to 1 August 2013.

Information on Conferences to be held

- 7-8 Oct 2013 - 2013 Government Sustainability Conference - Melbourne Park Function Centre, Olympic Blvd, Melbourne 3001 - *How to embed environmentally sustainable policies and practices into organisations and communities* - Registration \$650pp for 2 days earlybird by 14 August, or \$400pp for 1 day, plus flights and accommodation - Refer www.commstrat.cvent.com/events/government-sustainability-conference/event-summary-a598cde403bb4d85bd4de7bb58299793.aspx
- 16-18 Oct 2013 Sustainable Economic Growth for Regional Australia Conference (SEGRA) - Novotel Pacific Bay Resort, Corner Pacific Highway and Bay Drive, Coffs Harbour - *Assisting regional, rural and remote Australia to source and identify the techniques, skills and issues they need to achieve successful economic growth and development* - 2 Day Registration \$995 (or \$1,245 including optional half-day workshop) plus accommodation and travel costs - Refer www.segra.com.au/registration.php
- 12-15 Nov 2013 2013 NSW Coastal Conference - The Glasshouse, Corner Clarence and Hay Streets, Port Macquarie - *Valuing our Coastal Zone, Planning our Future, What's the big picture?* - Registration \$715pp earlybird by 13 September, plus travel and accommodation - Refer www.coastalconference.com/registration.asp

SIGNING OF DOCUMENTS BY THE MAYOR:

- 4 July 2013 - Licence Agreement - Art Gallery Cafe.
 - 18 July 2013 - Lease - Mission Australia - Lomandra Room - Banora Point Community Centre.
-

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.

RECOMMENDATION:

That:-

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

UNDER SEPARATE COVER:

Nil.

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4 [MM] 150 Year Commemoration of Tweed South Sea Island Community

SUBMITTED BY: Cr B Longland, Mayor



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.2 Preserve Indigenous and Non-Indigenous cultural places and values
-

Councillors

The Tweed South Sea Islander (SSI) community plans to mark the 150 Year Commemoration of South Sea Islander history and culture on 25 August 2013, Australian South Sea Islander Recognition Day. This marks the arrival of the first boat of South Sea Island indentured labourers to Brisbane in 1863 and celebrates the resilience and vibrancy of the South Sea Island people. I would like to take this opportunity to acknowledge the unique identity and heritage that the Tweed South Sea Islanders bring to our Shire and propose that Council gives its support to the 150 Year Commemoration celebrations in August.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

A total budget of \$3,000 has been allocated from existing budgets within the Community and Cultural Services Unit and the Recreation Services unit.

c. Legal:

Not applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

RECOMMENDATION:

That:-

1. Council re-designs the existing showcase cabinet in the South Sea Island room at Tweed Heads Civic Centre to more suitably display South Sea Island pictures and artefacts.
-

2. **The Director of the Tweed River Regional Museum facilitates the re-arrangement of the display and consistent labelling once the cabinet is completed, as has already been initiated in consultation with the South Sea Islander community members.**
3. **Council conducts maintenance at the South Sea Island burial ground at Chinderah and places a plaque, in preparation for the 150 Year Commemoration celebrations.**
4. **The Mayor attends the main commemoration event at the Chinderah burial ground site on 25 August to acknowledge this significant event to the South Sea Island people of the Tweed, and encourages the participation of all Councillors.**

UNDER SEPARATE COVER:

Nil.

ORDERS OF THE DAY



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	<i>Civic Leadership</i>
1.2.1	<i>Council will be underpinned by good governance and transparency in its decision making processes</i>
1.2.2.1	<i>Priority decision making</i>

5 [NOM-Cr G Bagnall] Stairs to Access Beach Area

NOTICE OF MOTION:

Councillor G Bagnall moves that Council constructs a set of stairs to access the small beach near the Chinderah Hotel.

6 [NOM-Cr G Bagnall] Community Centre, Knox Park

NOTICE OF MOTION:

Councillor G Bagnall moves that Council liaise with the Murwillumbah Lions Club seeking their funding support for the refurbishment and retention of Nullum House to include uses that accord with their bequest.

7 [NOM-Cr W Polglase] Environmental Levy

NOTICE OF MOTION:

Councillor W Polglase moves that Council officers prepare a report for the introduction of an environmental levy of 1% above the capped rate for the consideration of Council at the November 2013 meeting. This levy would be for 2014-2015 financial year and beyond.

8 [NOM-Cr K Milne] Proposed 9 lot Rezoning Terranora

NOTICE OF MOTION:

Councillor K Milne moves that given the Department of Planning and Infrastructure request to prepare a planning proposal for 420-434 Terranora Rd, that Council prepares the proposal taking into account the critical and site specific issues identified previously by Council and the Joint Regional Planning Panel, including the number and configuration of lots, retention of some public open space, visual amenity and scenic escarpments impact within the context of the Far North Coast Regional Strategy, Area E Urban Release Development Code and protection of the view line from the Memorial Avenue of pines directly over Terranora Rd (identified and accepted as a future war memorial).

9 [NOM-Cr K Milne] Regional Casual Open Space Plan

NOTICE OF MOTION:

Councillor K Milne moves that Council brings forward a report on the CP26 Regional Open Space Plan, and consideration of providing more equal resources for sports and casual open, including, but not limited to, the potential for scenic lookouts, environmental education and research, and Regional community gardens.

Note: Tweed Shire Council's Regional Open Space Plan currently provides for \$51,611,816 for regional sports compared to \$16,599,948 for casual open space.

10 [NOM-Cr K Milne] Proposed Black Rocks Sportsfields

NOTICE OF MOTION:

Councillor K Milne moves that Council brings forward a report on the potential of preserving the proposed Blacks Rocks sportsfield for koala habitat and environmental purposes including, but not limited to:

1. Advice on the sporting requirements and current levels of sporting use in the Pottsville area, and review of these requirements in regard to any reduced population forecasts,
2. Options for relocating or rationalising these sports fields into other less environmentally sensitive areas;
3. Options for less intensive sporting uses of the proposed Blacks Rocks sports field including, but not limited to, eliminating the night tennis component and other activities that could impact on the environmental buffer areas and;

4. Advice in regard to future maintenance costs and bushfire concerns arising from the isolated location.
-

11 [NOM-Cr K Milne] Chinderah Pontoon

NOTICE OF MOTION:

Councillor K Milne moves that Council holds a public meeting in Chinderah on the proposed Chinderah pontoon to better inform the community and affected stakeholders.

12 [NOM-Cr K Milne] Graffiti Walls

NOTICE OF MOTION:

Councillor K Milne moves that Council brings forward a report on the potential of establishing graffiti walls to encourage appropriate use of graffiti for Tweed Shire artists.

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QUESTIONS ON NOTICE

13 [QoN-Cr G Bagnall] Study - E2 Lands

QUESTION ON NOTICE:

Councillor G Bagnall asked:

Please explain the level of study being undertaken on the E2 lands next to the proposed motor bike track and how it differs to the requested study. What is the cost of the study and will it be given freely to the developer? Will the study be undertaken over all seasons of the year to ensure migratory and breeding wildlife are surveyed?

14 [QoN-Cr K Milne] Industrial Pollutants

QUESTION ON NOTICE:

Councillor K Milne asked:

Can Council advise what compliance processes Council undertakes to ensure industrial enterprises dispose of waste chemicals and pollutants appropriately and how such enterprises could be assisted by Council in the future to encourage compliance with greater convenience?

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RECEIPT OF PETITIONS

15 [ROP] Receipt of Petitions

SUBMITTED BY: CORPORATE GOVERNANCE

Valid



Civic Leadership

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
-

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

REPORTS THROUGH THE ACTING GENERAL MANAGER

REPORTS FROM THE ACTING GENERAL MANAGER

16 [GM-CM] Organisation Structure Review

SUBMITTED BY: Acting General Manager

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.3	Delivering the objectives of this plan
1.3.1	Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan

SUMMARY OF REPORT:

Council is required under the provisions of the Local Government Act 1993 to determine an Organisation Structure within twelve months after any ordinary election. As the last election was conducted on 8 September 2012, Council must review the Organisation Structure at this Council meeting to meet the prescribed timeframe.

This report seeks the endorsement by Council of the re-determination of the organisation structure.

RECOMMENDATION:

That:

1. In accordance with Section 333 of the Local Government Act 1993 the existing organisation structure be confirmed.
2. The following positions are noted as being senior staff positions:
 - General Manager
 - Director Community and Natural Resources
 - Director Engineering and Operations
 - Director Planning and Regulation
 - Director Technology and Corporate Services

REPORT:

Council is required under the provisions of the Local Government Act 1993 to determine an Organisation Structure within twelve months after any ordinary election. As the last election was conducted on 8 September 2012, Council must review the Organisation Structure at this Council meeting, and the applicable sections of the Local Government Act 1993 are:

332 Determination of structure

(1) A council must determine:

- an organisation structure
- those positions within the organisation structure that are senior staff positions
- the resources to be allocated towards the employment of staff.

333 Re-determination of structure

The organisation structure may be re-determined by the council from time to time. It must be re-determined within 12 months after any ordinary election of the council.

The Division of Local Government following a review of operational matters of council, advised in a letter to the Mayor which was tabled at the April 2013 Council Meeting:

That pending the appointment of a new general manager the council re-determines the existing organisation structure.

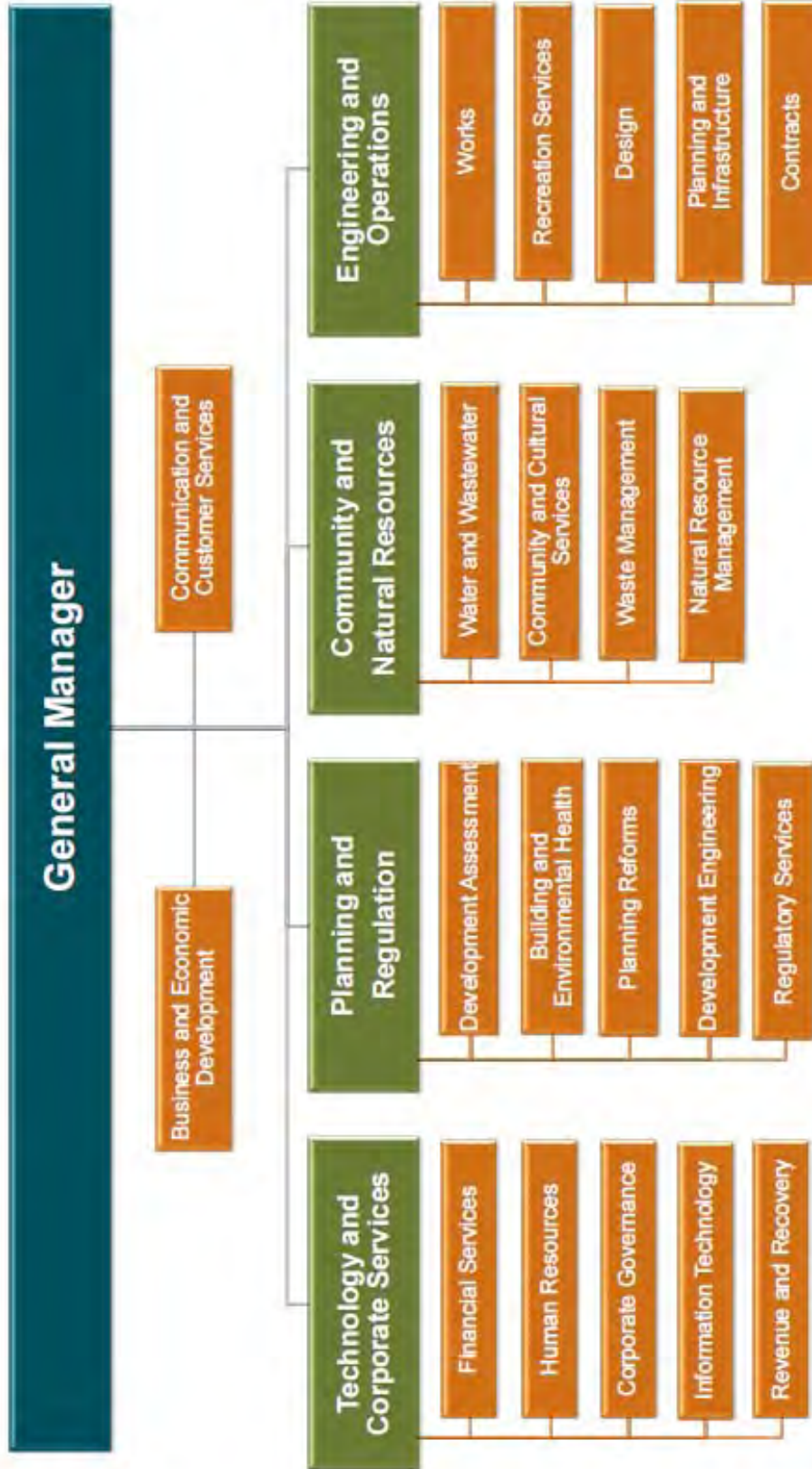
Given that the recruitment process has not yet been finalised for the new General Manager it is prudent that Council re-determines the existing structure within the timeframe prescribed. The re-determination by Council at this point of time will not preclude any further re-determination of the organisation structure following the appointment of the new General Manager as catered for within Section 333 of the Local Government Act 1993.

The current Organisation Structure disclosing the Office of General Manager and the Directorates of Community and Natural Resources, Engineering and Operations, Planning and Regulation and Technology and Corporate Services is reproduced for the information of Council. It is further noted that the senior staff positions are:

- General Manager (as prescribed by the Local Government Act)
- Director Community and Natural Resources
- Director Engineering and Operations
- Director Planning and Regulation
- Director Technology and Corporate Services



Organisational Chart as at June 2013



OPTIONS:

In accordance with Section 333 of the Local Government Act 1993 that Council re-determines the current organisation structure and notes the senior staff positions.

CONCLUSION:

That Council re-determines the current organisation structure and notes the senior staff positions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

Sections 332 and 333 of the Local Government Act 1993.

b. Budget/Long Term Financial Plan:

Employment costs are allowed within the existing 2013/2014 Budget and Long Term Financial Plan

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

17 [GM-CM] Expression of Interest 2014 Australian IRB Surf Life Saving Championships on the Tweed Coast

SUBMITTED BY: Business and Economic Development

Valid



Strengthening the Economy

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 Strengthening the Economy
 - 3.1 Expand employment, tourism and education opportunities
 - 3.1.2 Attract major events to the Tweed
-

SUMMARY OF REPORT:

Surf Life Saving Australia is seeking expressions of interest from Clubs who may be interested in hosting the 2014 Australian IRB Championships. Cudgen Headland SLSC is leading the application and seeking partnerships with the other SLSC's on the Tweed Coast. In submitting a combined submission to host the event, in this way they will pool their resources and provide greater flexibility on the venue for races depending on the surf conditions.

Council is being asked to support and endorse the Expression of Interest with a commitment to the financial and in kind contribution to a maximum of \$15,000. Given that there are in excess of 1,000 participants, team officials, competitors and support crew coming from around Australia with accommodation required for the period of the championships (4-5 days) this major sports event is a worthy investment in sports tourism in our area.

Council will organise to meet with Clubs and Destination Tweed to assist the Surf Clubs to finalise the details for their submission to NSW SLSA for consideration as one of two NSW submissions going to the national organisation. Tweed Coast has firmly established itself as an excellent place to operate large scale surf competitions as demonstrated in the very successful Surf Life Saving Championships held at Kingscliff Beach in 2011 and 2012.

Further information on the 2014 Australian IRB Championship Expression of Interest to host requirements are attached

RECOMMENDATION:

That Council supports and endorses the submission of the Expression of Interest for the conducting of the 2014 Australian IRB Championships, and provide funding support to a maximum of \$15,000 being cash and/or in kind.

REPORT:

As per Summary

OPTIONS:

Nil.

CONCLUSION:

Council provides its endorsement and support to the Surf Life Saving Clubs on the Tweed Coast to submit their Expression of Interest to host the 2014 Australian IRB Championships.

COUNCIL IMPLICATIONS:

a. Policy:

Events Strategy 2011-2016

b. Budget/Long Term Financial Plan:

\$15,000 from Event Management 2013/14 budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Circular 2014 Australian IRB Championships Expression of Interest to host (ECM 3132661)

18 [GM-CM] Economic Impact Reports Battle of the Border 2013

SUBMITTED BY: Business and Economic Development

Valid



Strengthening the Economy

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 Strengthening the Economy
 - 3.1 Expand employment, tourism and education opportunities
 - 3.1.2 Attract major events to the Tweed
-

SUMMARY OF REPORT:

The Battle of the Border Cycling Festival held over four days in May 2013 across the Tweed Shire has released its post event evaluation report. The festival exceeded all expectations in terms of number of entries (612) plus social riders, \$1.32 million economic impact (direct visitor spending) and the number of spectators and visitors. Customer satisfaction ratings are “very good” (51%) to “excellent” (32%) and the inclusion of the acclaimed Men and Women National Road Series (Cycling Australia endorsed) achieved the much sought after national media profile with coverage on NBN Gold Coast and on SBS One.

The organisation is seeking funding support from Destination NSW particularly towards the costs for police supervision of the rolling road closures that enables the event to be run safely. This festival is still in its formative stages of development but is fast becoming a major cycling event in the Australian sporting calendar with strong television and social media following. Battle of the Border is becoming nationally recognised as an exciting sports tourism initiative which is bringing significant social and economic benefits to the Tweed.

RECOMMENDATION:

That the report on the economic impact of the "Battle of the Border 2013" be received and noted.

REPORT:

Below please find a snapshot of the key results from the 2013 Battle of the Border.

Overall the event is considered to be very successful and the \$1.32m direct visitor spend a good return on investment on Council's financial support of \$20,000.

The event organisers are working with Destination NSW to further develop the race series to the highest standard.

Attached to this report is the full post event report.

The Battle on the Border Cycling Festival 2013

4 days of racing, 5 nights of accommodation on 2 - 5 May

A competitive event, the Tour de Tweed and a social event, the Gran Fondo Rides

5 stages: 3 Road Races, 1 Time Trial, 1 Criterium

9 divisions: NRS Men and Women; Elite division 1 and 2; Masters A, B, C; Women division 2, Juniors Under 17

Multiple sites – Murwillumbah, Salt Village.

Participants & Spectators

612 graded racers, and 100 social riders

98 staff, officials and volunteers

2,608 unique visitors to the Festival

NRS (National Road Series) Men & NRS Women

57% came from Queensland

29% of participants came from New South Wales

14% came from other states

83% satisfaction rating (32% rated the event excellent, 51% rated the event very good)

74.90% said they would return in 2014.

Economic Impact

\$1.32million direct visitor spending

\$573 per person visitor spend on average (many participants spent over \$700 for accommodation

and entry fees alone

Tourism and Accommodation

9,146 bed nights

3.79 average night stay

96% staying in the Tweed Shire

59% stayed in Kingscliff

24.60% had never visited the Tweed

80% are considering returning to the Tweed on a holiday

25% stayed at Mantra or Peppers resorts

40% rented a house or an apartment

Marketing & Media

1,124 Facebook likes on the dedicated page
20,411 hits – battleontheborder.com.au
11,722 hits on www.tourdetweed.com.au
4,165 on www.granfondo.net.au
60,122 page views on the Subaru NRS website
80,000 views on SBSTV Cycling Central
5,000 views on Youtube (5 videos)

CONCLUSION:

The Battle of the Border Cycling Festival is on track to establish the Tweed as a major destination for sports cycling in Australia.

COUNCIL IMPLICATIONS:

a. Policy:

Events Strategy 2011-2016

b. Budget/Long Term Financial Plan:

In kind support approved for 2013 - 2015 from annual budgets.

2013 - \$20,000

2014 - \$17,500

2015 - \$15,000.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Battle on the Border - Post Event Evaluation (ECM 3132463)

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19 [GM-CM] EQ2013-086 - Expression of Interest - Development of Murwillumbah Airfield

SUBMITTED BY: Business and Economic Development

FILE REFERENCE: Murwillumbah Airfield

Valid



Strengthening the Economy

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 Strengthening the Economy
 - 3.4 Provide land and infrastructure to underpin economic development and employment
 - 3.4.3 Manage Council business enterprises to provide economic stimulus and maximise returns to the community
-

SUMMARY OF REPORT:

In April Council advertised for Expressions of Interest (EOI) from interested parties to submit development and lease proposals within the Murwillumbah Airfield. Through this process three (3) EOI applications were received.

This report recommends the General Manager be authorised to enter into lease negotiations with two external parties that were received through the EOI process for land within the Murwillumbah Airfield.

RECOMMENDATION:

That in relation to EQ2013-086 Expression of Interest - Development of Murwillumbah Airfield:

- 1. Council authorises the General Manager to enter into negotiations with Stabilum Pty Ltd and Peter McKenzie for the development and lease of land at the Murwillumbah Airfield**
- 2. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) 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:

On 16 April 2013 Council advertised a Expression of Interest (EOI) for interested parties to submit development and lease proposals within the Murwillumbah Airfield. For probity and transparency this EOI process was conducted in accordance with Council's tendering guidelines. Applications from interested parties were closed on 8 May 2013.

Three (3) EOI applications were received, these were from;

1. Gary Polhner
2. Stabilium Pty Ltd
3. Peter McKenzie

All three applications were opened under tender conditions and deemed to be eligible.

As airport development is a highly specialised field, Council engaged the services of Aviation Projects to assist in the detailed review of the applications. Aviation Projects specialise in airport related development and in particular airside layout and design of airports, commercial lease arrangements as well as regulatory and Civil Aviation Safety Authority (CASA) compliance.

Below is Aviation Projects assessment of the applications;

1.1. Gary John Pohlner

The proponent's response was hand written on two pages including the Applicant's Details form from the EOI document. He is a sole trader with a current ABN, not registered for GST.

No acknowledgement is made of the two addenda.

The proponent is an experienced pilot with limited property development experience.

The proposal is to develop a single hangar on the Eastern Development Area 3 and a small three bay hangar on Western Development Area 1 (South).

Limited information is provided about the scope of operations or financial aspects of the proposal.

The proponent is prepared to be part of a consortium.

Due to the very limited information provided, it could not be reasonably concluded that the proposal was suitable or viable either technically or financially.

1.2. Peter Donald McKenzie

The proponent's response was on three type-written pages, along with a cover page, covering letter and acknowledgement of the two addenda. He is sole trader with no ABN and not registered for GST.

The proponent is an experienced pilot with an aircraft located at Bob Whittle Murwillumbah Airfield. He has some property development experience, and had previously attempted to be involved in a consortium formed for the purpose of developing the western site.

The proposal is to develop a number of small hangars for private aircraft storage on Western Development Area 1 (South).

Lease rates are expected to be comparable to existing rates (not specified). A 15 year lease was preferred.

The proponent is prepared to be part of a consortium.

The proponent may have the knowledge and experience required to develop the site, but the proposal does not provide sufficient technical or financial information for conclusions to be drawn about its suitability or viability.

1.3. Stabilum Pty Ltd

The proponent's response comprised 39 type-written pages plus acknowledgement of Addendum 1. Addendum 2 is not acknowledged.

The respondent's principal is an experienced pilot and aircraft owner and has been involved in similar development projects at other aerodromes. Other expertise proposed to be provided to the project includes an experienced airspace and airfields consultant who will provide input to airspace and airfield design, an architect for preparation of the Development Application and a consulting engineer to assist with technical aspects of the Development Application and Construction Certificate material.

The proposal is to develop a single hangar on the Eastern Development Area 3 and hangars on part of Western Development Area 1 (South). Development of Western Development Area 2 (North) was reserved as a secondary option.

Various development scenarios for each site were presented, along with a detailed explanation of the scope of operations and comprehensive technical analysis of obstacle protection requirements.

The proponent provided a relatively detailed financial analysis including various assumptions relating to aerodrome serviceability and lease conditions.

The financial offer is relatively modest and relies on Council undertaking some civil works in order to enable aircraft access to the hangar sites.

Some of the proposed conditions, such as management of inundation and drainage, movement area condition and other operational considerations, automatic 15 year extension of the lease if a building is damaged or destroyed and requires reconstruction may not be acceptable to Council.

The proponent prefers a 20 year lease with a 20 year option to extend.

This proposal was clearly the most comprehensive of the three submissions. The proponent appears to have the experience and technical expertise required to deliver the project and is assessed as suitable and viable from a technical perspective.

The proposed lease rates and conditions require further clarification before an assessment can be made of the proposal's financial suitability and viability.

AVIATION PROJECTS

Table 1 Assessment criteria and results

Applicant	Stabilium Pty Ltd	Peter McKenzie	Gary Palmer
Organisation type	Pty Ltd company, registered for GST. New entity to be created - Murwillumbah Aviation Pty Ltd	Sole trader	Sole trader with ABN, not registered for GST
Qualifications and experience	MD Lawrence Paratz - co director, pilot M Gahan - airfield and airspace consultant B Kenny - architect M Trauchniks - engineer	Retired professional engineer. Pilot licence since 1974. Owns aircraft at B W Airfield.	Semi retired professional pilot of 40yrs, charter pilot and instructor. Assisted set up of club and airfield development in UAE.
Property development experience	Sunbury Victoria - hangarage Industrial buildings - Victoria and Qld	Industrial units (1970s) duplex 1980s land subdivision	Nil
Experience with aircraft and airfield operations	42 years pilot owns 2 aircraft Kinjaroy Aerodrome redevelopment and ops Sunbury East develop and operations	Pilot owns an aircraft	Assisted set up of club and airfield development UAE and ultralight school, Owns 3 aircraft.
Development area proposed	Part of Area 1 (1,044 or 2,520) and/or All of Area 3. Area 2, if required	Area 1	Area 1, 2, 3 (based on original sizes) ** No acknowledgment of addenda**

MUR02-01.MURWILLUMBAH AIRFIELD LEASE EOI EQ 2013-088 REVIEW V 0.1 130820

AVIATION PROJECTS

Applicant	Stabilium Pty Ltd	Peter McKerrie	Gary Fohlnar
Proposed operation/activity	Hangars for aircraft for private use - some.	Hangars for a/c for private use - some leased out and some held by proponent.	Hangars for a/c for private use - some leased out and some held by proponent.
No of aircraft movements	1 per a/c/ week	20-50/ week	12+/ week
No and max size of aircraft	Twin engine Area 1: 6-9 aircraft Area 2: 2-3 aircraft	Twin engine 15-20 aircraft	Twin engine 6+ aircraft
Design for site	Light single and twin engine Wingspan under 12 m Max weight 3400 kg Fixed enclosed structures, concrete floors. Area 1 West 3 hangar bays each 2.4m x 1.5m Area 3 East 1 hangar bay Area 1 north or south facing Area 3 west facing	2-3 aircraft per hangar, 2 rows of hangars. Similar to existing western hangars but different in size and orientation. Oriented north/ south or east/west depending on best fit to site. Bitumen taxiway/ramp required for access. Buildings would be high strength due to possibility of high wind loadings.	Area 1 - 3 aircraft hangar, alternate facing. Area 3 - 1 aircraft hangar
Commercial nature	Storage and protection of privately owned aircraft and tools. Own use - at least one of the hangar bays. Not preclude suitable aviation business use.	Private storage hangars.	Small hangarage - rent charged to aircraft owners on size basis.

YMU/R02-01 MURWILLUMBDAH AIRFIELD LEASE EOI EQ/2013-096 R EMBW V 0.1 150626

AVIATION PROJECTS

Applicant	Stabilium Pty Ltd	Peter McKenzie	Gary Pothier
Sub leasing	Right to lease, or sub-lease the hangars or sell shares in the owning company.	Nil known at this time	Alluded to, but no detail provided.
Financial aspects	Full business case completed assessing initial capital and ongoing operating costs. Benchmark market value of hangarage. Term of lease - extend from 5+5+5 to possible 20 + 20. Capital allowance - \$40,000 per aircraft. Area of land - hangarage plus apron. Council charges - wants council to consider not applying charges. Lease rate - \$6.40/ ac./month.	Lease rate comparable to existing rates. Wants to negotiate longer lease terms to cover capital cost. Retain up to 3 hangars - 1 own occupancy, others for rental. Balance sold to finance the project. Concerned about 5+5+5 not enough time to amortise cost of development.	Self, banks, financial institutions.
Schedule/timeline	Detailed schedule provided.	Reasonable time after permits issued, in two stages.	First hangar established as soon as possible. Others according to demand.
Willing to join consortium	Yes	Yes	Yes
Referrals provided	Yes	Yes	Yes

YMU02-03.MURWILLUMBAH AIRFIELD LEASE EOI 2013-0806 REVIEW V 0.1.330628

Review

In preparing the EOI documentation there were certain matters that were identified for the applicants to address. These matters included;

- exact development area,
- proposed operation/activity, including the potential number of aircraft movements generated by the development,
- number and maximum size of aircraft the development will accommodate,
- proposed design,
- sub-leasing arrangements,
- lease arrangements,
- timing for the development,
- willingness to be considered as part of a consortium.

Aviation Projects have summarised these points which has allowed the applications to be compared. This review is provided above. However the next step of negotiations will work through these points in detail and establish a draft lease with the preferred parties.

The outcome of successful negotiations will be the preparation of a draft lease, the terms and conditions of which will be the subject of a further report to Council.

OPTIONS:

The following options available resulting from this report are that Council;

1. Authorises the General Manager to enter into negotiations with Stabilum Pty Ltd and Peter McKenzie for the development and lease of land at the Murwillumbah Airfield, or
2. Take no further action in respect to Expression of Interest process and that all applicants be advised accordingly.

CONCLUSION:

This report recommends the General Manager be authorised to enter into lease negotiations with the two preferred external parties that were received through the EOI process for land within the Murwillumbah Airfield.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

If this recommendation is adopted then the General Manager will be approved to enter into lease negotiations with external party(s) for land within the Murwillumbah Airfield.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Confidential Attachment - Gary Pohlner - Application to Expression of Interest (EQ2013-086) for lease and development of Murwillumbah Airfield (ECM 3057038)
- Attachment 2. Confidential Attachment - Stabilum Pty Ltd - Application to Expression of Interest (EQ2013-086) for lease and development of Murwillumbah Airfield (ECM 3057037)
- Attachment 3. Confidential Attachment - Peter McKenzie - Application to Expression of Interest (EQ2013-086) for lease and development of Murwillumbah Airfield (ECM 3057039)
- Attachment 4. Confidential Attachment - Aviation Projects - Murwillumbah Airfield Lease EOI EQ2013-086 – Review of responses (ECM3119978)
-

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20 [GM-CM] Update on CAMS Tweed CARnival Motorfest 2013 and Ignition Program

SUBMITTED BY: Communication and Customer Services

Valid



Supporting Community Life

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
-

SUMMARY OF REPORT:

Confederation of Australian Motor Sport Ltd (CAMS) is liaising with local high schools, Rotary Clubs, Destination Tweed and local motorsport clubs to organise two events comprising the CARnival Motorfest and Ignition Driver Education Program to be held between 17 and 19 October 2013. This report provides an update on the status for planning these events.

RECOMMENDATION:

That Council:

- 1. Notes the dates of the CAMS Tweed CARnival Motorfest 2013 on Saturday 19 October at Murwillumbah Showgrounds and the Ignition Program 17-18 October in local schools; and**
- 2. Endorses the efforts of CAMS to engage the community in developing this event.**

REPORT:

On 17 and 18 October 36 pre licence aged students from local high schools, Tweed River High School, Murwillumbah High School and Mt St Patrick's College will be participating in the CAMS Ignition Program. This CAMS supported initiative focus on promoting road safety and driver education. Statistics have shown that P plate drivers are the most vulnerable on our roads so this is intended to provide critical education on safe driving at a young age with the goal of making every participant a safer more responsible driver on the roads. CAMS provides this kind of opportunity at all its major events such at the Australian Grand Prix in Melbourne.

CARNival Motorfest begins at the Murwillumbah Showgrounds on Saturday 19 October at 7am with a briefing for officials and volunteers and a barbeque breakfast provided by Rotary. The main event starts with a touring event by the Gold Coast MG Club (50 entries) and a Khanacross event (30 entries) set up and coordinated by Gold Coast Tweed Motor Sport Club within the showgrounds. There will also be the opportunity for the public to view car displays by the Northern Rivers Sporting Car Club and Group C V8 cars.

The CARNival Khanacross began planning in March 2013 with a site meeting at the Murwillumbah showground to plan the course and determine the ways in which driver's skills would be tested for skill and efficiency in manoeuvring their sports cars rather than speed. This is an exciting event and a large crowd of local and regional motorsport enthusiasts are expected to attend. The event will have free entry to the public with Rotary Clubs collecting a gold coin donation for local charities. The event concludes in the evening by bringing together drivers and their supporters with a presentation dinner at Murwillumbah RSL (100-200 attending).

The event, rather than having a competition focus, is instead about laying the foundations for a broad community event attracting members of CAMS and the general public who enjoy motor sports while showcasing the beauty of the Tweed.

CAMS will be undertaking the Ignition Program and the CARNival Motorfest in the Tweed as part of the negotiated agreement with Council regarding the financial deficit from the last Speed on Tweed event held in Murwillumbah in 2010. There has been a change in personnel at CAMS and Council has been liaising with the new CEO Mr Eugene Arocca and the Sports and Club Development Officer - NSW, Ms Doreen Butchers who is running the event. The full report is attached.

CONCLUSION:

Every effort is being made to involve members of the local community and form lasting partnerships in the hope that this event will become the foundation for CAMS to organise regional motor sports events in the Tweed in the future.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Part of debt repayment for costs to Council of erecting track for last Speed on Tweed.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

CAMS Tweed CARnival MotorFest 2013 - Report 1
(ECM 3132512)

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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.

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

SUBMITTED BY: Director



Civic Leadership

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
-

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the July 2013 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

DA No.	DA12/0553
Description of Development:	Dual occupancy including demolition of existing dwelling/structures
Property Address:	Lot 395 DP 755701 No. 55 Tweed Coast Road, Hastings Point
Date Granted:	1/7/2013
Development Standard to be Varied:	Cl32B(4)(b) - overshadowing
Zoning:	6(a) Open Space
Justification:	Application results in overshadowing of approximately 200m ² of waterfront open space.
Extent:	Variation to Clause 32B of NCREP (Coastal Lands) with respect to overshadowing of waterfront open space, considered acceptable overshadowing is minor and will not reduce quality of the useable foreshore area.
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA13/0065
Description of Development:	Dwelling additions including creation of second storey and detached double garage with carport with SEPP No. 1 objection
Property Address:	Lot 3 DP 712922 No. 13 Dalton Street, Terranora
Date Granted:	1/7/2013
Development Standard to be Varied:	Clause 24 - setbacks to designated roads
Zoning:	1(c) Rural Living
Justification:	The development standard to be varied is Clause 24, Part 5 of the Tweed LEP 2000 which requires a thirty metre building setback to a designated road. The variation to the standard is justified as the existing dwelling is already setback closer than thirty metres to Terranora Road and the additions will have no greater impact on Terranora Road than the existing dwelling. The location of the garage/carport within the thirty metre building setback to Terranora Road is justified as it will have no adverse impact on Terranora Road and other similar structures have been approved in this street which encroach into the thirty metre setback.
Extent:	Exceeds 10%
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA13/0257
Description of Development:	Two storey dwelling with attached double garage
Property Address:	Lot 18 DP 1030322 No. 42 Collins Lane, Casuarina
Date Granted:	2/7/2013
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(e) Residential Tourist & 7(f) Environmental Protection (Coastal Lands)
Justification:	The proposal is to construct a two storey dwelling that adjoins the 7(f) Environmental protection zone. The subject dwelling will be setback 38 metres from the rear property boundary 7(f) zone. This zone is prominent along the Casuarina foreshore. The subject dwelling will have an overall height of approximately 6.5 metres and may cast a shadow into the waterfront openspace before 3pm midwinter. Any shadow cast will have negligible impact on the waterfront openspace and will be considerably less than the shadow cast by other development within the vicinity. It is therefore considered that the use of SEPP1 in this circumstance is appropriate and is in accordance with the interim exemption issued by the Department of Planning and Infrastructure dated 16/7/2012.
Extent:	The proposal is to construct a two storey dwelling that adjoins the 7(f) Environmental protection zone. The subject dwelling will be setback 38 metres from the rear property boundary 7(f) zone. This zone is prominent along the Casuarina foreshore. The subject dwelling will have an overall height of approximately 6.5 metres and may cast a shadow into the waterfront openspace before 3pm midwinter. Any shadow cast will have negligible impact on the waterfront openspace and will be considerably less than the shadow cast by other development within the vicinity. It is therefore considered that the use of SEPP1 in this circumstance is appropriate and is in accordance with the interim exemption issued by the Department of Planning and Infrastructure dated 16/7/2012.
Authority:	Tweed Shire Council under assumed concurrence.

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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22 [PR-CM] Combined Tweed/Byron Local Emergency Management Committee

SUBMITTED BY: Building and Environmental Health



Supporting Community Life

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
-

SUMMARY OF REPORT:

Under the NSW State Emergency and Rescue Management Act 1989 No. 165 (as amended), known as the SERM Act, Councils are required to support a Local Emergency Management Committee (LEMC) in their local government area. As part of this support Council is amongst other things to provide administration support and a number of liaison and other officers to the Committee.

Discussions have now occurred by the LEMC's of Tweed and Byron in relation to the formation of a single LEMC for both Local Government Areas. The Committees have each resolved to progress the formation. This report outlines the discussions held and the processes required to achieve this objective.

RECOMMENDATION:

That:

- 1. Council approves the formation of a single Local Emergency Management Committee between Tweed Shire Council and Byron Shire Council local government areas with dual roles by Local Government members as far as practical and single roles as far as practical with other agencies.**
- 2. Council writes to the Regional Emergency Management Committee requesting endorsement to the formation of a single Local Emergency Management Committee between Tweed Shire Council and Byron Shire Council local government areas with dual roles by Local Government members as far as practical and single roles as far as practical with other agencies.**
- 3. The General Manager be authorised to develop and sign an Agreement with Byron Shire Council for the formation of a single Local Emergency Management Committee between Tweed Shire Council and Byron Shire Council local government areas with dual roles by Local Government members as far as practical and single roles as far as practical with other agencies.**

REPORT:

Under the NSW State Emergency and Rescue Management Act 1989 No. 165 (as amended), known as the SERM Act, Councils are required to support a Local Emergency Management Committee (LEMC) in their area. As part of this support Council is amongst other things to provide administration support and a number of liaison and other officers to the Committee.

Discussions have now occurred by the LEMC's of Tweed and Byron in relation to the formation of a single LEMC for both Local Government Areas. Rationale behind the proposal includes the fact that the Committees' have the same Local Emergency Operations Controller (Superintendent of the NSW Police Local Area Command for Tweed/Byron) and Regional Emergency Management Officer (REMO), as well as sharing common members for agencies and organisations such as, Rural Fire Service (RFS), Fire and Rescue (F&R), Ambulance, Essential Energy, State Emergency Services (SES) and surf lifesaving.

Process

The process for combining LEMC's for Local Government Areas into a single LEMC is:

- Step One: Agreement from each individual LEMC;
- Step Two: Resolution from each Council;
- Step Three: Endorsement by the Regional Emergency Management Committee;
- Step Four: Approval by the Minister.

A workshop with the LEMC's of both Tweed and Byron was held on 7 May 2013 and was attended by members of both committees representing all agencies. The meeting was chaired by the REMO and examined the similarities and differences between the LGA's of Byron and Tweed with respect to:

- Natural environment;
- Man made/built environment;
- Human/social environment;
- Local level emergency management planning;
- Local level combat agency operations management; and
- Identified hazards and likelihood of occurrence from Risk Management Studies.

At the end of the Workshop there was a unanimous agreement to the concept of progressing a single Tweed/Byron LEMC. A copy of the minutes from the workshop is included as Attachment 1.

The Tweed LEMC then met on 18 June 2013 to consider this matter and it was a unanimous vote to progress the option of a single Tweed/Byron LEMC. A copy of the minutes from the Tweed LEMC is included as Attachment 2.

The Byron LEMC also met on 26 June 2013 to consider this matter and it was also a unanimous vote to progress a single Byron/Tweed LEMC. A copy of the minutes from the Byron LEMC is included as Attachment 3.

A Draft Charter for the Tweed/Byron LEMC was developed by the Acting LEOCON, REMO and the two LEMO's and Chairpersons and was endorsed at both the Tweed and Byron LEMC meetings above. A copy of the Draft Charter for the Tweed/Byron LEMC is included as Attachment 4.

With Step One complete, the process now requires the matter to be considered by each separate Council for a resolution to approve the formation of a single LEMC (Step Two). If both Tweed and Byron Councils resolve to form a single LEMC then a request will be made by the REMC for endorsement by the Regional Emergency Management Committee (Step 3) and if approved, will be forwarded to the Minister (Step Four) as per the process outlined earlier in this report.

OPTIONS:

There are a number of different ways that a single LEMC can operate for the two LGA's, with the two main options being:

1. Single LEMC with single representation from rescue and combat agencies, single LEOCON, dual Local Emergency Management Officer's (LEMO's) and dual/single Liaison Officer roles as agencies determine based upon operational needs; or
2. Single LEMC with single representation from all bodies as operational needs permit.

The first option is preferred by both Tweed and Byron LEMC's. This is due to the fact that it saves resource duplication as far as practical but allows each Council to main autonomy and control commitment of its resources in times of emergencies. It also has the advantages of additional resources for planning and preparedness before emergencies and response and recovery phases where the LEMC and Emergency Operations Centre (EOC) are required.

Council officers recommend Option 1.

CONCLUSION:

1. That Council approves the formation of a single Local Emergency Management Committee between Tweed Shire Council and Byron Shire Council local government areas with dual roles by Local Government members as far as practical and single roles as far as practical with other agencies.
2. That Councils write to the Regional Emergency Management Committee requesting endorsement to the formation of a single Local Emergency Management Committee between Tweed Shire Council and Byron Shire Council local government areas with dual roles by Local Government members as far as practical and single roles as far as practical with other agencies.
3. That the General Manager be authorised to develop and sign an Agreement with Byron Shire Council for the formation of a single Local Emergency Management Committee between Tweed Shire Council and Byron Shire Council local government areas with dual roles by Local Government members as far as practical and single roles as far as practical with other agencies.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

There are no additional financial implications proposed by the combining of LEMC's, however, there may be indirect positive financial implications including the sharing of workload generated from the committee, as well as the potential for sharing of resources.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|---------------|---|
| Attachment 1. | Minutes of Combined Byron and Tweed LEMC Workshop held 7 May 2013 (ECM 3131863) |
| Attachment 2. | Minutes of Tweed LEMC dated 18 June 2013 (ECM 3131864) |
| Attachment 3. | Minutes of Byron LEMC E2013 dated 26 June 2013 (ECM 3131865) |
| Attachment 4. | Draft Charter Tweed/Byron LEMC dated June 2013 (ECM 3131866) |
| Attachment 5. | Division 3 of the State Emergency and Rescue Management Act 1989 (SERM Act) (ECM 3131867) |
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23 [PR-CM] Section 82A Review of Determination - Development Application DA12/0458 for the Use of Existing Rear Patio Awning at Lot 88 DP 260472 No. 25 Crystal Waters Drive, Tweed Heads

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: DA12/0458 Pt1



Civic Leadership

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
-

SUMMARY OF REPORT:

A development application DA12/0458 was lodged and subsequently refused seeking consent to use a rear patio awning erected without consent on a canal frontage at Lot 88 DP 260472 No. 25 Crystal Waters Drive, Tweed Heads West. A request has since been received by Council from the owner to review that decision in accordance with Section 82A of the Environmental Planning and Assessment Act, 1979 (as amended). In the request for a Review of Determination the proponent has provided a response to the following reasons for refusal:

1. *The unauthorised patio awning has been constructed within the 5.5m rear building setback.*
2. *The unauthorised patio awning has been constructed within the 450mm northern side boundary setback.*

The proposed development comprises non-compliances with mandatory controls relating to side and rear boundary setbacks. The development also comprises non-compliance with regard to an encroachment upon a rear easement for access which benefits Tweed Shire Council.

One objection was received for the proposed development.

Having regard to the assessment against Clause 8(1) of the Tweed Local Environmental Plan 2000 (Tweed LEP 2000) and non-compliance with the Development Control Plan A1, the unauthorised patio awning (original proposal which is 4.0m wide) is considered to be an unacceptable form of development due to its physical dominance and accordingly should not be considered for approval. This was relayed to the owner during the review process and he has since requested that Council further consider two alternative redesign options. The first option is to cut the 4.0m wide awning back slightly to stand clear of the 2.1m wide easement for access. The second option is to cut the awning back to 2.0m in width. Whilst this is least preferred by the owner it is recommended that this option be supported with an additional requirement to provide a minimum 450mm setback to the northern boundary as it

offers the best compromise affording amenity to the residents of No. 25 and to the immediate canal neighbours.

Since the owner has not submitted amended plans detailing option 2 above it is considered that the submission of such can be dealt with by a deferred commencement condition on a consent.

On the balance of the assessment of the relevant planning matters, it is considered that the development is suitable for approval in accordance with the owners option 2 including a additional requirement to provide a minimum 450mm setback to the northern boundary subject to conditions incorporating a deferred commencement condition.

RECOMMENDATION:

That the Section 82A Review of Determination of Development Application DA12/0458 for the use of existing rear patio awning at Lot 88 DP 260472 No. 25 Crystal Waters Drive, Tweed Heads 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 90 days 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.

- A. Amended plans indicating that the rear awning is two metres in width and is setback 0.45 metres off the northern boundary is to be 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 plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.**

[GEN0015]
- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- 3. Prior to the issue of the construction certificate a stormwater drainage plan detailing that all awning roof water is directed by pipe work to the street gutter is to be submitted to and approved by the Principal Certifying Authority.**

4. 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]

5. 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]

6. 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]

7. 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]

DURING CONSTRUCTION

8. 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]

9. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

10. 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]

11. 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]

12. 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]

13. **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]

14. **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]

15. **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]

16. **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]

17. **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]

18. **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]

19. **The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.**

[DUR2245]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

20. **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]

21. **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]

22. **A final occupation certificate must be applied for an obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).**

[POC0355]

REPORT:

Applicant: Mr Robert E Drane
Owner: Mr Robert E Drane & Mrs Christine A Drane
Location: Lot 88 DP 260472 No. 25 Crystal Waters Drive, Tweed Heads
Zoning: 2(a) Low Density Residential
Cost: \$9,600

Background:

The Subject Site

The subject site has a total area of 795.4m² and is of an irregular shape with a frontage of 21.97m to Crystal Waters Drive and the rear canal frontage of 10.45m. The site has a slight fall to the rear canal frontage.

The site is presently occupied by a single storey dwelling house.

Surrounding development consists predominantly of low density, detached dwelling houses with variable rear setbacks and areas of deep soil zones comprising dense vegetation.

There is a Section 88B Instrument applicable to the subject site that indicates a 2.1m wide easement for access located parallel with the canal frontage which benefits Tweed Shire Council.

The Proposed Development

Council received a Development Application on 9 October 2012 for the use of existing rear patio awning that had been erected without prior consent in July 2012. That application was refused as it was non compliant with required canal and boundary setbacks and was considered to have adverse impact on the amenity of the adjoining properties occupants.

On 11 July 2013 a joint site inspection was carried out with the owner, his planning consultant and Council's assessment officer during which time the reasons for refusal and options available were discussed.

The owner stated that he was prepared to cut the awning back to stand clear of the 2.1m wide easement. Council officers did not support this due to the effect upon the adjoining owner from the awnings visual dominance, and loss of view of the canal resulting from significant non compliance with the setback controls applicable to the site. This was relayed to the owner who responded with two emails on 12 July 2013 which listed two options as follows:

OPTION 1

Reduce the existing roof line so as not to overhang the easement and also to redirect the existing rain water discharge from this roof which is into the canal back to being discharged into the Crystal Waters Drive storm water system.

OPTION 2

If option 1 is not supported we would cut the 4.0m wide rear awning back in width to stand over the rear patio as per the previous awning which was 2.m in width and also to redirect the existing rain water discharge from this roof which is into the canal back to being discharged into the Crystal Waters Drive storm water system.

Site History

A search of Council's records has indicated that Building Application No. 451/84 was approved on 17 July 1984 for the erection of a single storey dwelling house with attached

double garage and an attached pergola/awning located in the north-western return of the dwelling at 25 Crystal Waters Drive. Condition 18 of that approval stated:

"Rear wall of dwelling shall be setback a minimum of 5.5 metres from the rear boundary."

Approved plans associated with the aforementioned Building Application did not include an awning attached to the western side of the dwelling. Investigation of the subject property through historic photographs contained in Council's "Enlighten" programme indicate that a 2.0m wide rear awning had been erected on the western side of the dwelling also without consent and that this has since been replaced by the existing much larger 4.0 wide unauthorised awning. Also recent photographs taken clearly show that the new awning posts stand off the rear elevated patio which also confirms that this new awning is not an exact replacement of the previous. It is to be noted that the previous illegal awning had existed for many years without any objection.

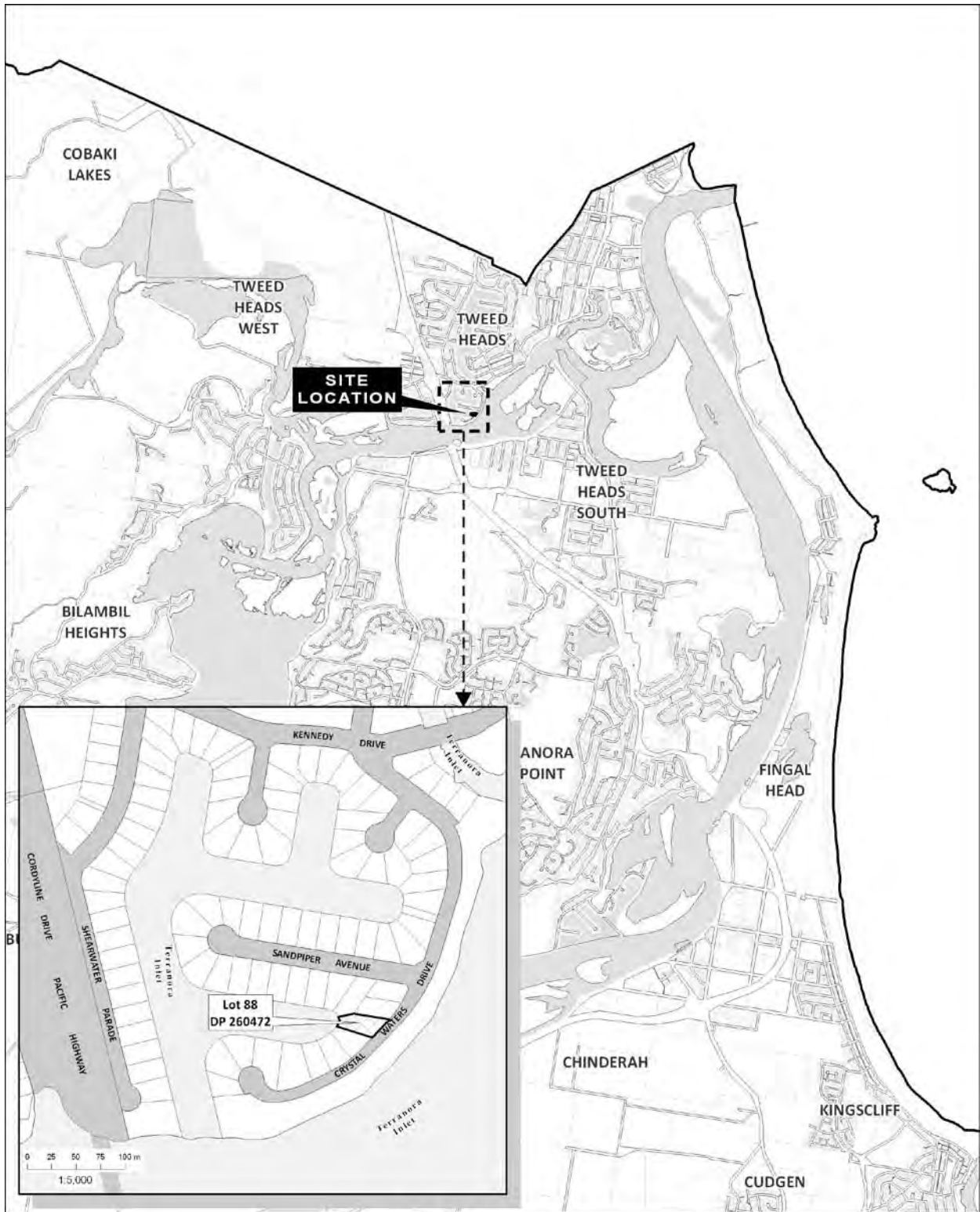


The above photograph details the dominance of the rear awning. The original awning was at the alignment of the white balustrade seen under the unauthorised awning.

Conclusion

It is considered that the proposed development if amended to be 2.0m in width and with a minimum setback of 0.45m off the northern side boundary, whilst still not being in total compliance with the rear canal frontage control of the Development Control Plan can be justified as detailed further within this report due to the reduction in impact. Therefore, having regard to the assessment against Clause 8(1) of the Tweed LEP 2000 and non-compliances with Development Control Plans A1, it is recommended that Option 2 as outlined above proposing the awning to be cut back to 2.0m in width and having a setback of 0.45m off the northern boundary be supported for approval.

SITE DIAGRAM:



Locality Plan

Lot 88 DP 260472
No. 25 Crystal Waters Drive, Tweed Heads

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties regarding its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability, including without limitation, liability in negligence for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you Dig" enquiry must be made by calling 3100. The information contained on this document remains valid for 30 days only from the date of supply.

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GDA
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1984
Scale: Map Scale of Australia, Zone 56

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The above photograph indicates the canal vista on the northern side.



The above photograph indicates two neighbouring properties to the north west of the subject property.



The above photograph shows the projection of the 4.0m unauthorised awning over the 2.0m wide patio.

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."

The proposed retention of the unauthorised rear awning, whilst of a contemporary design, is considered to be inconsistent with Council's side setback and rear canal setback requirements. This would in turn create an undesirable precedent and would affect residential amenity qualities of the canal frontages.

On this basis it is considered that the development fails to be compatible with the area's environmental and residential amenity qualities.

In respect of the applicants Option 1 proposing the 4.0m wide awning be cut back slightly to stand clear of the rear 2.1m wide easement for access would not satisfy the aims of the plan due to its physical dominance upon the canal environment and loss of amenity upon neighbouring properties.

However it is considered that Option 2 proposing the awning to be 2.0m in width and with a minimum setback of 0.45m off the northern side boundary would satisfy the aims of the plan due its reduction in size and improved amenity and views afforded to the neighbouring property.

This clause also requires that development complies with the zone objectives. This is addressed below.

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 use of the unauthorised awning is minor and, as the site has already been substantially cleared of vegetation, would not conflict with principles of ESD.

Clause 8 - Consent Considerations

It is considered that the development would be consistent with the primary objectives of the 2(a) Low Density Residential Zone; the subject site is 795.4m² and therefore meets the requirements of Item 2 of the 2(a) Zone (one dwelling per 450m²). The original proposal and Option 1 are not consistent with surrounding low density housing character or amenity in regards to the locality of the canal.

However further to Option 2 it is considered the awning with a reduction in width to 2.0m and together with a minimum setback of 0.45m off the northern side boundary would be more consistent with the surrounding development.

Clause 11 - Zone Objectives

The subject site is located within the 2(a) Low Density Residential Zone. The objectives of which are as follows:

Primary objectives:

To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.

Secondary objectives:

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

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

Whilst the subject proposal meets the requirements of the minimum lot size within the low density residential zone, it is considered that the illegal rear awning as originally proposed does not achieve good urban design outcomes and would not be consistent with surrounding low density housing character or amenity.

However further to the applicants Option 2 it is considered the awning with a reduction in width to 2.0m and together with a minimum setback of 0.45m off the northern side boundary would be more consistent with the surrounding development due to an improvement of its design.

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. The existing dwelling is connected to Council sewer and water.

Clause 16 - Height of Building

The subject site is located within an area that has been mapped as having a height of 3 storeys.

The existing dwelling house and unauthorised rear awning are single storey.

Clause 17 - Social Impact Assessment

This clause requires Council to consider whether a proposed development is likely to have a significant social or economic impact.

It is considered that the retention of this unauthorised structure as originally proposed which has a reduced rear canal setback will continue to impact on visual and residential amenity.

It is considered Option 1 which proposes a minor reduction in awning width in order not to overhang the rear 2.1m wide easement would continue to impact upon the visual amenity and residential amenity due to its size and bulk.

Option 2 is recommended in this report as the reduction in size of over 50% similar to that of the previous awning will afford a reasonable level of amenity especially to the residents of 25 and 27 Crystal Waters Drive.

It is considered however that a social impact assessment is not required.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as being Class 3 ASS. There is no excavation proposed and therefore no requirements in respect of this clause.

Other Specific Clauses

Clause 34 – Flooding

The site is flood prone and is affected by the Probable Maximum Flood (PMF).

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.*

As this application proposes the retention of an existing unauthorised awning which is non habitable there are no requirements in respect of this clause.

Section 82A of the Environmental Planning and Assessment Act 1979:

The applicant has requested that Council review the determination of their development application via Section 82A of the Environmental Planning and Assessment Act 1979.

The applicant in their request have included the following response:

"By way of background material, the rear patio awning replaced an old awning which was of the end of its economic life and which did not provide adequate protection to the outdoor living areas and main bedroom from the western sun. We note that the grounds of refusal for the Development Application are as follows:

- 1. The unauthorised patio awning has been constructed within the 5.5m rear building setback.*
- 2. The unauthorised patio awning has been constructed within the 450mm northern side boundary setback.*

These issues are addressed in our letter of 13 December 2012 a copy of which is attached.

In addition, we note that in respect of Lot 90 DP 260472, No. 27 Crystal Waters Drive, Council of its meeting on 5 February 1997 approved a building line variation to 2.5m for the erection of a shade cloth covered metal frame over the existing swimming pool.

A copy of the report to Council's meeting of 5 February 1997 and the stamped approved building plans and Building Permit No. BI 564/96 are attached.

In summary, the report to Council's Meeting on 5 February 1997 on Page 3 indicates that "within this locality precedents do exist where building lines to canal properties have been varied by Council."



The above photograph indicates the above mentioned screened pool area at No. 29 Crystal Waters Drive.

Having regard to all of the circumstances and particularly given that the replacement awning is an open structure which has no impact on the adjoining owner's view, privacy and amenity, we submit that the building line variation request is reasonable and appropriate in the circumstances.

We further reiterate that the NSW Parliament has recently passed amendments to the Environmental Planning and Assessment Act, 1979 which, we understand, will come into force in March 2013. In summary, the changes are intended to return the status of Development Control Plans to their original purpose as a guideline and return Local Environmental Plans to their status as the overarching statutory planning document for an area. Development Control Plans will retain an important role in the planning system as a guideline for development and can still be considered by Councils but they do not have the weight of a Local Environmental Plan.

Having regard to the above, Council is requested to review the determination by granting Development Consent. Following the receipt of the Development Consent, the applicant will resubmit the Building Certificate Application."

The owner in his recent email dated 4 July 2013 has requested a variation to the setback requirements as he considers that there is sufficient space for machinery or people. Also he has stated that if there is no other resolution available he would cut back the existing roofline to the easement line. This suggestion would translate to a 3.4m encroachment upon the 5.5m rear setback off the canal. The issue of encroachment of the rear canal setback will be addressed later in this report under Development Control Plan A1 Part A.

In regard to the above submission there is no justification for Council to vary its setback controls this will be detailed within the Development Control Plan assessment contained in this report.

On 11 July 2013 a joint site inspection was carried out with the owner, his planning consultant and Council's assessment Officer during which time reasons for refusal and options available were discussed.

Council officers did not support the owners' proposal to cut the awning back to stand clear of the 2.1m wide easement due to the effect upon the adjoining owner from the awnings visual dominance, and loss of view of the canal. The owner then submitted two further alternative redesign options:

Option 1

Reduce the existing roof line so as not to overhang the easement and also to redirect the existing rain water discharge from this roof which is into the canal back to being discharged into the Crystal Waters Drive storm water system.

Option 2

Cut the 4.0m wide rear awning back in width to stand over the rear patio as per the previous awning which was 2.m in width and also to redirect the existing rain water discharge from this roof which is into the canal back to being discharged into the Crystal Waters Drive storm water system.

It is considered that Option 2 is the best compromise as it would offer the owners a degree of weather protection whilst at the same time minimising the physical dominance and loss of views to the adjoining property at No. 27 Crystal Waters Drive and other nearby residents with canal frontages, and subject to a minimum setback of 0.45m off the northern side boundary.

State Environmental Planning Policies

SEPP No. 71 – Coastal Protection

The subject site is nominated as being SEPP 71 affected and within a Sensitive Coastal Location. The site is located within 40m of the waterway however the Office of Water have advised that a Controlled Activity Approval is not required under clause 39A of the *Water Management Amendment (Controlled Activities Regulation 2008* and no further assessment required.

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

In the Draft Tweed Local Environmental Plan the site is nominated within the R2 – Low Density Residential Zone. The subject proposal is not inconsistent with the provisions of Draft Tweed Local Environmental Plan.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 of Tweed DCP applies and includes detailed parameters for improved site outcomes including the provision of height controls, deep soil zones, impermeable site area, private open space, landscaping, car parking, setbacks and general street presence. Section A1 of the DCP is divided into two chapters.

Chapter 2- Site and Building Design Controls

Design Control 1-Public Domain Amenity

Streetscape and Public Views and Vistas

The proposed development relates to an illegally constructed rear patio awning which encroaches upon the required rear boundary canal frontage setback of 5.5m and the northern side boundary setback of 450mm and is readily visible from the canal. Because of its location the development will compromise the objectives of this control as it dominates the canal vista. However Option 2 offered by the owner to cut the 4.0m wide rear awning back in width to stand over the rear patio as per the previous awning which was 2.m in width will improve the vista in the canal together with a requirement to have the northern side boundary setback increased to a minimum 450mm.

Design Control 2 -Site Configuration

Deep soil zones (DSZs)

The development does not include any additional hardstand area but the awning roof does overhang over the rear deep soil zone.

Variation to this control is also permitted within the DCP by way of the development being constrained by the existing site conditions of an existing dwelling located on a subdivision created prior to the year 2000.

The front deep soil zone is existing and no change is proposed.

Impermeable Site Area

There is no change proposed to the existing impermeable area.

External Living Areas

The development being a 4.0m wide awning attached to the rear wall of the dwelling encroaches upon the 5.5m rear boundary setback on the canal frontage which adversely affects the amenity of the adjoining neighbour to the south.

Option 2 to cut the 4.0m wide rear awning back in width to stand over the rear patio as per the previous awning which was 2.m in width is considered the best compromise as it would offer the owners of the subject property a degree of weather protection to their external living area whilst at the same time improving the amenity to the adjoining property at No. 27 Crystal Waters Drive. Option 2 would also require the northern side boundary setback increased to a minimum 450mm.

Landscaping

There is no change proposed to the existing landscaping.

Topography, Cut and Fill

There is no cut and fill proposed.

Design Control 3 -Setbacks

Side setbacks

The controls require that awnings be setback a minimum of 450mm from the side boundary. One of the objectives of this control is to facilitate visual and acoustic privacy between neighbouring lots. It is clearly apparent with this application that the illegal rear awning does affect the neighbours privacy and amenity.

On 13 December 2012 the owners planning consultant provided the following response in regards to the side setback variation as follows:

- c) *The northern setback of 0.185m is to a boat ramp and is approximately 5m from the nearest living area in the adjoining dwelling to the north (see attached Aerial Photograph).*



View of existing northern boundary setback

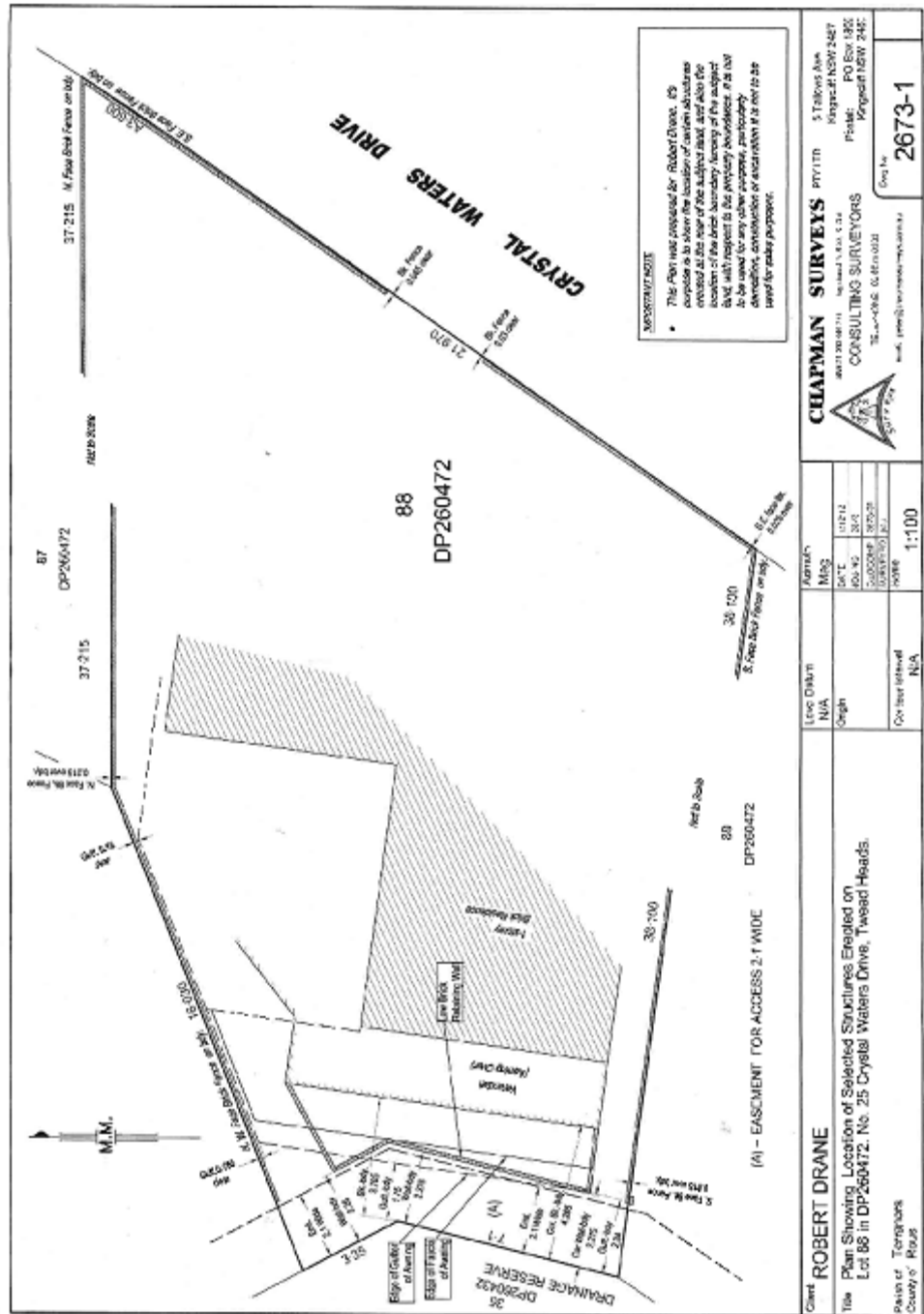
Comment: The reduced side boundary setback has resulted in a greater dominance of the rear patio awning upon the canal which in turn affects the canal vista. It is recommended that the owner be required to cut the awning back to stand a minimum of 0.45m off the northern side boundary.

Rear Setbacks Canal Frontages

The controls require that no structures are to be built in the setback area of 5.5m where the boundary is on the canal side of a revetment wall other than fences to 1.2m high, swimming pools, retaining walls, suspended decks that do not exceed the level of the allotment at the top of the batter and boat ramps.

On 13 December 2012 the owners planning consultant provided the following response in regards to the rear and side setback canal frontage variation as follows:

1. *We attach a Site Plan (Chapman Surveys, 4 December 2012) showing the northern and western boundary setbacks of the patio awning. The northern setback is 0.185m and the western (rear) setback ranges from 2.34m (south side), 1.75m (at the boundary angle) and approximately 4m at the northern boundary.*



Comment: This survey report also indicates that the unauthorised rear patio awning encroaches upon the rear 2.1m wide easement for access which benefits Council. Any encroachment upon an easement for access should not be supported.

We note that Tweed Development Control Plan 2008, Section A1-Residential and Tourist Code requires a minimum 450mm setback to the side boundary and a 5.5m setback to the canal frontage (western boundary).

Council is requested to approve a variation to the setbacks for the following reasons:

- a) *The patio awning replaces a dilapidated verandah awning which was setback 3.7m to 4.28m from the western boundary. However, the outdoor living areas (and main bedroom) have a westerly aspect and the verandah did not provide sufficient shade to create a liveable outdoor area and screen the main bedroom. The larger patio awning addresses these issues and provides a more functional and aesthetically pleasing structure.*

Comment: The dilapidated verandah awning referenced above has not been approved by Council and encroached upon the rear 5.5m setback requirement for canal frontages by up to approximately 1.8m. The new unauthorised awning and Option 1 proposed by the owner whilst benefiting his property does so at the cost of affecting the amenity of the other canal residents.

Option 2 has been proposed by the owner which is to reduce the 4.0m wide rear awning in width to stand over the rear patio as per the previous awning which was 2.m in width. This is considered the best compromise as it would offer the owners of the subject property a degree of weather protection to their external living area whilst at the same time improving the amenity to the adjoining property at No. 27 Crystal Waters Drive and will be requirement to have the northern side boundary setback increased to a minimum 450mm.

- b) *The patio awning is constructed of standard length sheets which extend into the setback but result in a more efficient and economical use of the sheeting and a more functional outdoor living area.*

Comment: This point of using standard sheets does not justify a reduction in rear setback and roof sheeting can be purchased readily at any length.

- c) *The northern setback of 0.185m is to a boat ramp and is approximately 5m from the nearest living area in the adjoining dwelling to the north (see attached Aerial Photograph).*

Comment: The reduced side boundary setback has resulted in a greater dominance of the rear patio awning upon the canal which in turn affects the canal vista. Therefore any approval should include the requirement for the awning to have a northern side boundary setback of 0.45m.

- d) *The patio awning does not impact on the amenity of the adjoining properties and being of contemporary, lightweight, open structure does not detract from the visual amenity of the canal foreshore.*

Comment: The reduced side boundary and rear canal frontage setback of the original proposal and Option 1 has and will result in a greater dominance of the rear patio awning upon the canal which in turn affects the canal vista and the visual amenity.

- e) *As indicated on the attached Aerial Photograph (Tweed Shire Council, Date of Photography July 2012), there are a number of existing dwellings and ancillary structures on adjoining and adjacent lots which do not comply with current setback requirements.*

Comment: The point of existing rear canal frontage setback variations should not be used as an argument in support for variations as this will set a undesirable precedent whereby the amenity afforded to canal properties will be eroded over time. Also it is questionable whether or not these structures were approved with the prior consent of Council and whilst Council did approve the pool enclosure at No. 29 Crystal Waters Drive it should not be assumed that any future encroachment upon the canal frontage be approved.

It is considered Option 2 proposing to reduce the awning in width to 2m to reflect that of the previous structure is worthy to be considered as it existed for some time without objection and would be of a less dominating design.

- f) *The NSW Parliament has recently passed amendments to the Environmental Planning and Assessment Act, 1979 which, we understand, will come into force in early 2013. In summary, the changes are intended to return the status of Development Control Plans to their original purpose as a guideline and return Local Environmental Plans to their status as the overarching statutory planning document for an area. Development Control Plans will retain an important role in the planning system as a guideline for development and can still be considered by Councils but they do not have the weight of a Local Environmental Plan.*

In the circumstances, we submit that variations to the rear and side boundary setbacks are justified in this case and therefore Council is requested to approve the Development Application.

Comment: The side boundary and rear canal frontage setback requirements have been enforced by Council for over 20 years originally within a Council policy and recently these have been transferred unchanged into Councils DCP. However it is considered Option 2 proposing to reduce the awning in width to 2m to reflect that of the previous structure is a reasonable compromise. This is due to the reduction in size to that of a previous tolerated structure and its location at the end of the canal will afford the residents of the canal a reasonable level of amenity together character afforded to by properties having canal frontages.

2. *As requested, we attach plans showing the northern, western and southern side elevations. These plans demonstrate that the patio awning is compatible with the scale of the existing dwelling and does not detract from the character of the area.*

Comment: The plans do not provide adequate justification for a variation to the setback requirements.

On 1 March 2013 the owners planning consultant Darryl Anderson provided the following response in his 82A review in regards to the rear setback canal frontage variation as follows:

"In addition, we note that in respect of Lot 90 DP 260472, No. 29 Crystal Waters Drive, Council of its meeting on 5 February 1997 approved a building line variation to 2.5m for the erection of a shade cloth covered metal frame over the existing swimming pool.

A copy of the report to Council's meeting of 5 February 1997 and the stamped approved building plans and Building Permit No. BI 564/96 are attached.

In summary, the report to Council's Meeting on 5 February 1997 on Page 3 indicates that "within this locality precedents do exist where building /lines to canal properties have been varied by Council."

Comment: The existing unauthorised awning adversely affects the amenity and views of the adjoining property and the rear setbacks of 3.705/4.285m proposed in Option 2 are necessary to address this affectation.

"Having regard to all of the circumstances and particularly given that the replacement awning is an open structure which has no impact on the adjoining owner's view, privacy and amenity, we submit that the building line variation request is reasonable and appropriate in the circumstances."

Comment: The reduced side boundary and rear canal frontage setback has resulted in a greater dominance of the structure upon the canal domain, and has impacted on the adjoining owner's view, privacy and amenity.

The owner in his recent email dated 4 July 2013 has requested a variation to the setback requirements as he considers that there is sufficient space for machinery or people. Also he has stated that if there is no other resolution is available would modification of the existing roofline back to the easement line be approved by Council.

Comment: This suggestion would translate to a 3.4m encroachment upon the 5.5m rear setback off the canal. This will still result in a greater dominance of the structure upon the canal domain, and will continue to impact upon the adjoining owner's view, privacy and amenity. As stated previously in this report support of Option 2 is recommended as it will be a reduction in dominance and an increase in canal amenity.

Design Control 5 -Height

Building Height

The development is single storey in height.

Design Control 6- Building Amenity

Sunlight Access

The proposed development relates to an illegally constructed rear patio awning which encroaches upon the required rear boundary canal frontage setback of 5.5m and the northern side boundary setback of 450mm. The projection of this 4.0m wide awning affects the available solar access to the adjoining property at No. 27 Crystal Waters Drive.

The prescriptive requirement of this control is to ensure for neighbouring properties:

- Sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21.
- Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

The original proposed development and Option 1 affects the sunlight requirements above to the adjoining site to the south and it is considered Option 2 with its reduction in width as per the previous structure will provide adequate solar access.

Visual Privacy

The width of the property at No. 27 Crystal Waters Drive is narrower at the rear as opposed to the front which concentrates the rear open space and reduces the available outlook. Therefore the increased roof projection of the rear awning at No. 25 Crystal Waters Drive has reduced No 27's outlook and privacy. The rear patio awning has been erected to provide usable open space due to awning affording shade from the western sun. This has been carried without regard to the rear setback requirements for canal frontages. It is considered Option 2 with its reduction in width as per the previous structure will provide adequate privacy to the adjoining property adjoining the southern boundary.



The photograph above represents the view from the rear of the adjoining property at No. 29 Crystal waters Drive.

Acoustic Privacy

The sound insulation of this design complies with the objectives of this control.

View Sharing

The original proposal due to its projection of 4.0m into the required 5.5m rear setback for canal frontages affects the neighbouring properties view of the canal. It is considered Option 2 with its reduction in width as per the previous structure

will provide adequate view sharing to the property adjoining the southern boundary.

Natural Ventilation

There is no change proposed to the existing natural ventilation available to the existing dwelling.

Building Orientation

The awning has been sited on the property to minimise western solar access and is required to be reduced in width by a minimum of 50% in order to allow adequate solar access to No. 27 Crystal Waters Drive.

Building separation

The proposed development relates to an illegally constructed rear patio awning which encroaches upon the required rear boundary canal frontage setback of 5.5m and the northern side boundary setback of 450mm. The projection of this 4.0m wide awning is located close to the adjoining property at No. 27 Crystal Waters Drive. This exacerbates the lack of separation between No. 25 and 27 which in turn affects privacy and amenity. Therefore approval of Option 2 is necessary to address this shortfall.

Design Control 7 – External Building Elements

Fences and Walls; Front, Side and Rear

The submitted architectural plans indicate that no fences are proposed with this application.

Roof

The design of the roof is consistent with the design requirements.

Design Control 8 -Building Performance

This control does not relate to the proposal due to its design.

Design Control 9- Outbuildings

There are no outbuildings proposed as part of this application.

Design Control 10- Swimming pools and spas

There is no pool proposed as a part of this application.

Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application.

Design Control 12 - Floor Space Ratio (FSR)

This development proposes no change to the existing floor space ratio.

A3-Development of Flood Liable Land

The development accords with the requirements of Section A3 of the DCP.

A11-Public Notification of Development Proposals

The application was not notified however Council is in receipt of an objection from a neighbouring property which is addressed later in this report.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. The subject site is governed by the requirements of Clause 92(a) Government Coastal Policy. The proposal does not pose a threat to coastal processes.

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

Not applicable to the proposed development.

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

Context and Setting

The side and rear setback of the illegal rear patio awning is not in keeping with surrounding development as it is considered that the unauthorised 4.0m wide rear awning significantly impacts on the visual amenity of the canal. Approval of Option 2 is necessary to maintain the visual amenity within the canal locality.

Cumulative Impacts

The approval of this development application as originally proposed, in Council's opinion, would set a undesirable precedent for similar development within the locality and within the Shire as a whole. The purpose of the DCP and other relevant planning policy is to ensure attractive, liveable and sustainable development that is in keeping with its surroundings and makes a positive contribution to surrounding residential and visual amenity.

As detailed within this report, the variations sought to the DCP's mandatory controls with regard to the side boundary and rear canal setbacks, cannot be justified within the current development application and Option 1. It is considered Option 2 with its reduction in width as per the previous structure will provide adequate privacy, solar access and amenity to the adjoining property adjoining the southern boundary and will improve the amenity within the canal locality.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Existing residential subdivision.

Site Orientation

The encroachment of the rear awning upon the 0.45m side boundary setback and the 5.5m rear canal setback have an effect of the solar access, breeze paths and views previously available to the adjoining property located at No. 27 Crystal Waters Drive. It is considered Option 2 with its reduction in width as per the previous structure will provide adequate privacy, solar access and amenity to the adjoining property adjoining the southern boundary and will improve the amenity within the canal locality.

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

The application was not notified however Council is in receipt of a submission from a neighbouring property owner who has objected to the development on the following grounds:

1. *Are the building codes being followed?*

Comment: This is a matter which would be addressed as a condition of development consent.

2. *Extended roof (already constructed) appears to overhand canal side boundary.*

Comment: The submitted survey report indicates that the awning encroaches upon the 2.1m wide easement for access.

3. *Robert Drane, the applicant, on 13 July 2012 told me in a very short conversation, when construction of the roof was soon to commencement, that he was:*

A. *Replacing existing; and*

B. *Other work had been approved.*

Both of which appear not true.

Comment: As previously stated the rear awning has been replaced with a larger structure without the prior consent of Council.

4. *The new, much larger, roof may block summer north-east breeze, which in the past has readily cooled my house, as I do not have air conditioning nor intend to install.*

A further concern on this matter is if Robert Drane bricks, glasses or flyscreens this new area in, at some time in the future, the breeze disruption would be exacerbated.

Comment: Due to the increased width of the awning it is probable that breeze paths can be altered.

5. *The roof restricts some vision - I see less neighbourhood and more roof.*

Comment: The width of the objector's property is narrower at the rear as opposed to the front which concentrates the rear open space and reduces the available outlook. Therefore the increased roof projection of the rear 4.0m wide awning at No. 25 has reduced the outlook and privacy of the adjoining property.

6. *If the patio floor area is enlarged, to say, posts of the new roof (i.e. towards the canal) I feel I would suffer a reduction in privacy.*

Comment: This building work would require development consent and privacy impact would need to be addressed.

7. *Stormwater drainage from the new roof does not hook into existing system.*

Comment: On canal blocks it has been Council's policy to require all roof water to be diverted to the street gutter. A site inspection has confirmed that the roof water from the rear awning discharges onto the ground. Any approval of a modified awning would be conditioned to ensure that roof water is discharged to the street gutter.

(e) Public interest

It is considered that to approve the use of the existing illegal rear patio awning development as originally proposed under this development application would impact on the public or community interests. Also if approved it would set an undesirable precedent for similar proposals in the future. Therefore it is considered that Option 2 be supported as the reduction in awning width and length will improve the amenity of the canal locality and the canal vista.

OPTIONS:

1. Refuse the application as per the previous recommendation; or
2. Grant consent and include a deferred commencement condition requiring amended plans to be submitted for endorsement detailing the reconstruction of the patio indicating the awning with a reduced width of approximately 2.0m and a minimum setback of 450mm off the northern side boundary; or
3. Grant consent and include a deferred commencement condition in accordance with the owner's proposed "Option 1" requiring amended plans to be submitted for endorsement to cut the 4.0m wide awning back slightly to stand clear of the 2.1m wide easement for access.

The Council officers have recommended Option 2.

CONCLUSION:

It is considered that the proposed development as detailed in Option 2 within this report comprises non-compliances with the Development Control Plan that have been sufficiently justified in this instance. Therefore, having regard to the assessment against Clause 8(1) of the Tweed LEP 2000 and non-compliances with Development Control Plans A1, the proposed use of the existing rear patio awning development as defined in Option 2 detailed in this report is recommended for approval.

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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24 [PR-CM] Development Application DA13/0181 for a Three Lot Community Title to Two Lot Torrens Title Subdivision (Stage 1) and Alterations to Multi-Dwelling Housing (Stages 2 and 3) at Lot 1 & 2 NPP 270157 No. 20 Tweed Coast Road, Hastings Point; SP57450

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0181 Pt1



Civic Leadership

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

SUMMARY OF REPORT:

The subject application relates to a subdivision and subsequent alterations and additions to an existing multi-dwelling unit building to be carried out over three stages. The proposed alterations and additions do not increase the existing building seaward or result in any coastal erosion concerns as outlined in the assessment of this report. The proposed development results in a minor increase in the overall building height and is generally compliant with the Hastings Point Development Control Plan.

Comment has been received from NSW Trade & Investment (Crown Lands) with respect to the development site adjoining coastal foreshore reserve. This notes that Tweed Coast Reserve Trust is the manager of this reserve and advises that *'the impact on the reserve must be assessed independently from Council's role in approving development applications.'* A separate report with respect to this has been prepared for consideration at the Tweed Coast Reserve Trust meeting.

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. Council has assumed concurrence for this application.

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. The proposed development is recommended for conditional approval.

The subject development has been notified to surrounding properties, with no objections to the proposed development received. The subject application has also been referred to NSW Rural Fire Service as an Integrated Referral. General Terms of Approval have been forwarded to Council in this regard.

RECOMMENDATION:

That:

- 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 Infrastructure and Planning be assumed.**
- B. Development Application DA13/0181 for a three lot community title to two lot torrens title subdivision (Stage 1) and alterations to multi-dwelling housing (Stages 2 and 3) at Lot 1 & 2 NPP 270157 No. 20 Tweed Coast Road, Hastings Point; SP 57450 No. 20A Tweed Coast Road, Hastings Point be approved subject to the following conditions:**

GENERAL

1. The development shall be carried out in three stages as follows:

- **Stage 1**
The subdivision of 3 Community Title lots to create 2 Torrens Title lots.
- **Stage 2**
Alterations and additions to the existing multi dwelling housing building to convert four existing units to three units.
- **Stage 3**
Alterations and additions to the multi dwelling building created through Stage 2 works to convert three units to two units as well as the demolition of the existing carport and replacement with a new four bay carport.

The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:

- **Site Plan (Drawing No.101);**
- **Proposed Subdivision Plan (Drawing No.102);**
- **Site Plan- Stage 2 (Drawing No.200);**
- **Demolition Plans- Stage 2 (Drawing No.201);**
- **Demolition Roof Plan- Stage 2 (Drawing No.202);**
- **Proposed Floor Plans- Stage 2 (Drawing No. 203);**
- **Proposed Roof Plan- Stage 2 (Drawing No. 204);**
- **Proposed Elevations - Stage 2 (Drawing No. 205);**
- **Proposed Sections - Stage 2 (Drawing No. 206);**
- **Site Plan- Stage 3 (Drawing No.300);**
- **Demolition Plans- Stage 3 (Drawing No.301);**
- **Demolition Roof Plan- Stage 3 (Drawing No.302);**
- **Proposed Floor Plans- Stage 3 (Drawing No. 303);**
- **Proposed Roof Plan- Stage 3 (Drawing No. 304);**

- Proposed Elevations - Stage 3 (Drawing No. 305) and;
- Proposed Sections - Stage 3 (Drawing No. 306).

All prepared by Build Restore and dated October 2011 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. 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]

4. 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]

5. The approved subdivision/development shall not result in any clearing of native vegetation without prior approval from the relevant authority.

[GEN0290]

6. 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]

7. Any new footings required as part of the proposed development are to be designed to resist scour to RL-0.0 and the superstructure is to be capable of resisting wave attack to RL+6.0. The design is required to ensure the building is stable after scour to RL-0.0. The designer may be required to provide calculations on stability under scour conditions, if requested by Councils General Manager or delegate.

[GENNS01]

8. The subject development site adjoins Crown land comprising Lot 7060 DP 1113577 being Reserve 1001008. Clear delineation of the boundary between the development site and the reserve is to be established prior to the issue of a Subdivision Certificate for Stage 1 works. Whilst this does not require fencing, obvious boundary lines are to be provided to minimise any potential incremental creep of residential use into the reserve, as well as the likelihood of reserve users encroaching on the residential site. This development consent does not confer any right on the proponent to:

- Use the reserve for access during demolition or construction;
- Use the reserve as part of the demolition, construction or exclusion zone;
- Use the reserve as an asset protection zone;
- Remove any vegetation from the adjoining Crown land;

- **Stockpile materials, equipment or machinery on the adjoining Crown land;**
- **Direct stormwater discharges or eroded soil onto the adjoining Crown land;**
- **Use the adjoining Crown land as an asset protection zone; or**
- **Restrict public use and access of the adjoining Crown land.**

[GENNS02]

9. **Any foreshore area disturbed by works carried as part of this consent are to be rehabilitated to the satisfaction of Councils General Manager or delegate.**
10. **Access across foredune areas is to be confined to the existing specified points. This application is not to generate any further accessways across foredune areas.**

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

[PCC0065]

12. **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]

13. **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 for Stage 2.**

[PCC0585]

14. **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.**

[PCC1195]

15. 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]

16. If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/developer.

[PCC1325]

PRIOR TO COMMENCEMENT OF WORK

17. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work for each relevant stage 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]

18. 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]

19. 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]

20. 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]

- 21. 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

- 22. 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]

- 23. 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]

- 24. 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]

- 25. 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]

- 26. 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]

- 27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

32. 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]

33. 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]

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

[DUR2505]

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

- * 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

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

[POC0205]

37. A final occupation certificate for each relevant stage must be applied for an obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

[POC0355]

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

[POC0435]

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

[POC1045]

USE

40. 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]

41. 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]

42. 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]

43. 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]

44. 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]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

45. A Subdivision Certificate will not be issued by the General Manager until such time as all relevant conditions for Stage 1 of this Development Consent have been complied with.

[PSC0825]

46. 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) Right of carriageway.
- (c) Right of footway.
- (d) Extinguishment of easements that are no longer required or applicable for the proposed 2 lot torrens title subdivision.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway / easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

47. 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]

48. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]

49. 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 the allotment has been completed.

[PSC1165]

50. The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential) has been provided adjacent to the front boundary of each allotment.

[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 Build Restore, identified as 'proposed subdivision plan', Plan No. 102, dated October 2011.

Asset Protection Zones

2. At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

3. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Design and Construction

4. All new fencing shall be non-combustible.
5. New construction on the Northern, Eastern and Southern 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.'
6. New construction on the Western elevation (including the proposed carport) shall comply with Sections 3 (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.'

Landscaping

7. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

General Advice

8. Any future development application lodged within this subdivision under section 79BA of the Environmental Planning and Assessment Act 1979 will be subject to requirements as set out in 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: Ms RL Hetherington
Owner: The Neighbourhood Association NPP 270157
Location: Lot 1 & 2 NPP 270157 No. 20 Tweed Coast Road, Hastings Point; SP 57450 No. 20A Tweed Coast Road, Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$350,000

Background:

Proposed Development

The proposed development is to be undertaken in three stages as follows:

Stage 1

This stage relates to the subdivision of 3 Community Title lots to create 2 Torrens Title lots. The proposed subdivision is to generally maintain a similar configuration to the existing site layout except that the existing common property driveway (Lot 1 NPP 270157) will be included as an access handle to proposed Lot 2 which contains the existing residential building.

Proposed Lot 1 is to have an area of 450m² with a western frontage of 13m to Tweed Coast Road.

Proposed Lot 2 will provide an area of 779.4m² including an access handle with dimensions of 3.074m x 33.52m providing access to Tweed Coast Road. The eastern end of proposed Lot 2 provides a frontage of 17.31m to the coastal foreshore reserve.

As the site is bushfire prone, the proposal was submitted as nominated integrated development under the Rural Fires Act 1997. General Terms of Approval for the proposal have been provided by the Rural Fire Service with respect to this.

Stage 2

This stage consists of alterations and additions to the existing multi dwelling housing building to convert four existing units to three units. Specifically the proposed works involve:

- Demolition and reconstruction of the concrete balcony at the eastern end of the units and internal reconfiguration of the existing 1 x 2 bedroom and 1 x 3 bedroom units at the upper floor level to form one larger three bedroom unit.
- The tile roof is to be replaced with a colorbond roof which will extend over the reconstructed balcony at the eastern end of the building and a skylight is to be installed over the living area. The ridge height of the new roof will be RL18.27m AHD as compared to the existing ridge height of 17.8m AHD, an increase of 470mm.
- The stairs at the northern and southern sides of the balcony are also to be reconstructed. At the upper level the balcony will be enclosed with glass balustrade and retractable insect screens at the eastern elevation.
- At the ground floor there will be no internal changes to the existing units. Minor external changes related to reconstruction of the balcony and the eastern walls will be undertaken.

The proposed works at Stage 2 will result in a total of three units (1 x 2 bedroom and 2 x 3 bedroom units) on the subject site.

Stage 3

This stage consists of alterations and additions to the multi dwelling building created through Stage 2 works to convert three units to two units as well as the demolition of the existing carport and replacement with a new four bay carport. Specifically the proposed works involve:

- The proposed 'Stage 3' alterations to the existing building on proposed Lot 2 will involve partial demolition and internal reconfiguration of the existing 1 x 2 bedroom and 1 x 3 bedroom units at the ground floor level to form one larger three bedroom unit.
- At the western end of the building the existing carport is to be demolished and replaced with a new four bay carport orientated parallel to the northern boundary. Associated earthworks and retaining walls (maximum height 1.2m) are detailed on the submitted plans.
- A new access foyer and stairs is to be constructed to provide a front door access to the ground floor and upper floor unit. Furthermore, an adjacent beach shower courtyard area is proposed to the west of the ground floor unit.
- The Stage 3 works also include an extension of the roof line to the west to cover the entry foyer area as well as improvements to the external elevations of the building including louver screens and fixed surfboard decorations. A minor extension to the master bedroom of the upper floor unit (approximately 2m²) is also proposed as part of this work.

Site Details

The subject development property consists of three land parcels consisting of a 'Community Scheme' as follows;

- Lot 1 NPP 270157 - This is identified as 'Community Property' under the Community Scheme and covers a total area of 112m², this parcel is 3.07 wide and is developed with an access road to SP 57450 from Tweed Coast Road.
- Lot 2 NPP 270157 - This lot has approximately 13m frontage to Tweed Coast Road and covers a total area of 506m². This site is currently vacant and maintained with grassed vegetation and some minor trees to the northern boundary.
- SP 57450 - This land parcel has a total area of 609m² and is located to the east of these allotments. In this regard the site has a frontage of approximately 17.3m to the foreshore reserve. This parcel is developed with a brick building containing four residential units and ancillary carport and parking area. These units are individually strata titled as Lots 1-4 in this Strata Plan. The site is accessed from Tweed Coast Road via Lot 1 as detailed above.

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 6(a) Open Space, 2(b) Medium Density Residential, 2(a) Low Density Residential and 6(b) Recreation.

Tweed Coast Road borders the site to the west from which the site is accessed while the foreshore coastal reserve forms the eastern boundary. To the north and south is residential development.

History

The allotments subject to this application has all been created from Lot 5 DP 22492. This site displays the following development history relevant to this application:

D86/0094- erection of four (4) flats. Approved 18 March 1986.

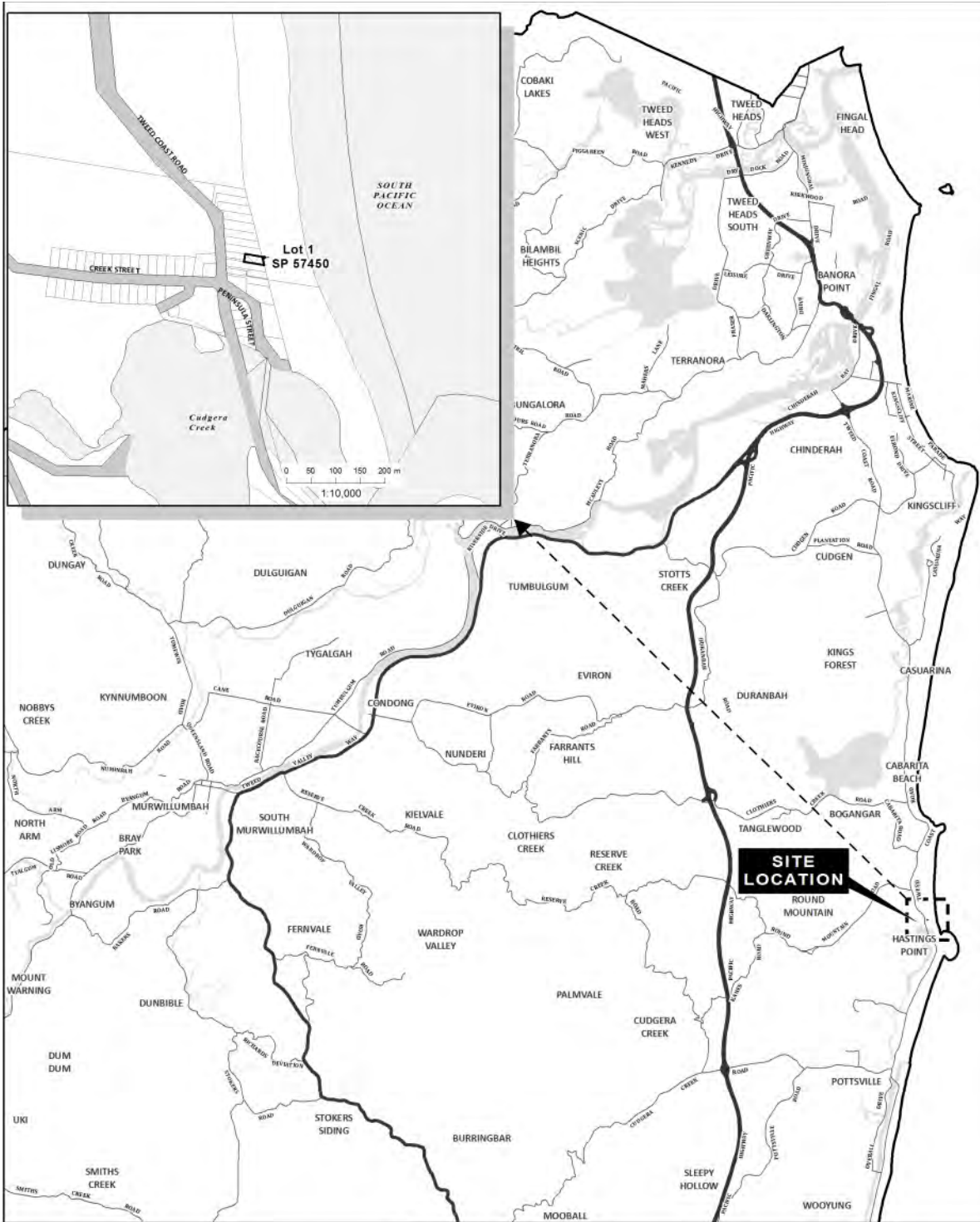
P98/0030- application for strata subdivision. Approved 12 June 1998.

A97/0076- Part 12 Linen – application for linen plan release (Subdivision Certificate). Approved 16 March 1998.

0055/86B- building application- flat. Approved 21 April 1986.

S97/0076- two lot residential subdivision. Approved 11 July 1997.

SITE DIAGRAM:

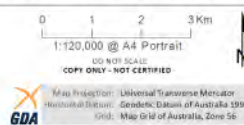


Locality Plan

DA13/0181 - Lot 1 NPP 270157 & Lot 2 NPP 270157
No. 20 Coast Road & SP 57450 No. 20A Coast Road, HASTINGS POINT

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

Cadastre: 25 July, 2013
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Boundaries shown should be considered approximate only.



Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T | (02) 6670 2400 | 1300 292 872
F | (02) 6670 2429
W | www.tweed.nsw.gov.au
E | planning@tforms@tweed.nsw.gov.au

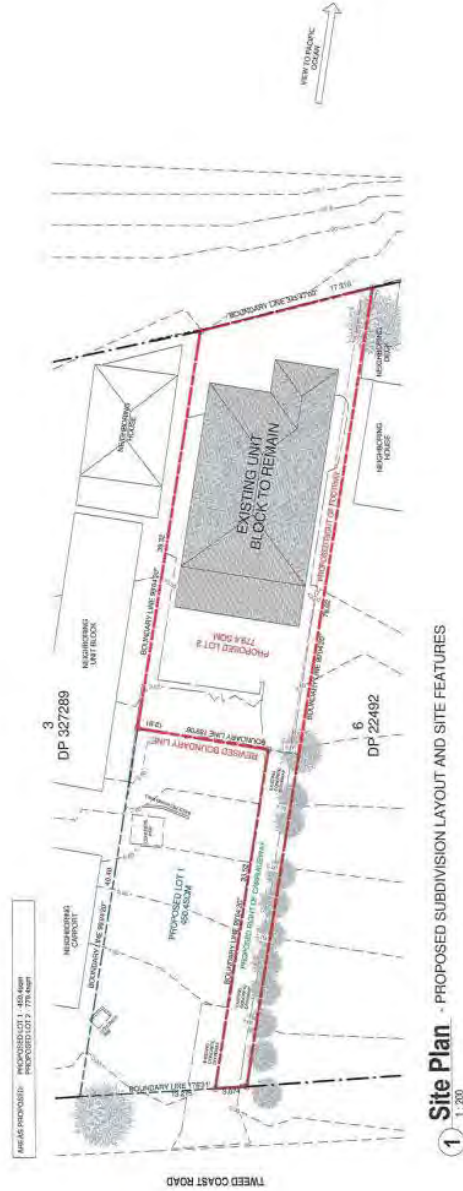


Data Printed: 25 July 2013

DEVELOPMENT/ELEVATION PLANS:



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PROJECT 20 TWEED COAST ROAD Proposed Subdivision Site Features	SHEET 1 OF 1
DATE 15/08/2013	DRAWN BY [Name]
CHECKED BY [Name]	APPROVED BY [Name]



1 Site Plan - PROPOSED SUBDIVISION LAYOUT AND SITE FEATURES
1:300



1 Site Plan - PROPOSED SUBDIVISION LAYOUT AND SITE FEATURES
1:200

	15 The Esplanade, Ballina NSW 2461 Ph: 02 237 54300 F: 02 237 78131 Email: info@ibuild.com.au Web: www.ibuild.com.au
	PROJECT: 20 TWEED COAST ROAD DRAWING: Proposed Subdivision Site Features SHEET: 1 OF 1 DATE: 05/08/2013 DRAWN BY: [blank] CHECKED BY: [blank]
	APPROVED BY: [blank] DATE: [blank]

OWNERS
 MACE, M. Cray Pacific & Air (2012) Holdings Pty Ltd
 Company No 613 346

All Plans are to be submitted to the Council for approval. No Plans are to be submitted to the Council for approval. No Plans are to be submitted to the Council for approval. No Plans are to be submitted to the Council for approval.	
DATE: / /	DRAWN BY:
CHECKED BY:	APPROVED BY:
PROJECT NO:	SHEET NO:
PROJECT NAME:	PROJECT ADDRESS:
PROJECT TYPE:	PROJECT STATUS:
PROJECT VALUE:	PROJECT RISK:
PROJECT COMPLEXITY:	PROJECT URGENCY:
PROJECT LOCATION:	PROJECT PHASE:
PROJECT TEAM:	PROJECT CONTACT:

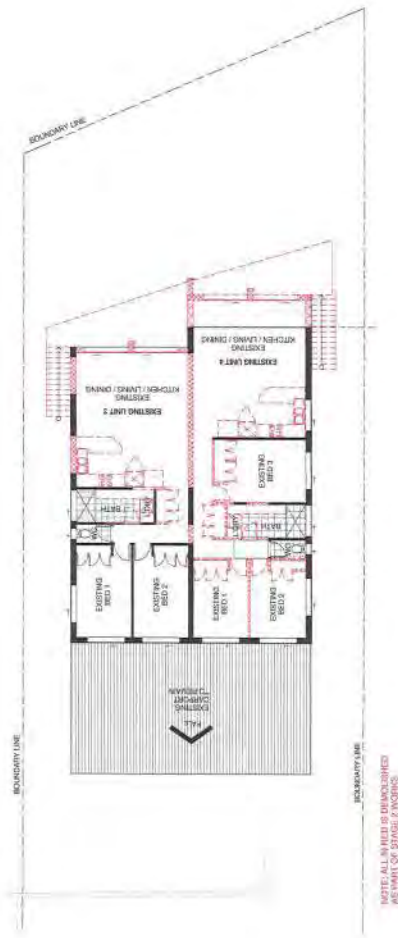


1 Site Plan - Stage 2
 1:200

		40 Princes Boulevard, Suite 1107 Melbourne VIC 3000 Tel: (03) 9377 8377 Fax: (03) 9377 8378 Email: info@tbuild.com.au www.tbuild.com.au	
PROJECT	20 TWEEED COAST ROAD	DATE	OCTOBER 2011
DESCRIPTION	Demolition Plans - Stage 2	SCALE	1:100
DESIGNER	T BUILD	DATE	OCTOBER 2011
CLIENT	DAVID JACOBSON	PROJECT NO.	2011/001
DATE	OCTOBER 2011	SCALE	1:100
PROJECT NO.	2011/001	DATE	OCTOBER 2011
SCALE	1:100	PROJECT NO.	2011/001



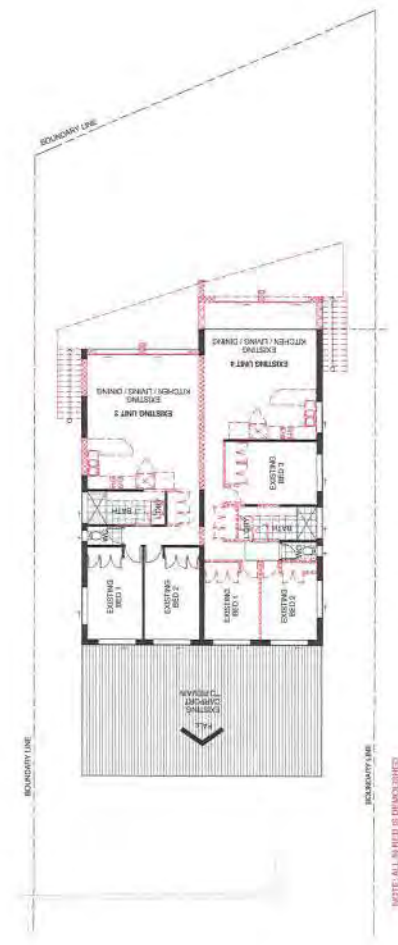
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1:100



2 Upper floor Plan
1:100

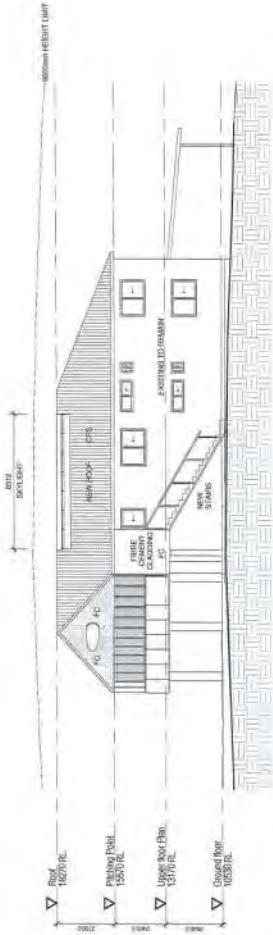


1 Ground floor
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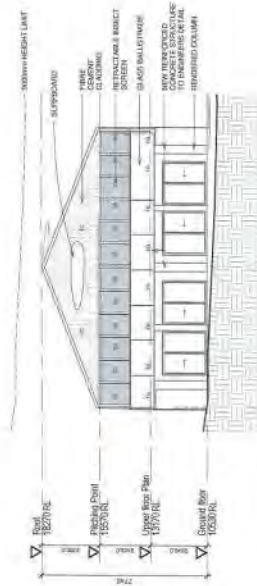


2 Upper floor Plan
1:100

		40 Precincts Building Unit 1/107 40 Precincts Building Unit 2/107 40 Precincts Building Unit 3/107 40 Precincts Building Unit 4/107 40 Precincts Building Unit 5/107 40 Precincts Building Unit 6/107 40 Precincts Building Unit 7/107 40 Precincts Building Unit 8/107 40 Precincts Building Unit 9/107 40 Precincts Building Unit 10/107 40 Precincts Building Unit 11/107 40 Precincts Building Unit 12/107 40 Precincts Building Unit 13/107 40 Precincts Building Unit 14/107 40 Precincts Building Unit 15/107 40 Precincts Building Unit 16/107 40 Precincts Building Unit 17/107 40 Precincts Building Unit 18/107 40 Precincts Building Unit 19/107 40 Precincts Building Unit 20/107 40 Precincts Building Unit 21/107 40 Precincts Building Unit 22/107 40 Precincts Building Unit 23/107 40 Precincts Building Unit 24/107 40 Precincts Building Unit 25/107 40 Precincts Building Unit 26/107 40 Precincts Building Unit 27/107 40 Precincts Building Unit 28/107 40 Precincts Building Unit 29/107 40 Precincts Building Unit 30/107 40 Precincts Building Unit 31/107 40 Precincts Building Unit 32/107 40 Precincts Building Unit 33/107 40 Precincts Building Unit 34/107 40 Precincts Building Unit 35/107 40 Precincts Building Unit 36/107 40 Precincts Building Unit 37/107 40 Precincts Building Unit 38/107 40 Precincts Building Unit 39/107 40 Precincts Building Unit 40/107 40 Precincts Building Unit 41/107 40 Precincts Building Unit 42/107 40 Precincts Building Unit 43/107 40 Precincts Building Unit 44/107 40 Precincts Building Unit 45/107 40 Precincts Building Unit 46/107 40 Precincts Building Unit 47/107 40 Precincts Building Unit 48/107 40 Precincts Building Unit 49/107 40 Precincts Building Unit 50/107 40 Precincts Building Unit 51/107 40 Precincts Building Unit 52/107 40 Precincts Building Unit 53/107 40 Precincts Building Unit 54/107 40 Precincts Building Unit 55/107 40 Precincts Building Unit 56/107 40 Precincts Building Unit 57/107 40 Precincts Building Unit 58/107 40 Precincts Building Unit 59/107 40 Precincts Building Unit 60/107 40 Precincts Building Unit 61/107 40 Precincts Building Unit 62/107 40 Precincts Building Unit 63/107 40 Precincts Building Unit 64/107 40 Precincts Building Unit 65/107 40 Precincts Building Unit 66/107 40 Precincts Building Unit 67/107 40 Precincts Building Unit 68/107 40 Precincts Building Unit 69/107 40 Precincts Building Unit 70/107 40 Precincts Building Unit 71/107 40 Precincts Building Unit 72/107 40 Precincts Building Unit 73/107 40 Precincts Building Unit 74/107 40 Precincts Building Unit 75/107 40 Precincts Building Unit 76/107 40 Precincts Building Unit 77/107 40 Precincts Building Unit 78/107 40 Precincts Building Unit 79/107 40 Precincts Building Unit 80/107 40 Precincts Building Unit 81/107 40 Precincts Building Unit 82/107 40 Precincts Building Unit 83/107 40 Precincts Building Unit 84/107 40 Precincts Building Unit 85/107 40 Precincts Building Unit 86/107 40 Precincts Building Unit 87/107 40 Precincts Building Unit 88/107 40 Precincts Building Unit 89/107 40 Precincts Building Unit 90/107 40 Precincts Building Unit 91/107 40 Precincts Building Unit 92/107 40 Precincts Building Unit 93/107 40 Precincts Building Unit 94/107 40 Precincts Building Unit 95/107 40 Precincts Building Unit 96/107 40 Precincts Building Unit 97/107 40 Precincts Building Unit 98/107 40 Precincts Building Unit 99/107 40 Precincts Building Unit 100/107
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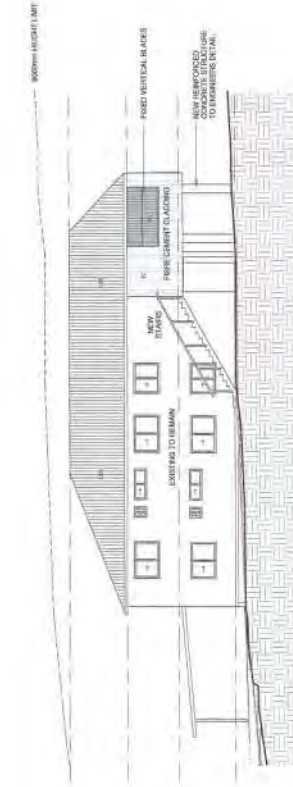


1 North Elevation
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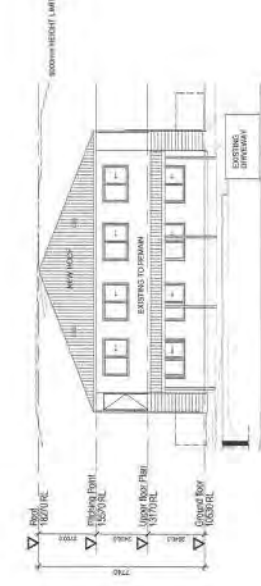


2 East Elevation
1:100

40 FRENCH CO. QUARRY DRIVE PO BOX 2011 WILSON, VIC 3177 PH: 03 9277 1177 FAX: 03 9277 1177 WWW.IBUILD.VIC.AU	
PROJECT: 201 WEEPCOAST ROAD DRAWING NO: 1100	DATE: 11/08/13 DRAWN BY: [Redacted] CHECKED BY: [Redacted]
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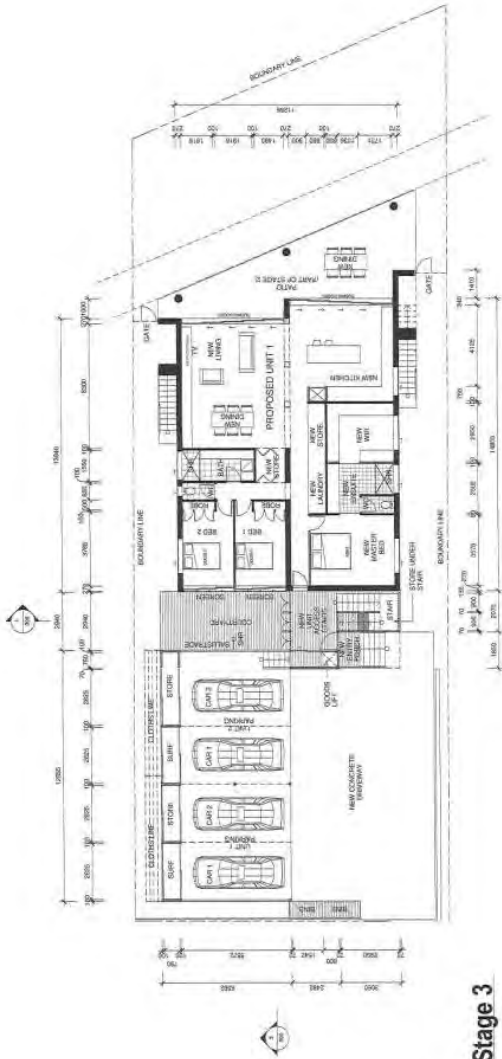


3 South Elevation
1:100

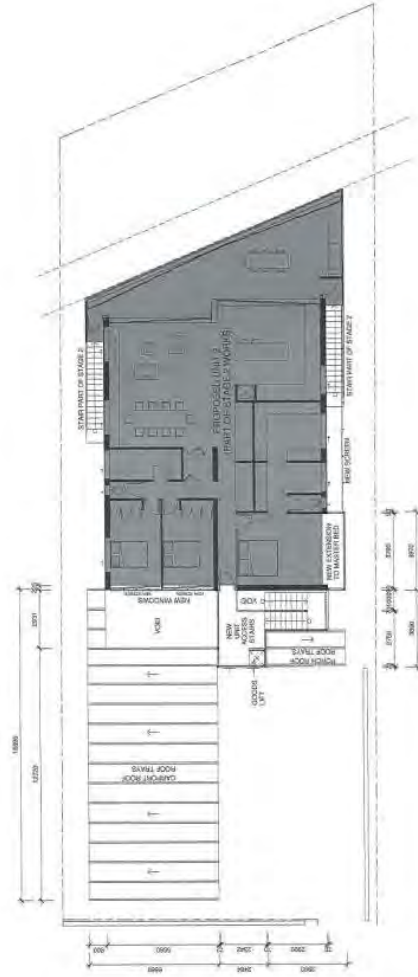


4 West Elevation
1:100

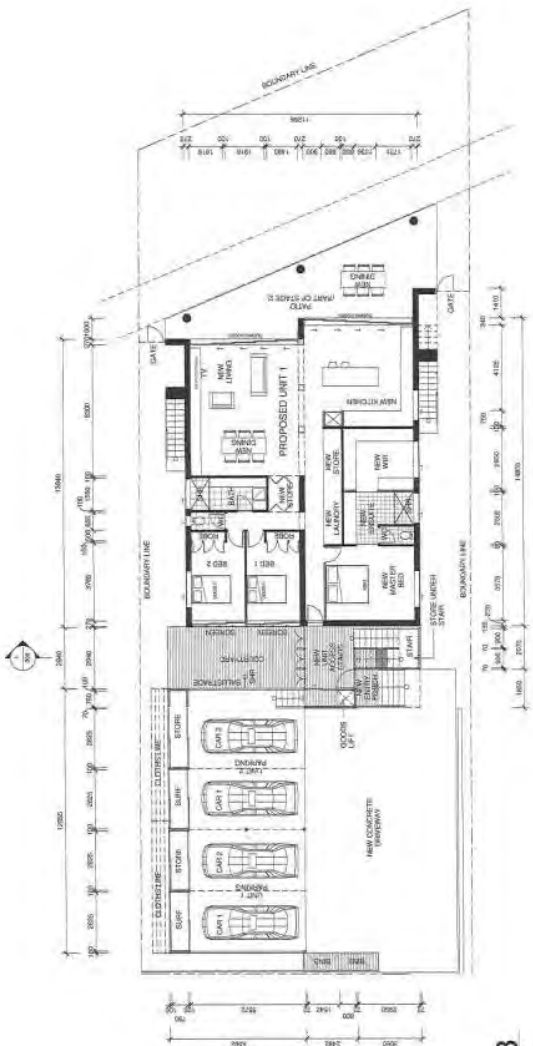
		49 Pritchard St, Sydney, NSW 1585 Ph: (02) 9550 0400 F: (02) 9550 0407 E: info@build.com.au www.build.com.au
1111 Pritchard Street, Sydney NSW 1585 20 TWEED COAST ROAD Proposed Floor Plans - Stage 3	DATE: 1/08/13 DRAWN BY: CWF CHECKED BY: JAW SCALE: 1:100	PROJECT NO: 13/001 SHEET NO: 1



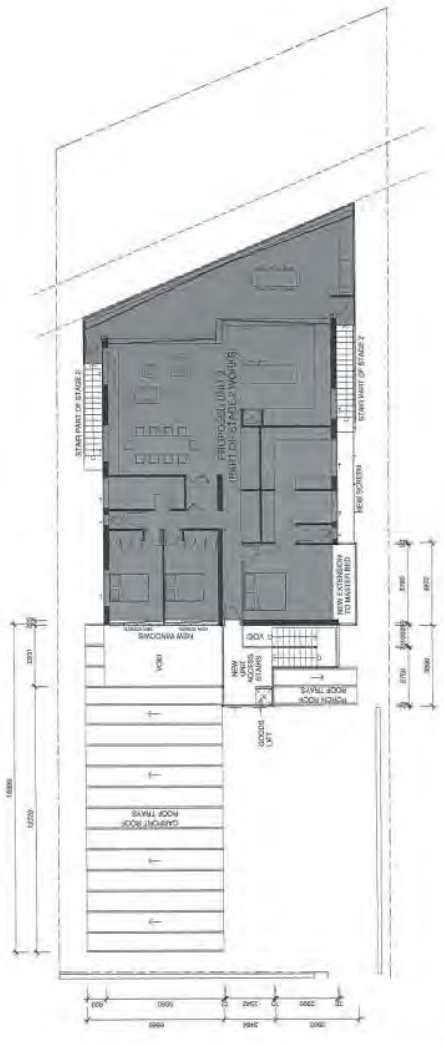
① Ground Stage 3
1:100



② Upper Stage 3
1:100

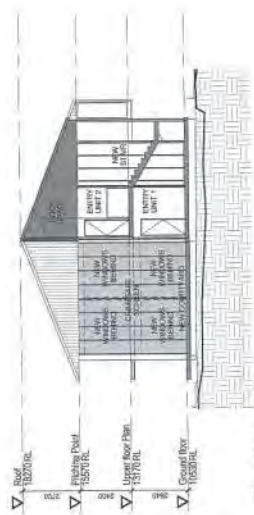


1 Ground Stage 3
1:100



2 Upper Stage 3
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40 PROPOSED BUILDING 2013/10/15 40 PROPOSED BUILDING 2013/10/15 40 PROPOSED BUILDING 2013/10/15 40 PROPOSED BUILDING 2013/10/15 40 PROPOSED BUILDING 2013/10/15	
PROJECT NO. SHEET NO.	DATE: 15/08/2013
20 WHEED COAST RD/40 Proposed Floor Plans - Stage 3	
SCALE: 1:100	@ A1
DATE: 15/08/2013	DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]



1 Section A3
1:100



3 Section C
1:100

40 Precinct 65 Gellibrigg Drive 1107 PO Box 201277 Christchurch 8141 T: 03 378 7373 F: 03 378 7374 EMAIL: info@build.co.nz	
ALL INFORMATION IS UNCLASSIFIED UNLESS OTHERWISE SPECIFIED	
PROJECT NO:	PROJECT NAME:
SHEET NO:	SHEET TITLE:
PROJECT:	
20 TWINEED COAST ROAD	
PROJECT DESCRIPTION:	
Proposed Structures - Stage 3	
DATE:	DRAWN BY:
11/08/13	T. HARRIS
CHECKED BY:	DATE:
OCTOBER 2011	08/10
DRAWN BY:	CHECKED BY:
@A1	T.H.

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 proposed development would generally accord with the aims of the plan, providing for a subdivision and 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 it 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 would be defined as subdivision and 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 proposed alterations to the existing building on the site through Stages 2 and 3 will result in a building with a maximum height of approximately 8.2m. This is classified as a two storey building in accordance with the provisions of this plan 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 a residential subdivision which creates more than 50 lots/dwellings or 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 subject development site is located on Class 3 and Class 4 Land. The majority of the site (including the existing residential building) is classified as being Class 4 Land with a small portion of the site adjacent to Tweed Coast Road being classified as Class 3 Land.

Specified works for Class 3 land under this Clause are: *Works beyond 1 metre below the natural ground surface and works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface.* 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.*

The submitted application has advised that *'the proposed development is unlikely to disturb soil deeper than 1m below the existing ground level or lower the water table 1m below the natural surface level. Accordingly it is not necessary to provide an Acid Sulphate Soil Assessment.'*

From the submitted documentation it is considered that the proposed development will not result in specified works as outlined above. The proposed development is therefore considered to be acceptable with respect to this clause.

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. The subject application would reduce the amount of residential properties on the site and in this regard is considered to reduce the traffic movements to the site.

- (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 the existing access arrangement to the site. Council's Development Engineering Section has reviewed the application in this regard and advised that the proposed access arrangement is considered adequate in this case.

- (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. In any event the proposed development is not considered to impede any future road works as the existing site access arrangements are to be maintained. It is noted that there is approximately 5m between the current road edge and the site boundary as per Councils 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 subject residential development is located on a designated road as such are to have an acoustic seal on the front door to reduce noise transmission. The submitted application has provided advice with respect to this as follows:

"The only sensitive use included within the proposal relates to alterations to the existing building which is located some 50m from the frontage. It is not considered that retrofitting of the existing building is necessary."

It is considered that having regard to the above, adequate spatial separation is evidenced on the site between the residential units and the designated road. In this regard it is considered that the residential units are not sensitive to traffic noise. Any future applications on this site would be assessed on its individual merits (particularly with respect to proposed Lot 1).

(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.

(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 to the west (at the roadside area) of the site is identified as flood prone on Councils mapping system as being covered by the Probable Maximum Flood (PMF) level. This area is earmarked for subdivision works only under this application, with no development works proposed.

Under Part (2) of this Clause, Council must not grant consent to development of flood liable land unless it has considered the following:

(a) *the extent and nature of the flooding hazard affecting the land, and*

The extent and nature of the flooding hazard affecting the subject site is considered to be minimal through it being the PMF flood impact only. It is further noted that no development work is proposed on the area to which this PMF level is evidenced, being currently an undeveloped grassed area.

(b) *whether or not the development would increase the risk or severity of flooding of other land in the vicinity, and*

The development to be carried out at the flood prone area relates to subdivision only under this application. This is not considered to result in an increased risk of flooding of other land in the area and the proposal is considered to be an acceptable use of the site in this regard.

(c) *whether the risk or severity of flooding affecting the development could be reasonably mitigated, and*

It is noted that the risk of flooding to the site relates to the PMF level only and having regard to this, the subject application does not require specific mitigation measures. It is noted that physical development is not proposed in the flood prone area.

(d) *the impact of the development on emergency services, and*

Council's emergency services provisions with respect to flooding are outlined under Section A3- Development of Flood Liable Land. Under this plan Emergency Response Provisions are not required on this development application.

(e) *the provisions of Section A3—Development of Flood Liable Land of Tweed Development Control Plan.*

The application has been assessed with respect to DCP A3 specifically elsewhere in this report. It is considered that the proposal is in accordance with the provisions of this DCP.

The subject application is considered to be acceptable having regard to the requirements of Clause 34.

Clause 36 - Coastal erosion outside zone 7 (f)

The objective of this clause is 'to protect land that may be subject to coastal erosion (but not within Zone 7 (f)) from inappropriate development.'

In determining whether to grant consent to development involving the erection of a building or the carrying out of a work at or above the surface of the ground on land that in the consent authority's opinion may be subject to coastal erosion, the consent authority must consider the following:

- (i) the likelihood of the proposed development adversely affecting the behaviour or being adversely affected by the behaviour of the sea, or of water in an arm of the sea or any other body of water, and

The proposed development is considered unlikely to adversely affect the behaviour or be adversely affected by the behaviour of the sea. Development works are to be carried out on an existing structure.

- (ii) the likelihood of the proposed development adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or floodplain of the sea, any arm of the sea or any other body of water, and

As outlined above the subject development application relates to works to be carried out to an existing built structure. In this regard the proposed works are considered to have a minimal impact with respect to the foreshore area outlined above.

- (iii) the likelihood of the proposed development adversely affecting the landscape or scenic quality of the locality, and

The proposed development is considered unlikely to adversely affect the landscape or scenic quality of the locality.

- (iv) the potential impacts of climate change including sea level rise.

The subject development works on this application relate to alterations to an existing structure. In this regard, the proposal is not considered to result in notable potential impacts with respect to climate change and sea level rise.

The subject application is considered to be consistent with the above provisions and the proposed development is supported with respect to clause 36. The subject site is affected by coastal hazards as outlined under Figure 1 below. Council's Coastal Hazards DCP B25 (from which this image is taken) is discussed in more detail elsewhere in this report.

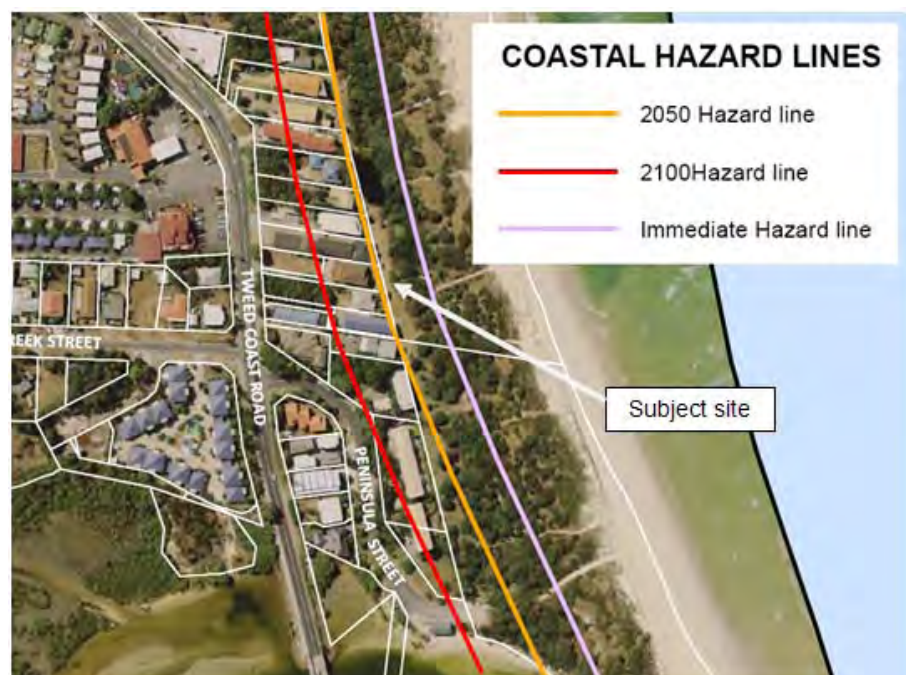


Figure 1: Coastal Hazards Map

Clause 39A – Bushfire Protection

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.

In this regard it is noted that the subject development site is entirely mapped as being bushfire prone by virtue of being located within the 30m and 100m vegetation buffer.

The subject application was nominated integrated under s100B of the Rural Fires Act 1997 and as such was referred to NSW Rural Fire Service (RFS) who have provided a bushfire safety authority and conditions of consent to include in any approval of have been included.

Having regard to the comments received from NSW RFS, the proposal is considered to be in accordance with the objective of the clause and is acceptable in this instance.

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 2011 Tree preservation order within the koala habitat study area.

The site has been predominantly cleared of vegetation, with some smaller trees to the north site boundary only evidenced on site inspection. It is not considered that these would require removal in order to facilitate the proposed development, however it is considered appropriate that a standard condition be applied to any consent limiting the removal of native (therefore including Koala) vegetation.

Therefore the proposal is unlikely to impact on Koala habitat or amenity values of the site. As such the provisions of this TPO 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 which 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 nature of the proposed development, on residential zoned land, it is considered unlikely that the proposal will impact on the coastal values or cultural heritage as discussed elsewhere in this report.

However, it is important to note that the proposal will create additional overshadowing of the waterfront open space by virtue of the proposed development having a slightly increased roof height at the ridge cap (470mm). 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 subject development casts a shadow upon the foreshore reserve located to the east of the site. Under the SEPP No. 1 assessment below this variation is supported.

Clause 33: Coastal hazard areas

This clause states that before granting consent to development on land affected or likely to be affected by coastal processes, the council shall:

- (a) take into account the Coastline Management Manual,

The subject application has been considered against the provisions of the Tweed Shire Coastline Management Plan 2005 elsewhere in this report. It is considered that the proposal is consistent with the objectives of the Management Plan. Proposal is acceptable in this regard.

- (b) require as a condition of development consent that disturbed foreshore areas be rehabilitated, and

Crown Lands have reviewed the subject application and provided appropriate conditions with respect to ensuring that the proposed development does not encroach or impact on the foreshore area adjacent to the subject site. In order to achieve strict compliance with this clause it is considered that a condition would be applied to any consent as outlined above.

- (c) require as a condition of development consent that access across foredune areas be confined to specified points.

The submitted application does not propose any modification to existing foredune areas nor is it considered that there would be any impact arising from the proposed development with respect to access. In any event a condition would be attached to any consent to ensure compliance with this clause.

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. The residential development proposed over Stages 2 and 3 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.

Clause 81: Development adjacent to the ocean or a waterway

The subject sites' eastern boundary is located approximately 90m from the ocean. This clause states that 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 of the following:

- (a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,

From Councils mapping system it is noted that there is approximately 90m of foreshore between the site boundary and the ocean. This is considered to constitute a sufficient amount of foreshore open space at this location. In close proximity to Hastings Point there is considered to be sufficient and accessible open space available to the public.

- (b) buildings to be erected as part of the development will not detract from the amenity of the waterway, and

The subject application proposes alterations to an existing building through Stages 2 and 3 of the proposal. In this regard, the proposed works are not considered to detract from the amenity of the waterway.

- (c) the development is consistent with the principles of any foreshore management plan applying to the area.

The Tweed Shire Coastline Management Plan applies to the subject site. The subject application is assessed in terms of this document elsewhere in this report, with it noted that the development is in accordance with the principles of this plan.

The submitted application is considered to be acceptable when assessed against the provisions of this clause.

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 results in an additional overshadowing of approximately 25m² of the foreshore reserve to the east of the site.

A 5 part test was outlined by Chief Justice Preston in *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 this particular case:

“The Chief Judge advised that the requirement to demonstrate that an objection is well founded and that the approval of the objection may be consistent with the aims of the policy could be satisfied in any one of the following ways:

- (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- (ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- (iii) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- (iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

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

We submit that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Numerous developments along the Tweed Coast have been approved since 1988 which include variations to the foreshore shadow development standard contained in State Environmental Planning Policy (North Coast Regional Environmental Plan) 1988. These variations include numerous detached dwellings and multi dwelling housing buildings, which like the proposed development, comply with the statutory height limits and setback controls.

The widespread application of variations to the development standard including the approval of development in the vicinity of the subject site indicates that the application of the development standard has been virtually abandoned. Accordingly, compliance with the standard for this development in the medium density residential area of Hastings Point is unnecessary and unreasonable.

*For the above stated reasons we submit that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard. Following from the fourth test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827, we conclude that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case."*

As outlined above, 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 fourth way to demonstrate this:

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

The subject development standard is considered to have been varied on many occasions by Council. Whilst these have been considered on their individual merits, it is noted that there is a relatively successful and common use of SEPP 1 Objections with respect to this 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, covering an additional area of approximately 25m² 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. Council has assumed concurrence for this application in accordance with Department of Planning Circular No. B1, issued 17 March 1989, a copy of which is attached to the file.

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,

The subject application does not impact upon any public access way to the coastal foreshore. Furthermore, it is considered that the proposal does not offer any opportunity for a formal access way to be created or improved.

(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 nature, scale and 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. 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 is not considered to impact negatively any animals or their habitats. The subject development site has been previously developed and cleared of any significant vegetation.

(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,

It is considered that 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.

(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 certificates have been prepared for both Stage 2 and 3.

Clause 18 of the SEPP requires a master plan for the land to be developed in certain instances, including for the subdivision of land into 25 lots or less, if the land proposed to be subdivided and any adjoining or neighbouring land in the same ownership could be subdivided into more than 25 lots.

The applicant has provided written documentation from the Department of Planning & Infrastructure (dated 3 October 2012), which notes that...*'having regard to the existing planning controls applying to the land and the level of information provided in support of this request, it is considered that a master plan is not necessary in this instance. Therefore, pursuant to clause 18(2) of SEPP 71, the need for a development control plan has been waived'*. No further assessment required in this regard.

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, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
 - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
 - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
 - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
 - (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
 - (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
 - (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
 - (i) to conserve or enhance areas of defined high ecological value,
 - (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

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.

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.

2.6 Subdivision- consent requirements

This clause states that land to which this Plan applies may be subdivided, but only with development consent. As this application has been submitted in order to obtain development consent, the proposal is considered to be in accordance with this clause.

Part 4 Principal development standards

4.1 Minimum subdivision size

The objectives of this clause are:

- (a) to ensure minimum lot sizes are appropriate for the zones to which they apply and for the land uses permitted in those zones,
- (b) to minimise unplanned rural residential development.

This clause applies to a subdivision of any land shown on the Lot Size Map. The subject allotment is not represented on this map and as such the provisions of this clause do not apply to the subject application.

Part 5 Miscellaneous provisions

5.5 *Development within the coastal zone*

This clause of the draft LEP states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following;

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
 - (i) *maintaining existing public access and, where possible, improving that access, and*
 - (ii) *identifying opportunities for new public access, and*

As outlined elsewhere in this report, the subject site is bordered by public foreshore. However, this application does not propose and modifications to existing public access nor is considered to identify an opportunity for new public access given its nature and scale. The proposal is considered acceptable in this regard.

(b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*

- (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
- (ii) *the location, and*
- (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed development is permissible on the subject site and is considered to be a suitable response to the relevant planning controls. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

(c) *the impact of the proposed development on the amenity of the coastal foreshore including:*

- (i) *any significant overshadowing of the coastal foreshore, and*
- (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development will result in additional overshadowing of the coastal foreshore through an increased roof profile proposed under Stage 2 works. This has been addressed under the NCREP and a SEPP 1 Objection in this application with the proposed development assessed as being acceptable in this instance.

(d) *how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*

The proposed development is not considered to compromise the scenic qualities of the coast as it represents an acceptable development on appropriately zoned land. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast.

(e) *how biodiversity and ecosystems, including:*

- (i) *native coastal vegetation and existing wildlife corridors, and*
- (ii) *rock platforms, and*
- (iii) *water quality of coastal waterbodies, and*
- (iv) *native fauna and native flora, and their habitats,*
can be conserved, and

The proposed development is to be wholly contained on a site which has been cleared of significant vegetation previously. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard.

(f) *the cumulative impacts of the proposed development and other development on the coastal catchment.*

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the sites zoning and the permissibility of the proposed development at this location.

This clause goes on to further state;

(3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*

(a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

As outlined elsewhere in this report, the proposal is not considered to impede or diminish the right of access of the public either to or along the public foreshore.

(b) *if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The subject development is to remain connected to Councils reticulation sewer system.

(c) *the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The subject application has been reviewed by Councils Development Engineering Section who have provided recommended conditions of consent with respect to stormwater. This is considered to satisfy the above clause.

(d) *the proposed development will not:*

(i) *be significantly affected by coastal hazards, or*

(ii) *have a significant impact on coastal hazards, or*

(iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, scale, and appropriateness given its permissibility at this location.

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

The submitted application proposes alterations to the existing multi-dwelling housing building under Stages 2 and 3. It is noted that Stage 2 works would remain assessable as a small residential flat building under this DCP whilst Stage 3 would result in a dual occupancy development under the provisions of DCP A1.

A detailed assessment of Section A1 is appended to the file. This DCP assessment has been generally undertaken through the residential flat building standards which are generally more onerous than dual occupancy controls. Where the dual occupancy control is more appropriate to the subject development this is noted and addressed in the assessment.

A variation to Section A1 (Topography, cut and fill) Control f. is required in this regard. This control states:

The maximum level of cut is 1m and fill is 1m except for areas under control j.

This variation is required with respect to proposed fill to be imported to the site as part of Stage 3 works. In this regard it is noted that fill of up to 1.5m is required, although DCP A1 limits this to 1m.

It is stated that fill greater than 1m is limited to a small area of the site. This would be located to the west boundary of proposed lot 1 adjacent to proposed lot 2 on the site and is considered to cover a total area of approximately 20m².

This fill is required to facilitate the proposed carport and hardstand area proposed under this stage.



Figure 2: Area to be filled

In this instance it is considered that the filling of this area is acceptable to the level required. The extension of the carport/hardstand area to proposed lot 2 allows improved vehicle access and alterations to be made to the existing building on the site including the provision of an entranceway facing the public domain which are considered to improve the design of the building on the site. The variation to this development standard is relatively minor, and is considered a reasonable development of the site in this instance.

The proposal is not considered to cause a significant impact and the variation is considered justified in this instance.

A2-Site Access and Parking Code

The proposed development site has frontage to Tweed Coast Road. Tweed Coast Road offers a 10m wide bitumen sealed road pavement in fair condition with kerb and guttering servicing either side of the street at this location. An upgrade of Tweed Coast Road is not required. A public transport system currently services the Hastings Point area and is considered accessible to the proposed development.

Access

The existing access arrangement is proposed to remain on the subject site. This has been reviewed by Councils Development Engineering Section who has advised that the proposed access arrangement is considered adequate in this case. The proposal is considered to be acceptable in this regard.

Parking

At present it is noted that there are four car parking spaces provided to serve 2 x 2 bedroom and 2 x 3 bedroom units on the subject site. This would not be compliant with current DCP A2 requirements which would require a total of 8 car parking spaces under current DCP A2 standards.

The applicant has advised that section a2.4.1 of this DCP with respect to Existing Use Credits is to be invoked in this instance. This clause states that:

Where there is an application for a change of use or redevelopment of an approved/lawful development site that does not cause any net increase in the demand for car parking, this Section does not require the provision of any additional car parking spaces.

Stage 2 works proposes to alter the unit configuration on the site to 2 x 3 bedroom units and 1 x 2 bedroom units. This would require a total of 6.5 spaces, which although not provided on the subject site, would be less intensive than the current approved configuration. In this regard the proposal is considered to be acceptable with respect to the existing use credits as advised above.

Stage 3 works would result in 2 x 3 bedroom units on the site in a dual occupancy configuration for the purposes of the DCP. This would require a total of four car parking spaces plus provision for driveway parking of another vehicle. Whilst the carparking arrangements are to be modified at this stage, four parking spaces are to be maintained and although driveway parking has not been identified, it is considered that there would be sufficient space on the site for a driveway parking space.

In this regard, it is noted that the subject development will reduce car parking requirements from that currently approved on site through Stages 2 and 3 to a state where compliance is considered achievable by Stage 3. In this regard the proposed development is assessed as being acceptable with respect to DCP A2 through the 'existing use credits' on the site.

A3-Development of Flood Liable Land

A small portion to the west (at the roadside area) of the site is identified as flood prone on Councils mapping system as being covered by the Probable Maximum Flood (PMF) level. This area is earmarked for subdivision works only under this application, with no development works proposed.

The proposed development is not considered to compromise the provisions of this DCP and is acceptable in this regard.

A5-Subdivision Manual

Stage 1 of the proposed development relates to subdivision work, consolidating the three current Community Title lots into two Torrens title lots. As such this DCP is applicable to this development application.

Tweed Development Control Plan A5 -Subdivision Manual aims to:

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

This DCP contains Council's guidelines for the preparation of applications for subdivision and aims to facilitate Council's assessment and consideration of such applications. A number of factors are required to be assessed including environmental constraints, land forming, design specifications, storm water runoff, drainage, waterways and flooding, setbacks and buffers (where appropriate). The subject application has been referred to Council's Development Engineer who has reviewed the subject application against the provisions of DCP A5 and indicated that the proposal would be acceptable subject to appropriate conditions of consent. Where applicable these matters have been discussed below.

Environmental Constraints – this section of the DCP relates to issues such as contamination, bushfire and access etc. These matters are discussed in detail elsewhere in this report with the conclusion being that the proposal is acceptable, having regard to the flooding threat to the site and bushfire comments received from NSW Rural Fire Service. Coastal erosion constraints have been assessed under DCP B25 below with the proposal determined as being acceptable in this regard.

Landforming – The existing ground levels across the site vary from approximately RL 3.3m AHD to RL 10.3m AHD. It is noted that minor earthworks and retaining walls are proposed for a new car port and driveway area. Although not related to the subdivision works as part of this application, these earthworks are considered to be acceptable in this instance.

Stormwater Runoff, Drainage, Waterways & Flooding – The site falls to the west towards Tweed Coast Road. The stormwater catchment is generally confined to the subject land. Roof water is piped from the existing building on proposed Lot 2 to a kerb adapter in Tweed Coast Road and undeveloped proposed Lot 1 drains as overland flow towards the road.

A stormwater management plan (Cozens Regan Williams Prove- dated January 2013) was lodged with the application. The report states that drainage from the site is piped to Tweed Coast road and this is to remain unchanged, which is considered adequate by Councils Development Engineers.

Urban Structure – The proposed subdivision is considered to provide appropriate access, orientation and configuration of lots. With respect to access it is noted that the existing arrangement is proposed to remain.

The battleaxe handle for future Lot 2 is approximately 3m in width; with a right of carriageway proposed over the battleaxe handle. Council's subdivision manual requires a minimum of 4m for battleaxe shaped allotments and this DCP also advises that battleaxe allotments must not be used for multi dwelling housing, dual occupancy, business, industrial, commerce and trade allotments.

It is noted that the multi dwelling housing is located over an existing community title subdivision which already has a battleaxe access arrangement in place. All services are existing, therefore no new services are required to be installed along the battleaxe handle, as generally required for a new allotment. It also is noted the application is also proposing to reduce the number of units from 4 to 2 for the multi dwelling housing component. The proposed access arrangement for a 3m right of carriageway to service a 2 lot Torrens title subdivision, is considered adequate in this case.

Lot Layout - The proposal is consistent with the minimum allotment area of 450m² as all allotments are greater than this.

Infrastructure – Council's Development Engineering Section have assessed the proposed development against the relevant standards pertaining to road ways, water and sewer provisions, electricity and telecommunications. Appropriate conditions of consent have been applied with regard infrastructure requirements where applicable.

In light of the above assessment, the proposed subdivision works are considered to meet the provisions of Section A5 of Council's Consolidated DCP.

A11-Public Notification of Development Proposals

The proposed development was notified for a period of 14 days from 15 May 2013 to 29 May 2013. During this time Council received two public submissions, however it has subsequently been found that these were incorrectly attributed to this application by the objector and these have now been registered to the intended application. As such, Council have not received any public submissions with respect to the submitted application.

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, although a variation to the specified controls is required with respect to Design Control 6 for Dual Occupancy Development. The site is situated within the Peninsula Street and the Northern Entry Precinct.

Part 4 – Precinct Specific Strategies – Peninsular St and North Entry

The controls outlined for residential lots under this precinct are as follows:

1. Suitable building types on some medium density residential zoned land indicated on the Control Diagram; Peninsula Street and the Northern Entry include: dwelling houses, dual occupancy housing, granny flats, town houses and small coastal residential flat buildings.

The subject application relates to alterations to an existing residential building under Stages 2 and 3. The density of this building is to be lowered from four units to two units through these stages. The proposal is considered to result in a suitable building type on the subject site.

2. Some lots zoned medium density residential land indicated on the Control Diagram; Peninsula Street and the Northern Entry are only suitable for small building types including: dwelling houses, dual occupancy housing, granny flats and town houses.

As outlined above, the subject application ultimately lowers the density on the subject site from four units to two units. The site is considered to be suitable for the proposed development having regard to its currently developed status.

3. Controls for houses, dual occupancies, town houses and residential flat buildings also apply. Refer to Part 6 - Building Type Controls.

An assessment with respect to Part 6 matters has been undertaken and can be reviewed below.

4. Setbacks are to be in accordance with the Control Diagram. Peninsula Street and Northern Entry.

A rear setback of 8m is applicable to the subject development in accordance with the abovementioned diagram. This has been provided on the site. Future development of proposed lot 1 would be required to maintain a 10m landscape front setback when developed.

5. For residential flat buildings up to 3 storeys the applicant must demonstrate to the satisfaction of Council through design workshops with council staff, architectural, landscape and urban design graphic and design explorations (including 3 dimensional images, models and illustrative site plans that the building(s) have:

- applied all of the Part 7.1 Built form and landscape design ideas;
- achieved all of the design considerations necessary for buildings in a small coastal village context as set out in the various parts of this document;
- retained the visual settings;
- addressed flooding and acid sulfate soils;
- addressed all other Strategic Principles and Objectives of the Precinct.

The subject application reduces the existing, and approved, residential flat building to an eventual dual occupancy development over Stages 2 and 3. The above criteria are considered to be generally addressed as part of this application, with the design reflecting an acceptable development of the site. In particular a Development Assessment Panel (DAP) meeting was attended. It is further noted that the subject application relates to alterations to an existing building on this site. In this regard, the redevelopment of the site is considered to result in a more desirable outcome when compared to the existing structure on the site.

6. Where Council will consider a residential flat building on or behind the beach dune area or that is otherwise visually prominent to or from the beach, estuary or headland, it shall be a maximum of 8m (2 storeys) in presentation to the beach, estuary, headland or in combination, whichever applies. The remainder of the site can be a maximum footprint of 50% of the internal spaces below.

To this elevation, the proposal has a maximum height of approximately 7.8m, compatible with this objective. As the application relates to an existing approved building it is not considered appropriate to limit any alterations to a maximum footprint of 50% of the internal spaces below.

Part 5 Visual Settings

Under this section of the DCP, it is considered appropriate that that the subject site be assessed under section 5.2 'Views from the Headland'.

The key characteristics of this view are:

- The layering of vegetation on the headland, water and sand, foreshore vegetation (on the northern side of the creek) and finally the hills in the distance which meet the sky. Buildings are seen nestled between the foreshore vegetation and the hills in the distance.
- The view shows how the settlement is surrounded and contained by vegetation; buildings are nestled within nature, with nature dominating built form.
- Vegetation meets water, sand and sky.
- Buildings are contained within and surrounded by vegetation (top, bottom and to both sides) ie. buildings do not meet water, sand or sky.

The controls of this visual setting are:

1. Development applications for lots within the visual setting must be accompanied by a photomontage demonstrating impacts and measures to mitigate impacts.

The submitted application includes provision of a photomontage (reproduced below) demonstrating the building from the view from the headland. In this regard it is noted that alterations as part of this application would have a minimal impact in terms of the view from the headland, resulting in a height differential of 470mm and an altered roof profile. As demonstrated below, this is considered to result in a minimal impact due to the distance from the viewpoint and the works proposed.



Figure 3: Applicants photomontage

2. Structures on lots within the visual setting may be visible on the mid layer, between the foreshore vegetation layer.

The proposed development will not result in any structures being visible on any other layer than the mid layer as currently evidenced. The proposal results in a slightly altered roof profile with ridge height increased by 470mm. The proposal is considered acceptable in this regard.

3. Public domain improvements such as picnic shelters, signage, fencing, facilities blocks or the like are not to be located within the visual setting.

Not applicable to the subject application. No public domain improvements as outlined above are proposed as part of this application.

Part 6- Building Type Controls

As outlined elsewhere in this report it is noted that proposed Stage 2 relates to the alteration of the existing residential flat building to reduce four units to three, thus remaining a residential flat building. Proposed Stage 3 however would result in the reduction of these three units to two, thus being assessable as a dual occupancy under the provisions of this DCP.

In this regard it is important to note that the existing building has Council approval, however may not comply with all of Councils current development standards. The approach has been taken that where a non-compliance is as a result of the previous approved building, strict compliance with the provisions of any given control may not be required.

Residential Flat Buildings provisions are outlined under 6.6.3 of this DCP, whilst Dual Occupancy controls are under 6.6.2. Many of these controls relate to DCP A1 controls and objectives which have been assessed in a separate report appended to this application or to provisions under Part 4 or Part 5 of this DCP which are assessed above. The following assessment differentiates between each set of controls (and therefore the staging of development) where necessary.

Design Control 1- Public Domain

These design controls relate to DCP A1 and other parts of this DCP. Assessment of these has been undertaken elsewhere with the proposal being assessed as being acceptable with respect to its interaction with the public domain.

Design Control 2 – Site Configuration

Residential Flat Building controls (Stage 2 works)

A deep soil zone has been provided in accordance with Part 4 of this DCP, consisting of an 8m area to the east site boundary (rear). The above ground external living area is considered acceptable having regard to their nature being alterations to an existing residential building. Having regard to the additional landscaping controls under this DCP it is noted that the site has been previously cleared and minimal landscaping is proposed as part of this application, a landscaping plan is required under DCP B23 provisions. This is to be done through an appropriate condition of consent.

Dual Occupancy controls (Stage 3 works)

Deep soil zones provisions have been discussed through the DCP A1 assessment as follows:

It is noted that the existing development of Strata Plan lot 57450 provides a rear deep soil zone only. The proposed Stage 1 subdivision works would result in this site (as proposed Lot 2) gaining undeveloped land from existing NPP2//270157, which under proposed Stage 3 is to be developed, thus removing a front deep soil zone created by Stage 1 subdivision.

It is considered that the additional area (approximately 40m²) given to proposed Lot 2 has been undertaken in order to allow the alterations to the existing multi-dwelling building on the site proposed as Stage 3 works rather than to provide a front deep soil zone through Stage 2.

In this regard it is considered that it would be unreasonable to require this already developed site to provide a front deep soil zone due to the subdivision layout provided by the Council. The undeveloped area allocated to proposed Lot 2 is considered to be done so in order to allow improvements to the existing building under Stage 3 works.

A deep soil zone of approximately 128m² is provided to the rear of proposed Lot 2, consistent with the existing development on the site. This is a total of 8m depth and 100% of the width of the site.

The subject application is considered to be generally acceptable having regard to these controls considering that the application relates to alterations to an existing developed site.

Design Control 3 – Setbacks

Appropriate setbacks are provided to the site with respect to these controls for both Stages 2 and 3. The proposed development maintains a requisite 8m rear setback whilst the existing buildings location on the rear of a (to be created) battle-axe allotment minimises any impacts with respect to front setbacks. It is noted that side setbacks are not reduced from the existing building on site and in this regard the proposal is considered to be acceptable, meeting the minimum 1.5m for first and second levels of a building.

Design Control 4 – Car Parking and Access

Residential Flat Building controls (Stage 2 works)

This stage development works does not propose to amend the existing car parking on the site, however it is noted that Stage 2 works would reduce the car parking requirements on the site, as such the proposal is considered acceptable in this manner. No on-grade carparking is proposed within 12m of the primary street boundary given the site battle-axe configuration, located away from the public road. No basement carparking is proposed. The existing carport is to be maintained as part of the proposed Stage 2 works.

Dual Occupancy controls (Stage 3 works)

Stage 3 works amend the location of carparking on the site and proposes to demolish the existing carport and replace with a four bay carport. This is considered acceptable having regard to the additional car parking controls outlined through this DCP.

Design Control 5 - Building Footprint, Attics, Orientation and Separation

This application does not propose a third level to the residential flat building. The provisions of this control are therefore not applicable to this development. Dual occupancy controls relate to DCP A1 which is assessed elsewhere on this application.

Design Control 6 – Height

Residential Flat Building controls (Stage 2 works)

The subject development would be generally compliant with the controls under this section, however it is noted that control b states:

- b. The south side of buildings within 3 metres of the boundary is to be a maximum of 7 metres.*

In this regard, it is noted that the subject building is within 3 metres of the southern boundary. However, at this location there is a maximum height of 5m (eave height) the proposal complies with these controls.

Dual Occupancy controls (Stage 3 works)

This DCP outlines a number of additional objectives to DCP A1 with respect to DCP B23 for dual occupancy development. These 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.

Proposed Stage 3 of this application will result in the existing residential flat building being reconfigured to create a dual occupancy development as outlined elsewhere in this report. A new access foyer and stairs is to be constructed to provide a front door access to the ground floor and upper floor unit. Furthermore, the existing carport is to be demolished and replaced with a new 4 bay carport orientated parallel to the northern boundary.

These works would result in non-compliance with controls a, b and c of Design Control 6 as follows:

a. 8 metres is the maximum overall building height.

The works proposed as part of Stage 3 works will result in the proposed development having a maximum height of 8.2m resulting in a variation of approximately 0.2m.

b. 7.5 metres is the maximum wall plate height.

The proposed design of the proposed building works through this stage are considered to result in a maximum wall plate height of approximately 8m resulting in a variation of 0.5m.

c. Carports maximum height 2.7 metres for a flat roof and 3.5 metres for a pitched roof.

The proposed carport under Stage 3 works would have a maximum height of approximately 2.9m and is a flat roof in design resulting in a variation of approximately 0.2m.

With respect to these controls, it is noted that this stage of the application relates to the reconfiguration of a residential flat building to a dual occupancy development. Were the proposal to remain as a residential flat building these building heights would be allowable as outlined under Stage 2 above. Furthermore, it is accepted that all the proposed alterations on this application relate to modifications to an existing building and in this regard the design of alterations impacted by the existing design on the site.

It is considered that the variations outlined above are considered to be acceptable in this instance, minor in nature, and do not compromise the additional development objectives. Furthermore, given the location of the proposed development set back from the public street it is considered that these works would not have a negative impact on the public amenity associated with the proposed development. These variations are supported in this instance.

Design Control 7 – Building Amenity

Building amenity controls relate to DCP A1 for both residential flat buildings and dual occupancy development. This has been assessed under DCP A1 report with the proposed development considered as being acceptable in this regard.

Design Control 8 – Internal Building Elements (Residential Flat Building only)

This design control relates to DCP A1 controls, under which the proposed development was assessed as being acceptable. The proposal therefore remains acceptable under DCP B23 assessment.

Design Control 9 – External Building Elements

Residential Flat Building controls (Stage 2 works)

This design control relates to DCP A1 controls, under which the proposed development was assessed as being acceptable. The proposal therefore remains acceptable under DCP B23 assessment.

Dual Occupancy controls (Stage 3 works)

No fences are proposed as part of this application. The proposed roof design is considered to reflect a desired built form through appropriate articulation. The colours and materials proposed as part of this application have been provided on a colour schedule and are considered acceptable. Furthermore the built form is considered to be an improvement from the existing multi-dwelling residential building currently on the site. The application is considered to be acceptable in this regard.

Design Control 10 – Building Performance

Building Performance controls relate to DCP A1 for both residential flat buildings and dual occupancy development. This has been assessed under DCP A1 report with the proposed development considered as being acceptable in this regard, with BASIX certification being provided for both Stages 2 and 3.

Design Control 11 – Floor Space Ratio

Residential Flat Building controls (Stage 2 works)

This control states that the proposal should have a maximum floor space ratio of 0.8:1. Stage 2 works will result in the proposed development having a floor space ratio well within the permissible range.

Dual Occupancy controls (Stage 3 works)

Dual occupancy controls relate back to DCP A1, under which the subject development was assessed as having an appropriate floor space ratio.

Design Control 12 – Lot Consolidation

Allotment consolidation is proposed as Stage 1 of this development application, with three existing Community Title lots being consolidated into two Torrens title land parcels. One driveway is maintained through this consolidation, whilst the maximum length for a building facing the street or other public place would remain below the permitted 20m in accordance with these controls.

The proposal is considered to be acceptable having regard to the provisions of this DCP.

B25-Coastal Hazards

This DCP applies to all land located seaward of the 2100 Hazard Line. The subject site is partially within this area, with approximately half the total site area (including the existing multi dwelling building) being located in the 2100 hazard area. It is also noted that approximately 50m² of the site adjacent to the coastal foreshore reserve is within the 2050 hazard area. No development work is proposed within the 2050 area, whilst alterations to the existing structure are proposed within the 2100 area through Stages 2 and 3 of the proposed development.

The aims of this DCP are:

- To provide guidelines for the development of the land having regard to minimising the coastal hazards risks (a function of likelihood and consequence) to development on land in proximity to the Tweed Coast.
- To establish if the proposed development or activity is appropriate to be carried out, and the conditions of development consent that should be applied if it is to be carried out, having regard to the coastal hazard lines established in the Tweed Coastline Hazard Definition Study 2001 (as amended).
- To minimise the risk to life and property from coastal hazards associated with development and building on land that is in proximity to the Tweed Coast.
- To maintain public access to public land on the Tweed Coast.

This document requires that a Coastal Risk Management Report is to be submitted for all development on land that is seaward of the 2100 Hazard Line. A Coastal Risk Management Report is to be prepared by suitably qualified coastal engineering and structural engineering consultants and must consider and address the Coastal Risk Management Report Guidelines. The applicant has submitted a Coastal Hazards Report prepared by Cozens Regan Williams Prove Pty Ltd, Consulting Engineers.

In the 2100 hazard area development is permitted on private land subject to design by a professional engineer to accommodate future erosion and potential inundation from increased sea levels. The submitted Coastal Hazards Report suggests that a condition of consent be applied as follows:

“Footings are to be designed to resist scour to RL-0.0 and the superstructure is to be capable of resisting wave attack to RL+6.0. The design is required to ensure the building is stable after scour to RL-0.0. Where doubt exists, the designer may be required to provide calculations on stability under scour conditions.”

Given that this application involves alterations to an existing building through Stages 2 and 3 it is considered that this condition be amended slightly to relate to new footings developed as part of this application which would most likely relate to the carport at Stage 3.

It is considered that the proposed development is acceptable having regard to this Coastal Hazards Development Control Plan as the development work generally relates to alterations to an existing building.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy, given its permissible nature on this site.

Clause 92(b) Applications for demolition

The subject application would include demolition through Stages 2 and 3 relating to the modifications to the existing building on the site. Council's Building Unit have reviewed the application in this regard and included recommended conditions of consent with respect to demolition on the site.

Clause 94 Buildings to be upgraded

The subject application was referred to Council's Building Unit who have raised no objections with respect to the proposed development with respect to clause 94. The following comment is provided in this regard '*Clause 94 considered satisfied as egress from the building complies and no work being proposed to ground floor units so fire rating of floor/ceiling to remain as is.*' The proposed development is considered to be acceptable in this regard.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand.

The subject site is located within the Hastings Point Area identified under the Plan at Clause 3.1.6. The subject site however is not directly impacted upon by the issues identified for that area, though it is noted that the Plan addresses development within the 50 and 100 year hazard line. This is detailed further under the DCP B25 assessment elsewhere in this report.

Under this plan, the subject site is not identified as having any key management actions for the Hastings Point area, as outlined under Figure 3.7, or specific management strategies under Table 3.11. 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. Cudgera Creek is located approximately 160m south of the subject development site, however the provisions of this plan are not considered to be impacted by the subject development.

Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at 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.

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 stormwater drainage services which are available to the proposal within Tweed Coast Road. As such the proposal is considered to be acceptable in this regard.

(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 Rural Fire Service

The subject application was nominated integrated under the Rural Fires Act 1997. As such the application was referred to New South Wales Rural Fire Service.

General Terms of Approval for the proposal have been provided by the Rural Fire Service. These will be included as conditions of consent in the event of approval of the 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 of the Tweed Coast Reserve Trust coastal foreshore to the east of the site. A response has been received from Crown Lands advising of the following:

“The proposed development site adjoins Crown land comprising Lot 7060 DP 1113577 being Reserve 1001008, set aside for Public Recreation and Coastal Environmental Protection. Tweed Shire Council is the appointed manager of the Tweed Coast Reserve Trust that is charged with care, control and management of the reserve. As Trust Manager of the reserve, the impact on the reserve must be assessed independently from Council’s role in approving development applications.

It appears the proposed alterations remain of suitable scale and we recommend retaining the 8m setback from the reserve boundary to minimise impact on the reserve and use of the reserve, including overshadowing of the public land.

We also recommend clear delineation of the boundary between the development site and the reserve. Whilst this does not need to be fenced, obvious boundary lines will minimise any potential incremental creep of residents’ use into the reserve, as well as the likelihood of reserve users encroaching on the residential site.

Please ensure that the development envelope does not encroach and has minimal impact on the adjoining Crown land. The proponent may not:

- *Use the reserve for access during demolition or construction;*
- *Use the reserve as part of the demolition, construction or exclusion zone;*
- *Use the reserve as an asset protection zone;*
- *Remove any vegetation from the adjoining Crown land;*
- *Stockpile materials, equipment or machinery on the adjoining Crown land;*
- *Direct stormwater discharges or eroded soil onto the adjoining Crown land;*
- *Use the adjoining Crown land as an asset protection zone; or*
- *Restrict public use and access of the adjoining Crown land.”*

A separate report has been prepared for the Tweed Coast Reserve Trust meeting which is to take place prior to the full Council meeting in which the impact of the proposal on the reserve would be assessed independently from this Development Application. In this regard the application has been discussed with Council’s Natural Resource Management Unit, and it is considered that the proposed development would be acceptable. It is noted that the proponent has not proposed to undertake any of the above works nor would have any right to undertake development encroaching onto Crown Lands. In any event, 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.

With respect to a clear delineation of site boundary between development site and the foreshore reserve it is considered appropriate than a condition of consent be applied requiring that this boundary be delineated.

The proposed development is considered to be acceptable in this regard, subject to approval of Tweed Coast Reserve Trust.

(e) Public interest

Given the nature of the proposed development, being for subdivision and residential alterations to an existing building development on an appropriately zoned site which is permissible having regard to the applicable planning framework, it is considered that the proposal would be unlikely to impact on the public interest.

OPTIONS:

That Council:

1. Subject to Tweed Coast Reserve Trust approval of this proposed development with respect to impact on public foreshore, approve the development application subject to recommended conditions of consent; or
2. Refuse the development application for specified reasons.

The Council officers recommend Option 1.

CONCLUSION:

The subject application seeks consent for the creation of two Torrens title allotments and alterations to an existing multi-dwelling building over three stages as identified above. The above assessment is considered to demonstrate that the proposal is generally acceptable with respect to the appropriate legislative considerations.

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 approval of the development application is recommended in this instance.

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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25 [PR-CM] Development Application DA13/0098 for a Legalisation of an Existing Farm Structure as a Rural Workers Dwelling at Lot 5 DP 630597 No. 197 Kielys Road, Mooball

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0098 Pt1



Civic Leadership

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
-

SUMMARY OF REPORT:

Council is in receipt of an application for the legalisation of an existing farm structure as a rural workers dwelling at the above address. The subject building covers a total area of 52m² and is single storey in design with a maximum height of 4.2m.

The application includes a State Environmental Planning Policy No. 1 (SEPP No. 1) objection in relation to Clause 18(3) of the Tweed Local Environmental Plan 2000 relating to site area. In this regard, it is referred to Council for determination. This clause requires a 40ha allotment for a rural workers dwelling in the 1(a) rural zone. The subject site has a total area of approximately 5.06ha. Concurrence has been granted by NSW Department of Planning and Infrastructure with respect to this application.

The subject 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 the subject development is recommended for conditional approval.

The subject application has been lodged in response to compliance action undertaken by Council staff in October 2012, following a complaint from a neighbouring property owner. The application has been notified to surrounding properties and two submissions have been received with respect to the Development Application.

RECOMMENDATION:

That Development Application DA13/0098 for legalisation of an existing farm structure as a rural workers dwelling at Lot 5 DP 630597 No. 197 Kielys Road, Mooball 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 1470A (Sheets 1-4) prepared by Parameter Designs and dated 29 November 2012, 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. The approved development shall not result in any clearing of native vegetation without prior approval from the relevant authority.

[GEN0290]

4. The building is to be upgraded as follows within sixty (60) days of the date of this consent:

- a) Provide a mains powered smoke alarm complying with Australian Standard AS3786 to the lounge area.
- b) Provide natural lighting and ventilation to the bedroom in accordance with the Building Code of Australia.
- c) Secure the roof framework of the bathroom building in accordance with standard building practice.
- d) Expose the full perimeter of the ground slab of the building to a depth of 75mm.
- e) Provide sanitary drainage to the bathroom and kitchen in accordance with Australian Standard AS3500.

[GENNS01]

5. The rural workers dwelling shall be constructed in accordance with the BAL 12.5 construction standards pursuant to AS 3959-2009 and Appendix 3 of Planning for Bushfire Protection 2006.

6. In perpetuity the property around the rural workers dwelling for a distance of 20m or to the property boundary whichever is the lesser with exception to the south which is to be 42m is to be maintained as an asset protection zone. These asset protection zones are to be maintained as an Inner Protection Area (IPA) and managed to prevent the spread of a fire towards the building in accordance with the requirements of Standards for Asset Protection Zones (RFS 2005).

7. A 65mm Storz outlet with a ball or gate valve is generally required to the dedicated 10,000 litre water supply with a hardstand area located within 4m of the water tank to accommodate a fire fighting appliance. The water tank must be non-combustible.

The static water supply is to be accessible for the fire fighting personnel and in this regard fire brigade vehicles would need to be able to park within 4m of the water supply outlet. It is generally preferable to ensure that the water storage is located close to the access driveway and adequately marked or identified.

A SWS - Stored Water Supply sign is to be attached to the front gate or in that proximity.

8. Should a gas service be installed the following aspects will require consideration:
- Reticulated or bottled gas installed and maintained in accordance with AS 1596 with metal piping used.
 - Fixed gas cylinders to be kept clear of flammable material and shielded on the hazard side of the installation
 - Gas cylinders close to the dwelling are to have the release valves directed away from the building and at least 2m from flammable material with connections to and from the gas cylinder being of metal.
 - Polymer sheathed flexible gas supply lines to gas meters adjacent to the buildings are not used.
9. Landscaping within the asset protection zone is undertaken in accordance Appendix 5 of Planning for Bushfire Protection 2006 and managed and maintained in perpetuity.
10. It is recommended that the property owner and occupants familiarise themselves with the relevant bushfire preparation and survival information located on the NSW Rural Fire Service website. This website should be accessed periodically to ensure the property owner and occupants are aware of the latest information. The RFS website is www.rfs.nsw.gov.au.

In addition to the requirements of this report it is recommended that a bushfire survival plan be developed and implemented for the subject site. In this regard your attention is drawn to the following documents which will be useful in the preparation of a bushfire survival plan:

- * NSW Rural Fire Service - Bushfire Survival Plan
- * NSW Rural Fire Service - Bushfire Safety-Prepare, Act and Survive
- * NSW Rural Fire Service - Bushfire Survival Plan Factsheet
- * NSW Rural Fire Service - Leaving Early Factsheet
- * NSW Rural Fire Service - Bushfire Preparation Factsheet
- * NSW Rural Fire Service - Farm Fire Wise

[GENNS02]

11. 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.

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

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

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

- (a) **Tweed Road Contribution Plan:**
6.5 Trips @ \$1296 per Trips **\$8424**
(\$1252 base rate + \$44 indexation)
S94 Plan No. 4
Sector11_4
- (b) **Open Space (Casual):**
0.541 ET @ \$543 per ET **\$294**
(\$502 base rate + \$41 indexation)
S94 Plan No. 5
- (c) **Open Space (Structured):**
0.541 ET @ \$622 per ET **\$337**
(\$575 base rate + \$47 indexation)
S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
0.541 ET @ \$838 per ET **\$453**
(\$792 base rate + \$46 indexation)
S94 Plan No. 11
- (e) **Bus Shelters:**
0.541 ET @ \$64 per ET **\$35**
(\$60 base rate + \$4 indexation)
S94 Plan No. 12
- (f) **Eviron Cemetery:**
0.541 ET @ \$123 per ET **\$67**
(\$101 base rate + \$22 indexation)
S94 Plan No. 13
- (g) **Community Facilities (Tweed Coast - North)**
0.541 ET @ \$1389 per ET **\$751**
(\$1305.6 base rate + \$83.4 indexation)
S94 Plan No. 15
- (h) **Extensions to Council Administration Offices
& Technical Support Facilities**
0.541 ET @ \$1860.31 per ET **\$1006.43**
(\$1759.9 base rate + \$100.41 indexation)
S94 Plan No. 18

- (i) **Cycleways:**
 - 0.541 ET @ \$473 per ET \$256
 - (\$447 base rate + \$26 indexation)
 - S94 Plan No. 22
- (j) **Regional Open Space (Casual)**
 - 0.541 ET @ \$1091 per ET \$590
 - (\$1031 base rate + \$60 indexation)
 - S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
 - 0.541 ET @ \$3830 per ET \$2072
 - (\$3619 base rate + \$211 indexation)
 - S94 Plan No. 26

[GENNS03]

12. **The Rural Workers Dwelling shall be occupied by employees of the agricultural enterprise on Lot 5 in DP 630597 only. The Rural Workers Dwelling shall not be separately leased, rented or sold and shall remain as ancillary accommodation for genuine workers of the agricultural enterprise carried out on the subject allotment.**

[GENNS04]

13. **Prior to occupation the applicant is required to:**
- a) **Lodge an application to install an onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a written approval to Install a Waste Treatment Device, prior to the commencement of the installation of the facility.**
 - b) **Install a Waste Treatment Device in accordance with an Approval to Install an On-site Sewage Management System under Section 68 of the Local Government Act 1993.**
 - c) **Obtain approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 from Council.**
14. **A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device and adequately maintained to ensure a safe and suitable drinking water supply, where applicable. The minimum storage tank capacity shall reflect the dry seasonal periods experienced in the locality and shall be in addition to any fire fighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum storage capacity required shall be 15,000L per bedroom with a minimum 20,000L to be provided.**

USE

15. **The rural workers dwelling is to be occupied only by a person engaged in agricultural pursuits on the property in accordance with this consent.**

[USE0425]

REPORT:

Applicant: Mr PJM Brills
Owner: Mr Peter JM Brills & Mrs Eleonora JA Brills-Bindels
Location: Lot 5 DP 630597 No. 197 Kielys Road, Mooball
Zoning: 1(a) Rural
Cost: \$10,000

Background:

Proposed Development

The proposal is for the legalisation an existing 52m² structure with a maximum height of 4.2m as a rural workers dwelling. This structure contains a single bedroom, kitchen/dining area and living area. The bathroom is located adjacent to the main structure.

In support of the need for a rural workers dwelling on this site, the subject application has submitted information in order to establish the genuine need for a rural worker and the capacity of the existing farm to support their employment.

It is stated that a rural worker is required to reside on the site due to the labour intensive tasks which need to be carried out, having regard to the organic practises undertaken on the site. Furthermore, it is stated that the rural workers are generally participants in the Willing Workers On Organic Farms (WWOOF) programme, who are employed but paid through in-kind benefits such as organic farming experience, food and accommodation.

The assessment of the appropriateness of the rural workers dwelling is detailed under the Tweed Local Environmental Plan 2000 (TLEP 2000) Clause 18 assessment in this report.

The application was notified to surrounding properties and Council have received two submissions with respect to the proposal, one from a neighbouring property owner and one from a town planning consultant on behalf of the neighbouring property owner.

The application involves a SEPP No. 1 Objection to Clause 18(3) of the TLEP 2000. The SEPP No. 1 Objection is considered reasonable and is supported in this instance.

Site Details

The subject property is legally described as Lot 5 DP 630597 and more commonly referred to as No. 197 Kielys Road, Mooball. The property has an area of approximately 5.06ha which currently contains a detached dwelling and a number of farm sheds and nursery sheds. The site is irregular in shape with frontage to Kielys Road.

The subject property is zoned 1(a) Rural under the provisions of TLEP 2000.

History

The subject site demonstrates the following development history:

0418/2001CDC- Complying Development Certificate - installation of swimming pool.
Approved – 5 December 2001.

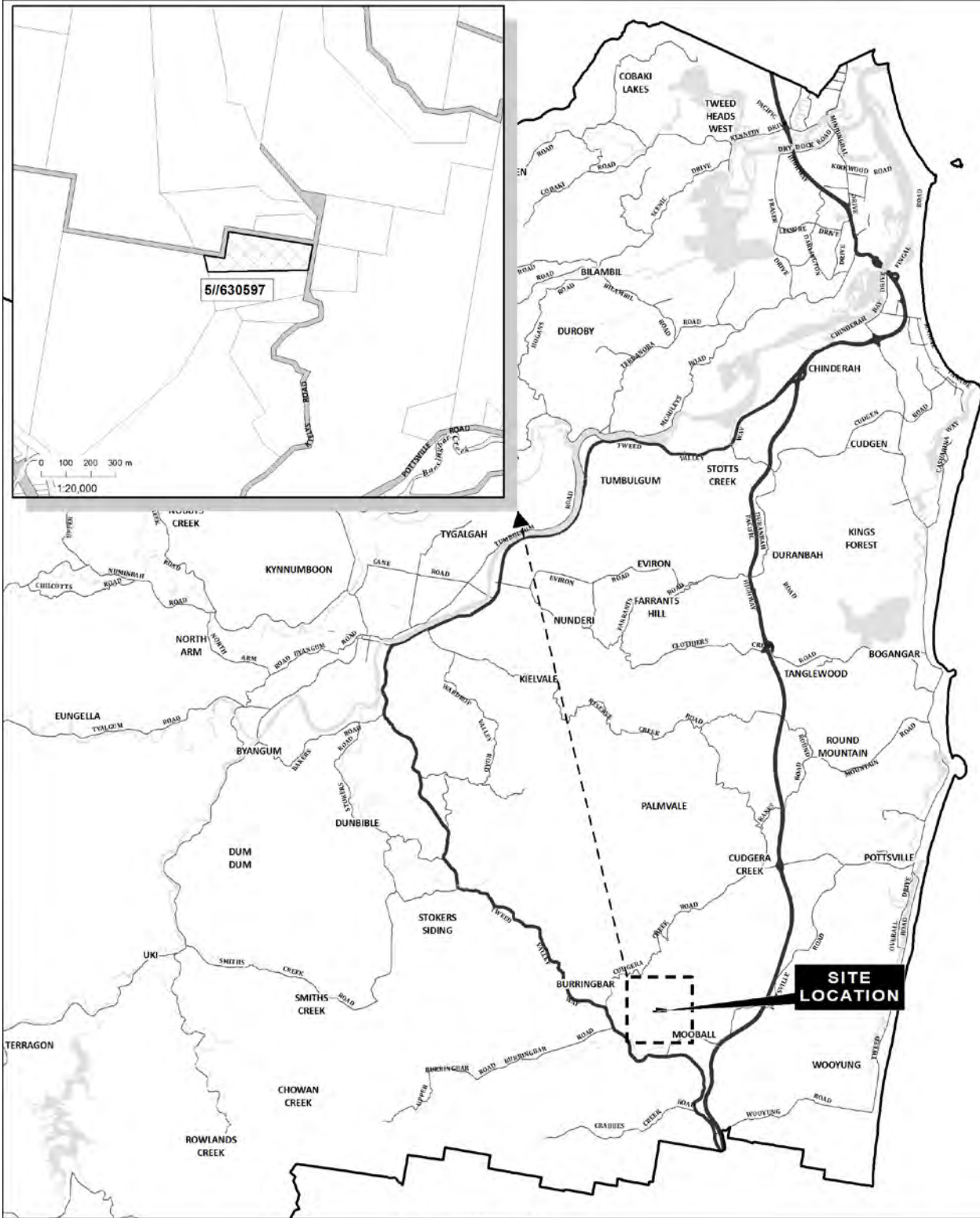
0607/95B- Building Application (Historic) – Dwelling. Approved 14 June 1995.

1740/94B- Building Application (Historic) – Garage. Approved 24 November 1994.

1052/91B- Building Application (Historic) – Garage. Approved 13 September 1991.

Council became aware of the use of the structure as a rural workers dwelling following a complaint made by a neighbouring property owner in approximately October 2012. An investigation was undertaken by Councils compliance officer and the applicant has lodged this development application in response to this action.

SITE DIAGRAM:

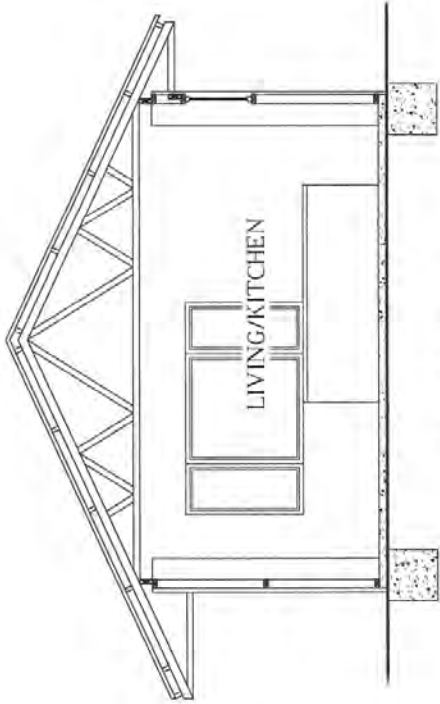
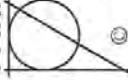


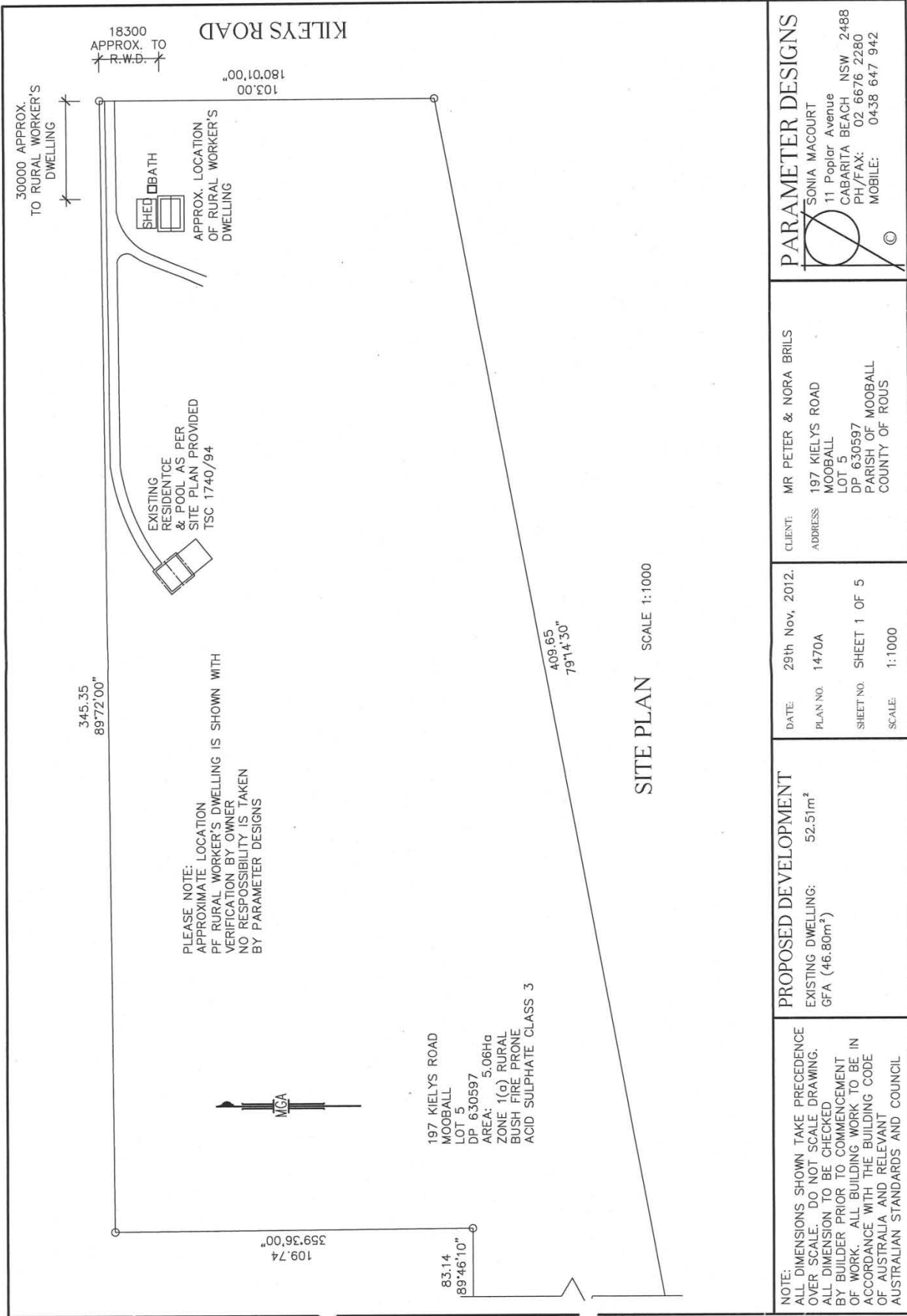
Locality Plan

DA13/0098 - Lot 5 DP 630597
No. 197 Kielys Road, MOOBALL

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 1100. This information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 25 July, 2013 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 1 2 3 4 Km 1:150,000 @ A4 Portrait GDA 94 MGR 56S19 COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Horizontal Datum: Geocentric Datum of Australia 1994 Grid: Map Grid of Australia, Zone 56</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murrumbidgee NSW 2484 PO Box 816 Murrumbidgee NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	<p>TWEED SHIRE COUNCIL</p>
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DEVELOPMENT/ELEVATION PLANS:

 <p style="text-align: center;">SECTION A-A SCALE 1:50</p>	<p style="text-align: center;">ZINCALUME CORRUGATED ROOF SHEETING</p> <p style="text-align: center;">METAL BATTENS @ 900 CTRS.</p> <p style="text-align: center;">HWD TRUSSES @ 900 CTRS.</p> <p style="text-align: center;">HWD BEAM FOR TRUSS SUPPORT</p> <p style="text-align: center;">HWD TIMBER FRAME</p> <p style="text-align: center;">CONCRETE SLAB & PIERS STRUCTURE TO BE CERTIFIED BY STRUCTURAL ENGINEER</p>			
<p>NOTE: ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL</p>	<p>PROPOSED DEVELOPMENT EXISTING DWELLING: 52.51m² GFA (46.80m²)</p>	<p>DATE: 29th Nov, 2012. PLAN NO: 1470A SHEET NO: SHEET 4 OF 5 SCALE: 1:100</p>	<p>CLIENT: MR PETER & NORA BRILS ADDRESS: 197 KIELYS ROAD MOOBALL LOT 5 PARISH OF MOOBALL COUNTY OF ROUS</p>	<p>PARAMETER DESIGNS  SONIA MACCOURT 11 Poplar Avenue CABARITA BEACH NSW 2488 PH/FAX: 02 6876 2280 MOBILE: 04-38 647 942</p>



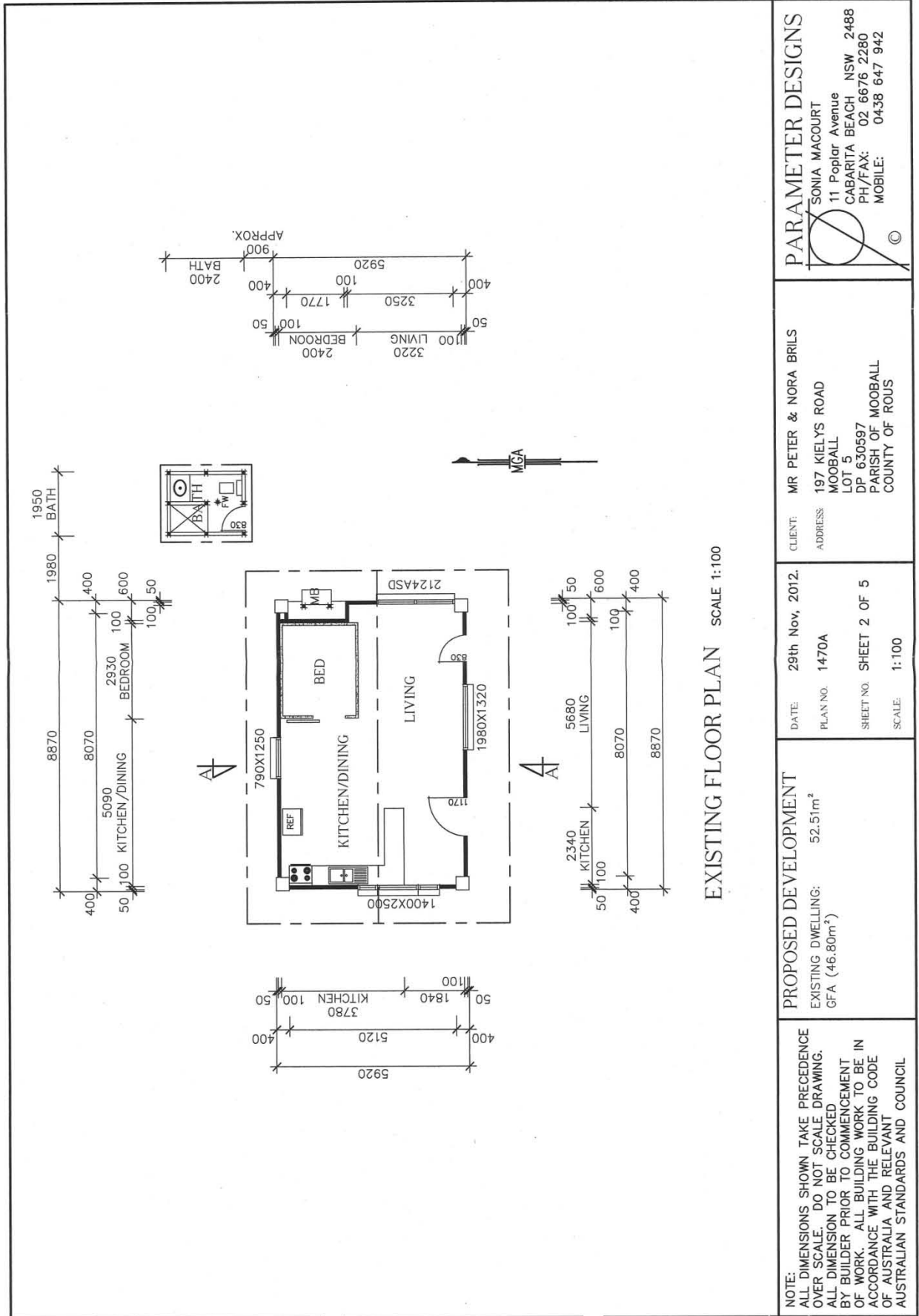
PARAMETER DESIGNS
SONIA MACCOURT
11 Poplar Avenue
CABARITA BEACH NSW 2488
PH/FAX: 02 6676 2280
MOBILE: 0438 647 942

CLIENT: MR PETER & NORA BRILS
ADDRESS: 197 KILEYS ROAD
MOOBALL
LOT 5
DP 630597
PARISH OF MOOBALL
COUNTY OF ROUS

DATE: 29th Nov, 2012.
PLAN NO. 1470A
SHEET NO. SHEET 1 OF 5
SCALE: 1:1000

PROPOSED DEVELOPMENT
EXISTING DWELLING: 52.51m²
GFA (46.80m²)

NOTE:
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ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL



EXISTING FLOOR PLAN SCALE 1:100

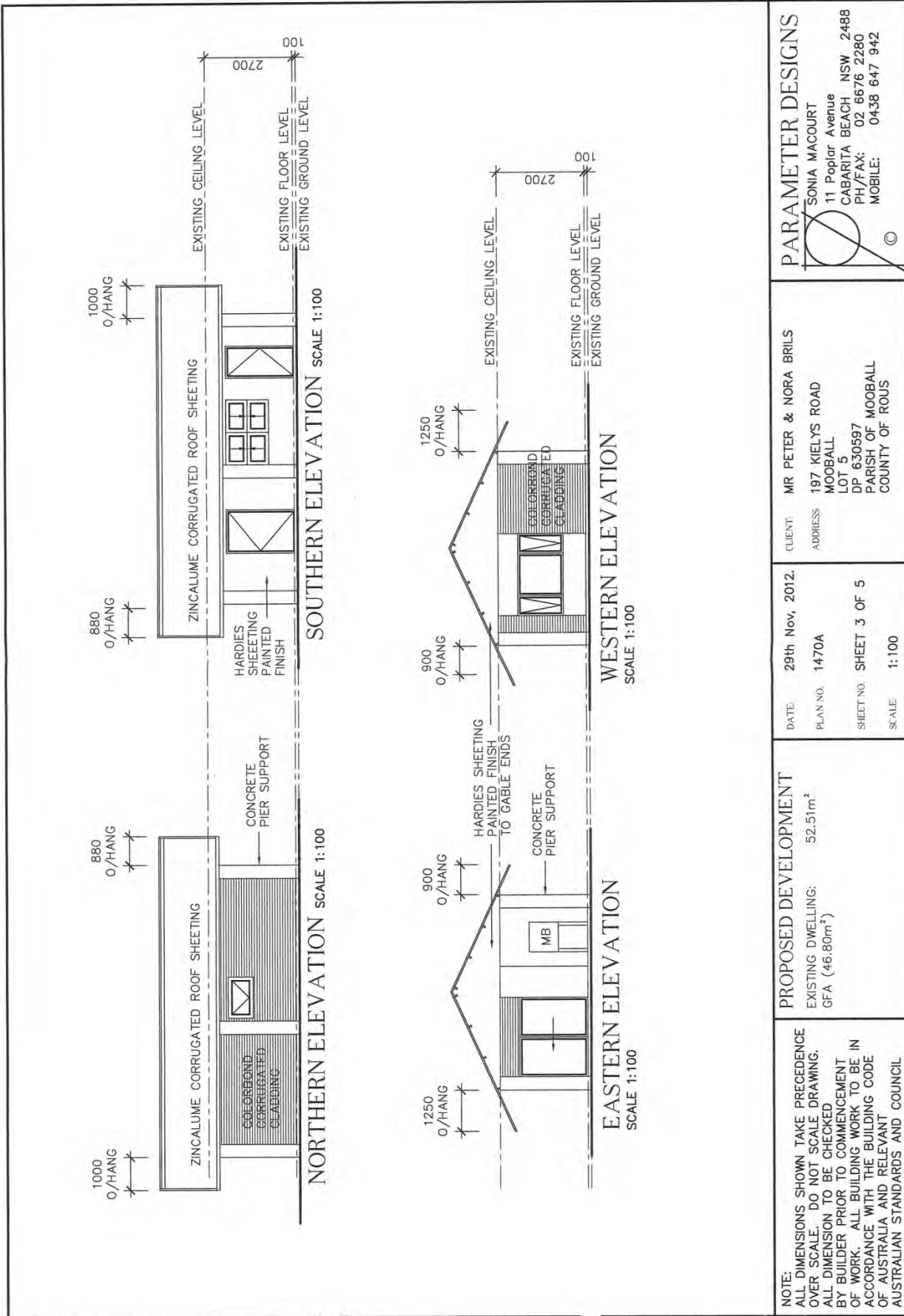
PARAMETER DESIGNS
 SONIA MACCOURT
 11 Poplar Avenue
 CABARITA BEACH NSW 2488
 PH/FAX: 02 6676 2280
 MOBILE: 0438 647 942

CLIENT: MR PETER & NORA BRILS
 ADDRESS: 197 KIELYS ROAD
 MOOBALL
 LOT 5
 DP 630597
 PARISH OF MOOBALL
 COUNTY OF ROUS

DATE: 29th Nov, 2012.
 PLAN NO. 1470A
 SHEET NO. SHEET 2 OF 5
 SCALE: 1:100

PROPOSED DEVELOPMENT
 EXISTING DWELLING: 52.51m²
 GFA (46.80m²)

NOTE:
 ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING.
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PROPOSED DEVELOPMENT
EXISTING DWELLING: 52.51m²
GFA (46.80m²)

DATE: 29th Nov, 2012.
PLAN NO. 1470A
SHEET NO. SHEET 3 OF 5
SCALE 1:100

CLIENT: MR PETER & NORA BRILS
ADDRESS: 197 KIELYS ROAD
MOOBALL
LOT 5
DP 630597
PARISH OF MOOBALL
COUNTY OF ROUS

PARAMETER DESIGNS
SONIA MACCOURT
11 Poplar Avenue
CABARITA BEACH NSW 2488
PH/FAX: 02 6676 2280
MOBILE: 0438 647 942

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 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 subject development application is considered suitably in keeping with the above and is not considered likely to result in a reduction of residential amenity for nearby properties or the shire as a whole.

Clause 5 - Ecologically Sustainable Development

The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

Broadly, the subject proposal is considered consistent with the above criteria, as the rural workers dwelling is not likely to have significant ramifications for ecologically sustainable development given its relatively minor scale.

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.*

In this instance, the subject site is zoned 1(a) Rural, the primary objectives of which are;

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

The subject development is considered consistent with the primary objectives of the site, as a development associated with the agricultural use and rural nature of the site.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the rural workers dwelling development generally complies with the aims and objectives of each.

Due to nature of the proposal, which is considered to be in accordance with the zoning objectives for the area, the development is not considered to result in an unacceptable cumulative impact on the community, locality of catchment of the area of the Tweed as a whole.

Clause 11 - Zone Objectives

The subject site is zoned 1(a) Rural, the primary objectives of which are:

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

The secondary objectives of this zone are:

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

The subject rural workers dwelling is considered to be in accordance with the zone objectives, being associated with and facilitative of the ongoing agricultural use of the land.

Clause 15 - Essential Services

In accordance with Clause 15, the rural workers dwelling must have adequate provision for essential services. Council is satisfied that the dwelling can be appropriately serviced by an approved onsite effluent treatment system. In this regard the applicant was required to submit further information in the form of an 'amended On-site Sewage Management Design Report'. This report has been assessed by Councils Environmental Health Unit who have advised that 'the report appears satisfactory' and have provided recommended conditions of consent with respect to the proposal.

The dwelling would gain its water supply from rain water tank on the property Councils Environmental Health Unit have also provided recommended conditions with respect to this water supply. Telephone and electricity services are indicated as being available to the site.

Clause 16 - Height of Building

The objective of this Clause is 'to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.'

Under this Clause the subject site has a maximum building height of three storeys. The subject development is single storey in design with a maximum height of 4.2 metres. Having regard to this objective, it is considered that the development is appropriate in terms of height at this location.

Clause 17 - Social Impact Assessment

The subject development does not necessitate the preparation of a social impact assessment as it is not considered that the development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed.

Clause 18 – Rural Workers’ Dwelling

This Clause enables the provision of on farm accommodation for rural workers where there is a genuine need for them and it has been demonstrated that the farm can support their employment. Specifically, the objective of the Clause is:

- *to enable the provision of on-farm accommodation for rural workers only where there is a genuine need for them to live on-site and there is a demonstrated capacity of the existing farm to support their employment.*

The submitted application has outlined that the agriculture undertaken on the farm includes the growing, picking, weeding and maintenance of various fruits including finger limes and dragon fruit, as well as the cultivation of grafted finger lime plants.

Information provided states that there are over 950 established fruit trees on the property over an area of 45,000m² including mango, lychee, longan, mandarin, lemons, limes, oranges, dragon fruit, jackfruit, sour sop and sapodelia which require regular inspection, weeding and pest management.

As the farm utilises organic practices it is stated that these tasks are labour intensive and it would not be possible for the site owners to undertake the works by themselves. It is further advised that there are a number of emergency tasks including tending to the operation and malfunction of irrigation equipment and protecting against inclement weather such as hail and frost which require an on-site presence.

The workers on the farm are either paid labour or participants under the Willing Workers on Organic Farms (WWOOF) program. This program provides workers for organic farms, in exchange for ‘in-kind’ payment of accommodation, food and a rural experience in organic, bio-dynamics and permaculture.

In *Griffis and anor v Tweed Shire Council*, Senior Commissioner Moore considered the objective of this clause.

It was noted that in determining a ‘*genuine need*’ to live on-site a facultative meaning of the word *need* was adopted as a synonym for *highly desirable* rather than a more restrictive *requirement* meaning. In this regard, it is considered that a genuine need has been established by the applicants in accordance with Senior Commissioner Moore’s interpretation due to the labour intensive nature of the work carried out on the site.

Senior Commissioner Moore also regarded the element of this objective with respect to a *demonstrated capacity* of the existing farm to support the employment. In *Griffis and anor v Tweed Shire Council* it was determined that the provision of rent-free accommodation and utility services of gas, electricity and telephone without charge as part of a total package of benefits of approximately \$45,000 did not satisfy the Senior Commissioner that this limb of the objective was met. However, it is also noted that in evidence in this case the applicant (Mr Griffis) 'expressly disavowed any notion that of the person undertaking these activities would be an employee of the farm' with a share-farmer relationship instead envisaged.

Senior Commissioner Moore determined that there 'must be an employer/employee relationship between the farming enterprise and the rural worker who is to reside in a rural workers dwelling.'

In the instance of this application, the applicants have identified that the workers on the farm are either paid labour or participants of the WWOOF program, who are paid in-kind through accommodation, food and a rural experience.

The WWOOF program is an established program and the submitted application has included testimony from approximately twenty-four (24) WWOOFers since March 2010 who have been employed on the property.

The applicants have submitted the following information in support:

'We note that the for the purpose of considering labour force statistics, the Australian Bureau of Statistics applies the internationally accepted concepts of employment as follows:

"According to the international concepts, employed persons comprise those above the age specified for measuring the economically active population, in paid employment or self-employment, during a specified reference period.

Paid employment includes persons who performed some work for wages or salary, in cash or in kind, and persons temporarily absent from a paid employment job but who retained a formal attachment to that job."

Since the workers on the farm are paid either in cash or in kind for work performed, it is considered that the use of the rural workers' dwelling meets the objective of the Clause.'

Having regard to the above, it is considered that the rural workers on the farm, though perhaps not in a conventional sense, do operate in an employer/employee relationship insofar as whilst on the property, they are employees of the applicants, with payment in-kind in the form of accommodation, food and the experience and knowledge gained from working on the farm.

A register of rural workers employed on the site dating back to March 2010 has been submitted in support of demonstrating that there is a capacity on the site for a rural worker in this regard. The objective of this clause is considered to be met in this instance.

Clause 18 further specifies that consent may be granted for the erection of a rural workers' dwelling only if Council is satisfied that:

- a. Its erection will not impair the use of the land for agriculture, and
- b. The existing agricultural operation genuinely necessitates that rural workers reside on the farm and the operation has the economic capacity to support them, and
- c. The resident of the rural workers dwelling is to be employed on that farm, and
- d. The erection of a rural workers dwelling would not result in there being any more than one rural workers dwelling on the farm, and
- e. The dwelling will not be built on land classified as Class 1 or 2 agricultural land by the Department of Agriculture.

This application does not relate to the erection of a rural workers dwelling as specified above but rather the legalisation of an existing building as a rural workers dwelling. As to whether this clause can therefore utilise clause 18, both *Pancho Properties Pty Ltd v Wingecarribee Shire Council (1999)* and *Griffis and anor v Tweed Shire Council* has provided relevant information.

In *Pancho Properties Pty Ltd v Wingecarribee Shire Council*, Justice Talbot considered that the subclauses only apply where erection of a rural workers dwelling is proposed. They have no direct application to a change of use that does not necessitate erection of a building.

However Senior Commissioner Moore, in *Griffis and anor v Tweed Shire Council*, indicates that clause 18 is to be regarded as being of a beneficial and facultative nature and considers that Justice Talbot's consideration does not raise a fatal bar to the proposal as there is no reasoned analysis to support this element of Talbot's decision.

Having regard to this, it is considered reasonable to assess the application under Clause 18.

- a. *Its erection will not impair the use of the land for agriculture, and*

The development, as outlined above, does not relate to the erection of rural workers dwelling, however it is considered appropriate to assess the application under this provision, taking into account Senior Commissioner Moore's reasoning in *Griffis and anor v Tweed Shire Council*.

In this regard it is noted that the rural workers dwelling covers a relatively minor proportion of the site (51m²) which is adjacent to ancillary shed structures on the site. It is considered reasonable to assess the proposal as not impairing the use of the land for agriculture to any notable degree, having regard to the total area required to provide the dwelling.

- b. *The existing agricultural operation genuinely necessitates that rural workers reside on the farm and the operation has the economic capacity to support them, and*

In *Griffis and anor v Tweed Shire Council* it was determined that this element of the clause essentially posed the same tests as the objective of the clause. The objective of the clause has been discussed above, with it being determined that the subject development meets the objective. As such, this provision of clause 18 is considered to be satisfied, with a genuine need and economic capacity being demonstrated in this instance.

- c. *The resident of the rural workers dwelling is to be employed on that farm, and*

As discussed above, the resident of the rural workers dwelling will typically be a participant in the Willing Workers on Organic Farms (WWOOF) program. Whilst this does not entail employment in the traditional sense, with the workers paid in-kind through accommodation, food and a rural experience. However, as detailed above, there is considered to be an employer/ employee relationship between the applicants and WWOOFer and as such this provision is considered to be satisfied.

- d. *The erection of a rural workers dwelling would not result in there being any more than one rural workers dwelling on the farm, and*

The proposed rural workers dwelling would be the only development of its type located on the subject site. Therefore this is considered to be satisfied.

- e. *The dwelling will not be built on land classified as Class 1 or 2 agricultural land by the Department of Agriculture.*

The subject location of the rural workers dwelling is not identified as either Class 1 or 2 agricultural land.

Subclause (3) of this clause states that Consent must not be granted to the erection of a rural workers dwelling on an allotment of land having an area of less than 40 hectares in Zone 1(a). The subject site to which the development is located is zoned 1(a) with an approximate land area of 5.06ha.

In this regard a SEPP No. 1 Objection has been submitted as part of this application with respect to this development control. This is detailed further later in this report, with it considered that a variation to this control is acceptable on this application.

The proposed development is considered to comply with the objectives of the Clause.

Clause 35 - Acid Sulfate Soils

The subject application relates to the legalisation of an existing structure as a rural workers dwelling and as such it is not considered that the proposal impacts on acid sulfate soils.

In any event, the subject site is identified as having Class 5 Acid Sulfate Soils in accordance with this clause. The subject site is located more than 500m from any land with class 1, 2, 3 or 4 Acid Sulfate Soils and it is not considered that the proposal would be likely to lower the watertable below 1 metre AHD in adjoining Class 1, 2, 3 or 4 land. The proposed development is considered to be acceptable having regard to the provisions of this clause.

Other Specific Clauses

Clause 39A – Bushfire protection

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 subject site is mapped as being partially bushfire prone with both vegetation categories 1 and 2, as well as the 30m and 100m vegetation buffer evidenced on the site. The location of the subject development is however located outside of the bushfire prone area.

The applicant has submitted a Bushfire Threat Report, prepared by a BPAD- A Certified Practitioner. This report makes recommendations regarding construction standards of the dwelling, maintenance of asset protection zones, water connections, gas safety, landscaping and bushfire preparation plans.

The subject application was forwarded to New South Wales Rural Fire Service (NSWRFS) for comment, who have provided the following comment:

"It is noted that neither the proposed rural workers dwelling nor the related property access are located within the area mapped as bush fire prone land. In addition a Certificate has been issued by "a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements". Clause 79BA(1)(b) of the Environmental Planning and Assessment Act, 1979 provides that Council may rely upon such a Certificate."

In this regard it is considered that the report submitted by the applicants bushfire consultant is accepted for bushfire protection measures and the recommendations/conditions contained therein are to be attached to any consent. The proposal is considered to be acceptable with respect to the objective of this clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

In this instance, the subject rural workers dwelling is assessed as meeting the provisions prescribed by the Tweed Local Environmental Plan 2000, including clauses relating to zone objectives and the specific rural workers dwelling clause. The site is not identified as being Regionally or State Significant Farmland.

The subject development application relates to the conversion of a shed to a rural workers dwelling in order to service the agricultural operations on the subject site. The proposed development is therefore not considered to have an adverse impact on this sites agricultural capability.

Based on the above, it is considered that the proposal will not have an adverse impact on the use of adjoining or adjacent agricultural land and will not cause a loss of prime crop or pasture land. The subject application is consistent with Clause 12 of the NCREP.

Clause 43: Development control - residential development

Clause 43 of the NCREP states that council shall not grant consent to the development for residential purposes unless:

- (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*

The proposed dwelling density on the site is considered to be acceptable having regard to the above criteria. A SEPP No. 1 objection has been submitted with respect to the allotment not meeting the required 40ha minimum which is supported as outlined elsewhere in this report.

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

Road access to the rural workers dwelling are considered to be acceptable.

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

Not applicable to the subject application.

- (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*

Due to the remote location of the subject site, it is noted that there is no public transport available to the site. However it is not considered that the road network to the subject dwelling is prejudicial to the provision of public transport.

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

The subject application relates to the legalisation of an existing structure as a rural workers dwelling and as such it is not considered that the proposal would result in detrimental impacts with respect to erosion or sediment control.

The proposed development is considered to be in accordance with the above provisions and does not contravene (a) –(e) above. The proposal is considered to be consistent with the relevant provisions of Clause 43 of the North Coast Regional Plan 1988.

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:

TWEED LOCAL ENVIRONMENTAL PLAN 2000- CLAUSE 18

18 Rural workers' dwellings

(1) Objective

- to enable the provision of on-farm accommodation for rural workers only where there is a genuine need for them to live on-site and there is a demonstrated capacity of the existing farm to support their employment.

(2) Consent may be granted to the erection of a rural worker's dwelling only if the consent authority is satisfied that:

- (a) its erection will not impair the use of the land for agriculture, and
-

- (b) the existing agricultural operation genuinely necessitates that rural workers reside on the farm and the operation has the economic capacity to support them, and
 - (c) the resident of the rural worker's dwelling is to be employed on that farm, and
 - (d) the erection of a rural worker's dwelling would not result in there being any more than one rural worker's dwelling on the farm, and
 - (e) the dwelling will not be built on land classified as Class 1 or 2 agricultural land by the Department of Agriculture.
- (3) Consent must not be granted to the erection of a rural worker's dwelling on an allotment of land having an area of less than 40 hectares in Zone 1 (a), 1 (b2) or 7 (d) or an allotment of less than 10 hectares in Zone 1 (b2).**
- (4) For the purposes of subclause (3), land is taken to be in Zone 1 (b2) if it is shown on the zone map by the marking "1 (b2)".

The proposed development is for consent of a rural workers dwelling on a site with a total area of 5.06ha. As such a relaxation of the above control is required.

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 has stated that that the objectives of the standard are achieved notwithstanding noncompliance with the standard for the following reasons;

Clause 18(1) of the Local Environmental Plan provides the following objectives in relation to Rural Workers' Dwellings, which is directly associated with development standard in question.

Clause 18 – Rural Workers' Dwellings

This clause in the following terms:

"(1) Objective

- *to enable the provision of on-farm accommodation for rural workers only where there is a genuine need for them to live on-site and there is a demonstrated capacity of the existing farm to support their employment."*

Compliance with the objective can be determined by providing positive responses to the following questions.

- *Is there genuine need for on-site accommodation of rural workers on the property?*

and

- *Does the farm have the capacity to support the employment of a rural worker?*

Each of these questions is addressed below.

Is there genuine need for on-site accommodation of rural workers on the property?

It is not possible to operate the existing agricultural use on the property without the use of rural workers. Due to the intensive nature of the work, the relatively low rate of pay, the remoteness of the property and the need to source workers from beyond the immediate locality, off site accommodation is not feasible. In this instance there is a genuine need for on site accommodation of rural workers.

Does the farm have the capacity to support the employment of a rural worker?

The agricultural activities on the property have supported the employment of rural workers for the past 2 years. This is evidenced by the records held by the owner of the property which details the workers who have been provided with either cash or in-kind payment for work undertaken on the property over a 2 year period. We note that for the purpose of considering labour force statistics the Australian Bureau of Statistics applies internationally accepted concepts of employment as follows:

“According to the international concepts, employed persons comprise those above the age specified for measuring the economically active population, in paid employment or selfemployment, during a specified reference period.

Paid employment includes persons who performed some work for wages or salary, in cash or in kind, and persons temporarily absent from a paid employment job but who retained a formal attachment to that job.”

Since the workers on the farm are paid either in cash or in kind for work performed, it is considered that the use of the rural workers’ dwelling meets the objective of the Clause.

It is therefore submitted that notwithstanding the size of the rural property being less than the 40ha development standard, the proposed agricultural use on the property generates a need for the on site accommodation of rural workers and has been demonstrated to have sustained the employment of the rural workers over time.

Accordingly the proposed development is consistent with the objectives for rural workers’ dwellings in the Rural 1(a) zone as set out in Clause 18(1) of Tweed LEP 2000.

*For the above stated reasons we submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard. Following from the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827, we conclude that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

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:

The proposed development is considered to be 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 applicant has submitted the following with respect to this;

“Compliance with the 40 hectare development standard would preclude the necessary provision of rural worker accommodation on the site. The operation of the property has a demonstrated capacity to provide for the sustained employment of rural workers to undertake labour intensive duties associated with the commercial agricultural use undertaken on the property, involving organic practices. We submit that the demand for the rural workers’ dwelling is not related to the size of the property but rather the nature of the agricultural use and work undertaken thereon.

The proposed subdivision (this is considered to be a typographical error on behalf of the applicant) will not create any additional dwelling entitlements and will not involve any site works or alterations to the existing site conditions.

To add weight to the case to vary the 40 hectare minimum lot size development standard, it is noted that Draft LEP 2012, which has been exhibited, does not include a 40 hectare minimum lot size development standard for rural workers’ dwellings. The proposed use fully complies with the provisions of Draft Tweed LEP 2012. In this case, the proposed development would not hinder attainment of the EP&A Act’s object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

The proposed development is not considered to affect the proper management or conservation of natural resources. The rural workers dwelling is located at a developed section of the property, adjacent to farm sheds and would have a minimal impact in terms of reducing the agricultural viability of the farm due to its scale. The proposed development is considered to reflect an orderly and economic use of the land and 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 non compliance will not raise any matters of significance for State or regional planning, noting that the Department of Planning & Infrastructure have issued concurrence for the proposal. Furthermore, it is considered that there is no public benefit to maintaining this planning control in this particular instance.

With regard to the justification provided by the applicant above it is considered that the SEPP No. 1 objection in relation to clause 18(3) of the TLEP 2000 is acceptable in this instance.

SEPP No. 55 - Remediation of Land

The applicant has addressed SEPP 55 through the submitted application. In addition to this a statutory declaration has been received from a neighbouring resident as part of further information submitted by the applicant in response to a request for further information. The subject application has been reviewed in terms of contamination by Councils Environmental Health Unit who have advised that they have no objections subject to recommended conditions of consent. The proposed development is considered to be acceptable having regard to SEPP 55.

SEPP (Rural Lands) 2008

The aims of this SEPP are as follows:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,
- (c) to implement measures designed to reduce land use conflicts,
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

Clause 10(3) specifies the following matters to be considered in determining development applications for rural subdivisions or rural dwellings:

- (a) *the existing uses and approved uses of land in the vicinity of the development;*

The rural workers dwelling is, by its nature determined under clause 18, considered to be a consistent land use and associated with the existing agricultural use of the site.

(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,

The proposal is not considered to have a significant impact on such land use given the rural workers dwelling area forms a small percentage of the entire farm operation.

(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),

Given the proposal is for a rural workers dwelling associated with the existing farm, it is not considered to be incompatible with the land uses mentioned in (a) or (b) above.

(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,

The subject site is not located adjacent to a rural/residential zone and Clause 10(3)(d) is therefore considered satisfied.

(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).

Not applicable. No such measures have been proposed by the applicant.

The proposal does not reduce the agricultural viability of the subject site or surrounding properties and is considered acceptable when assessed against the provisions of this SEPP.

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

Draft Tweed Local Environmental Plan 2012

The Draft Tweed Local Environmental Plan 2012 would apply to the development 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, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,

- (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
- (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
- (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
- (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its permissibility in the subject zone and compliance with the objectives of this zone.

1.4 Definitions

Under the draft LEP, the proposed development would be defined as a rural workers dwelling which is included as a type of residential accommodation. Please see definitions below:

rural worker's dwelling means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.

Note. Rural workers' dwellings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,

- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

Part 2 Permitted or prohibited development

2.1 Land use zones

The subject site is zoned as RU2 Rural Landscape under the provisions of this plan.

2.3 Zone objectives and Land Use Table

The Draft TLEP 2012 zones the development area as RU2 - Rural Landscape. The objectives of the RU2 - Rural Landscape zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.

In this zone, a rural workers dwelling is permissible with consent. The proposed development is considered to be consistent with the objectives of the zone, through facilitating the carrying out of intensive labour required as part of the primary industry production on the site.

Part 7 Additional Local Provisions

7.2 Erection of rural workers' dwellings

The objective of this clause is to ensure the provision of adequate accommodation for employees of existing agricultural or rural industries and this clause applies to the subject development site, being located in the RU2 Rural Landscape Zone.

Development consent must not be granted to the erection of a rural worker's dwelling on land to which this clause applies, unless the consent authority is satisfied that:

- (a) *the development will be on the same lot as an existing lawfully erected dwelling house, and*

Council records indicate that under 0607/95B a building application for a dwelling was approved on 14 June 1995. As such it is considered that the existing dwelling meets this requirement.

- (b) *the development will not impair the use of the land for agricultural or rural industries, and*

The subject rural workers dwelling is considered to comprise of a small area of land and in this regard would not impair the use of the land for agricultural purposes to any significant degree.

- (c) *the agricultural or rural industry being carried out on the land has a demonstrated economic capacity to support the ongoing employment of rural workers, and*

As outlined elsewhere in this report, the Rural Workers Dwelling is to be utilised by participants in the WWOOFer organisation who are not paid financially. As such the agriculture work carried out on the farm is considered to have the economic capacity to support the ongoing employment of these rural workers.

- (d) *the development is necessary considering the nature of the agricultural or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.*

The submitted application is considered to satisfactorily demonstrate that due to the labour intensive operations to be carried out on the farm in a remote location, the development of a rural workers dwelling is considered necessary in this instance.

Having regard to the information above, the subject development application is considered to be appropriate when assessed against the provisions of the Draft Tweed Shire LEP 2012.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

This plan specifies under Table 4.9b, item A14 that a rural workers dwelling requires the provision of one (1) resident and visitor parking space. The submitted application indicates that there is an area adjacent to the dwelling for car parking and ample site area for the parking of other vehicles.

Having regard to the area of the site, it is considered that there is adequate space in close proximity to the rural workers dwelling to allow the provision of a car parking space as prescribed by this DCP.

The rural workers dwelling is to utilise the established site entrance for the primary dwelling on the site and the farm operation. This is considered to be acceptable.

As such, the proposal is considered to be acceptable having regard to this DCP.

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

Clause 92(a) Government Coastal Policy

The subject site is not located within the Government Coastal Policy area.

Clause 92(b) Applications for demolition

The subject application does not involve any demolition works.

Clause 93 Fire Safety Considerations

The subject application has been referred to Council's Building Unit for comment, who have advised that they have no objections to the proposal subject to appropriate conditions of consent.

Clause 94 Buildings to be upgraded

The subject application has been referred to Council's Building Unit for comment, who have advised that they have no objections to the proposal subject to appropriate conditions of consent.

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

Tweed Shire Coastline Management Plan 2005

The subject development site is located approximately 7km from the Tweed coastline. In this regard the proposed development is not considered to contravene the provisions of this management plan.

Tweed Coast Estuaries Management Plan 2004

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

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

The subject site is not located within the Cobaki or Terranorra Broadwater (within the Tweed Estuary), with this Plan therefore not applicable to the subject development.

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

Context and Setting

The proposal is considered to be consistent with the primary agricultural use of the site, by virtue of providing a residence for a required on-site farm worker. The proposal is considered suitable to the subject site and is unlikely to result in any significant adverse impacts to the surrounding natural and built environment or result in adverse social or economic impacts. As such the proposal is not considered to conflict with any of the surrounding land uses.

- (c) **Suitability of the site for the development**

Effluent Disposal

The submitted application has indicated that an OSSM system is to service effluent from the rural workers dwelling. This has been reviewed by Councils Environmental Health Unit who requested an amended onsite sewerage management design report which demonstrated that the proposed sewage management system will provide adequate treatment and disposal for wastewater generated by future occupants of the dwelling.

This has been submitted and is accepted by Councils Environmental Health Unit who have provided recommended conditions of consent in this regard.

The proposed Rural Workers' Dwelling is considered not to create any significant adverse impacts on the natural or built environments. The proposal is considered appropriate in terms of context of the surrounding land uses, and the agricultural use of the site.

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

Public submissions

The subject application was notified to surrounding properties for a period of fourteen days on Planning officer recommendation. During this time Council received two submissions with respect to the proposed development.

The first of these was from the owner of an adjoining allotment who raised concerns with respect to errors in drawn up plans and sewerage outflow, but was having trouble in accessing the application online and requested that the PDF's be forwarded directly to him in order to provide a more detailed submission.

The second submission was from a town planning consultant who has advised that they have been commissioned by the owner of an adjoining land parcel who wishes to formally object to this Development Application.

These submissions are detailed and assessed in greater detail below:

Submission No.1

Owner of adjoining land parcel (Lot 4 DP 612571)

This objector states that they have a number of concerns regarding this application, including:

'errors in the drawn-up plans and practical issues related to the sewerage outflow, among other things.'

Council Officer Assessment

The submitted plans and particulars associated with this application are considered to be an accurate representation of the actual development on the ground, as evidenced on site inspection undertaken on 4 April 2013.

As outlined elsewhere in this report, the applicant has submitted a On-site Sewage Management Design Report at the request of Council's Environmental Health Unit, who have raised no concerns with respect to this. This is considered to satisfactorily address this issue.

Submission No. 2

Chris Lonergan- Town Planner

This submission states that it has been commissioned on behalf of the adjacent property owner. The submission itself does not identify which adjacent property owner, however, separate correspondence from the owner of adjoining land parcel (Lot 4 DP 612571) demonstrates that it was prepared on their behalf.

The detailed submission raises the following issues which are assessed below:

- *Proposal will impact on amenity of adjoining dwelling and represents a poor design*

The submission notes that the subject development has a significant impact on the rural amenity of the dwelling on Lot 4 DP612571.

Applicant's response

The applicant's agent has provided advice which states that the subject development consists of a relatively small 52m² structure and is spatially separated from surrounding dwellings and screened from same by landscaping. With respect to the design of the proposal it is stated that the proposal is of a simple design.

Council assessment

The rural workers dwelling is located approximately 65m from the nearest dwelling and approximately 100m from the dwelling belonging to the objector on this application. The subject area is characterised by a number of rural properties which are under the 40ha minimum lot size and as such the spatial separation between residences in this area is smaller than might normally be expected in land zoned 1(a) Rural. In any event the separation distance provided is considered to be sufficient to protect rural amenity and there is considered to be adequate mature screening between both structures.

The design of the structure is considered to be acceptable from an architectural perspective.

The proposal is considered to be acceptable in this regard.

- *Development is inconsistent with objectives of the zone*

The submission states that the subject development does not protect rural character and amenity and is therefore not in accordance with the objectives of the zone. It is further stated that the proposal would have a cumulative impact in terms of settlement pattern in Tweed Shire whereby all rural properties could apply for rural workers dwelling where workers are paid in kind.

Applicant's response

The applicant has advised that the rural workers dwelling is subject to appropriate controls limiting it to use by rural workers only and cannot be subdivided from the existing landholding. It is further noted that a rural workers dwelling is permissible with consent on the subject site.

Council assessment

The above report has assessed the subject application with respect to the 1(a) zone and it has been determined that the proposal is consistent with the zone objectives. Future applications would be assessed and determined on their own merits and as noted by the applicant, a rural workers dwelling is a permissible use at this location. The proposal is considered to be acceptable in this regard.

- *Proposal inconsistent with strict planning controls which restrict RWD to 40ha sites.*

Applicant's response

The applicant has advised that the submitted application was supported by a SEPP 1 Objection in this regard. It is also noted that the Draft Tweed LEP 2012 does not contain the provisions with respect to a minimum 40ha site.

Council assessment

As outlined above, the submitted application has been supported by a SEPP 1 objection which is considered to be reasonable and is supported by Council officer. Concurrence has also been provided by NSW Planning & Infrastructure and the subject development is considered to be acceptable in this regard.

- *Accepting payment in kind as employment sets a precedent for this type of development all over the shire*

Applicant's response

The applicant has reiterated that they believe that employment is provided on the site in accordance with the definition provided from the Australia Bureau of Statistics.

Council assessment

Whilst the employment conditions on the subject site may not be conventional it is considered that an employer/employee relationship has been demonstrated in the submitted application. There is also considered to be a history of this employment on the site dating back to 2010 which both establishes a demonstrated need and an ability for the site to support the rural worker. In this way, the proposal is considered to be acceptable.

- *SEPP 1 Objection not well founded.*

The submission states that the subject development is not consistent with the SEPP objectives or the principles established in caselaw for SEPP 1 Objection. In particular it is raised that the development will result in a high density of residential development on the site, the built form of the rural workers dwelling is not supported,

Applicant's response

The applicant has advised that the subject development is in accordance with the zone objectives and would facilitate the accommodation of rural workers which is necessary for the proper and efficient operation of the agricultural enterprise on the site.

Council assessment

The SEPP 1 Objection assessment is detailed elsewhere in this report. It has been recommended by Council Officer that this Objection is supported and the 40ha development standard not be enforced in this instance. It is also noted that NSW Planning & Infrastructure have provided concurrence in this regard. The SEPP 1 Objection is considered to be well founded.

- *Issues raised with respect to the suitability of the site, in particular with respect to visual impact, settlement density, landuse compatibility with the rural amenity and character of the area, and its environmental impact.*

Applicant's response

The applicant has advised throughout their response that the proposal is considered to be an acceptable landuse with minimal impacts in terms of rural amenity in the subject area. It is also advised that the proposal is a permissible use and is necessary for the operation of the agricultural enterprise on the subject site.

Council assessment

The proposed development is considered to be acceptable in terms of scale and represent an acceptable development on the site in this regard. Furthermore, it is noted that the effluent disposal provisions are considered appropriate. The subject development is considered to be acceptable with respect to the above matters.

- *Rural Workers Dwelling not in accordance with public interest under 79c of the Environmental Planning and Assessment Act. It is further stated that the proposal is inconsistent with the character of the area in terms of scale, design, density, and lack of consideration for the precautionary principle.*

Applicant's response

The applicant has advised that they have outlined how the application is in accordance with the relevant planning controls applicable to the subject development. It is also advised that it is ultimately the role of the consent authority to determine if the proposal is acceptable in this regard.

Council assessment

As outlined elsewhere in this report, the proposed development is considered to be acceptable with respect to the applicable planning controls as outlined in the assessment undertaken.

- *Effluent disposal*

It is advised that the current septic system is not considered to be acceptable and the proposed effluent disposal areas close to boundaries is not acceptable and is likely to result in adverse impacts were the system to fail or during high rainfall events.

Applicant's response

The requisite setbacks have been provided on the site whilst supporting information with respect to the On-site sewerage system has been provided as requested through a request for further information from Council.

Council assessment

The effluent disposal provisions for the rural workers dwelling have been reviewed by Councils Environmental Health Unit who have advised that the proposal appears to be satisfactory in this regard and has provided recommended conditions of consent. The proposal is considered to be acceptable with respect to effluent disposal.

In conclusion it is considered that the subject development is generally acceptable and in accordance with the relevant legislative framework. The issues raised in these submissions are not considered to warrant refusal of the application.

Public Authority Submissions

New South Wales Rural Fire Service (NSW RFS)

As the subject site is partially bushfire prone the subject application was referred to New South Wales Rural Fire Service for comment as a Section 79BA referral.

A response was received advising that that Council may rely upon a Certificate that has been issued by “a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements”. The submitted application contains a bushfire assessment report prepared by a BPAD accredited bushfire consultant. The proposal is considered to be acceptable with respect to bushfire on the site.

New South Wales Department of Planning & Infrastructure

The subject application required the concurrence of NSW Department of Planning to vary the 40 hectare development standard for the 1(a) Rural zone contained in clause 18(3) of Councils Tweed Local Environmental Plan 2000, to permit a rural workers dwelling on the subject allotment.

A response has been received from NSW Planning & Infrastructure advising that *‘concurrence was granted in this instance because the application is considered to be consistent with the intent of the Rural Workers Dwellings provisions of the Tweed LEP and approval of the application does not raise issues of State or regional significance.’*

(e) Public interest

Given the nature of the development, being for a rural workers dwelling on an appropriately zoned site which has been assessed as being in accordance with the relevant legislative documents, it is considered that the proposal is not considered to result in a significant negative impact on the public interest.

OPTIONS:

1. Approve the development application; or
2. Refuse the development application for specified reasons.

Council officers have recommended Option 1.

CONCLUSION:

The subject application seeks consent for a rural workers dwelling which is permissible on the subject 1(a) Rural zone.

It is considered that sufficient justification has been provided to support the SEPP No. 1 Objection made in relation to minimum lot size for a rural workers dwelling whilst it is also considered that sufficient justification has been provided with respect to the proposal complying with Clause 18 of the LEP. Concurrence for the development has been granted by NSW Planning & Infrastructure.

It is therefore recommended that this application be approved subject to appropriate conditions of consent.

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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26 [PR-CM] Development Application DA13/0212 for a Change of Use of Existing Building to Car Repair Station at Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0212 Pt1



Civic Leadership

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
-

SUMMARY OF REPORT:

This application proposes a change of use of an existing industrial building (previously used for the warehousing/wholesaling of auto spare parts) to a car repair station. Proposed works would create an office and reception area and disabled toilet.

Three work bays are proposed within the building itself. The development would include four staff, with the development operating from 8.00am to 5.30pm Monday to Friday and 8.00am to 12.30pm Saturday.

The site is currently zoned 3(c) General Business and the development would be defined as a 'car repair station' under the current Tweed Local Environmental Plan 2000. Whilst the proposed car repair station could be considered as permissible under the 3(c) zone, it is prohibited under the proposed B4 Mixed Use zone of the Draft Tweed Local Environmental Plan 2012. In addition, the proposal is not considered to be consistent with the objectives of the B4 Mixed Use zone under the draft plan.

There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publicly exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

Following an earlier public exhibition, Council at its meeting of 31 May 2013 resolved to adopt the exhibited Draft Tweed LEP 2012, subject to certain changes. The modified draft LEP has been referred to the Department of Planning and Infrastructure, and gazettal of the plan is expected within a number of months.

On that basis, it is the officer's view that Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and as a prohibited use, should therefore be refused.

The development application has been referred to Council to determine given the current legal status which does not preclude Council from granting consent to the Development Application.

It should be noted that approval of the application would result in Existing Use Rights being relied upon once the Draft LEP 2012 is gazetted, which is not considered to be good planning practice.

RECOMMENDATION:

That Development Application DA13/0212 for a change of use of existing building to car repair station at Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South be refused for the following reasons:

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – *the provisions of any Draft Environmental Planning Instruments* in that the development is prohibited within the B4 Mixed Use zone.**
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – *the provisions of any Draft Environmental Planning Instruments* in that the development is inconsistent with the objectives of the B4 Mixed Use zone.**
- 3. The development does satisfy the provisions of the Tweed City Centre DCP (DCP B2), in that the development is not consistent with the future character of the Southern River Precinct.**
- 4. The development is not considered to be in the public interest.**

REPORT:

Applicant: Vosolo Pty Ltd and Colussa Superannuation Pty Ltd
Owner: Vosolo Pty Ltd and Colussa Superannuation Fund Pty Ltd
Location: Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South
Zoning: 3(c) Commerce and Trade
Cost: \$30,000

Background:

The site is located at Lot 19 DP 23512 No. 45 Minjungbal Drive, Tweed Heads South. The site contains an existing industrial building and associated on site car parking with access to Minjungbal Drive. The existing building has a floor area of 488.3m² and a site area of 1012m².

Previous approvals relevant for the site and proposal are the construction of an industrial building for the use of warehousing/wholesaling auto spare parts D89/0041 approved 19 April 1989 and the erection of an advertising structure (pylon sign) D89/0592.

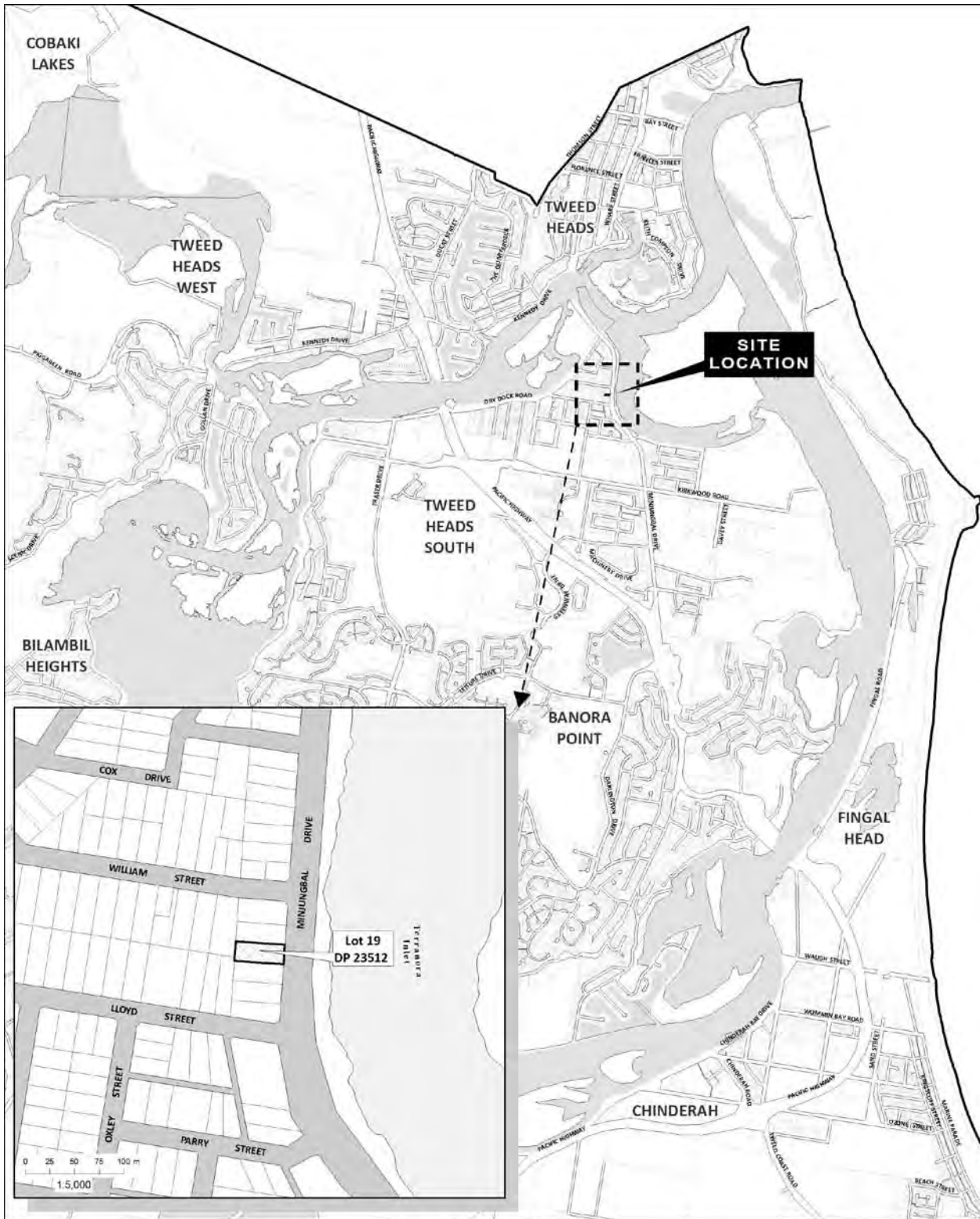
The application proposes a change of use of the existing building to a car repair station. The application proposes the construction of three garage doors and some minor internal works to create an office, reception and a disabled toilet.

The application proposes four staff and will operate 8.00am to 5.30pm Monday to Friday and 8.00am to 12.30pm Saturday and will be closed on Sunday. A total of 21 on site car parking spaces are proposed, of which five spaces are located within the building. One of the internal spaces is for a delivery vehicle, the delivery vehicle is to have a maximum length of 5m, which is to be conditioned should the application be approved.

A separate development application has been lodged with Council for advertising signage (DA13/0242) for the proposed development.

Given the prohibition of the proposed development under the draft LEP, the applicant was requested to withdraw the application. This option was not undertaken, with the applicant requesting that the development proposal be referred to Council for determination, in the knowledge that Council staff would not be supporting the application.

SITE DIAGRAM:



Locality Plan

DA13/0212 - Lot 19 DP 23512
No. 45 Minjungbal Drive, TWEED HEADS SOUTH

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Cadastre 25/07/2013
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Boundaries shown should be considered approximate only.

Scale: 1:40,000
A4 Portrait
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Map Projection: Universal Transverse Mercator
Geographic Datum: Geocentric Datum of Australia 1984
Grid: Map Grid of Australia, Zone 58

Civic and Cultural Centre
3 Tumbulgin Road
Murrumbidgee NSW 2484
PO Box 816
Murrumbidgee NSW 2484
T | (02) 6675 2400 | 1300 292 872
F | (02) 6672 2429
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed change of use is considered consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The development raises no specific concerns or implications in respect of ecologically sustainable development.

Clause 8 - Consent Considerations

The proposal is consistent with the clause as the development is consistent with the primary objectives of the zone, by providing a trade activity which would not jeopardise the viability or function of the sub-regional or business centres. The development is consistent the other aims and objectives of this plan relevant to the development which are addressed within this report. Council Officers are 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.

Clause 11 - Zone Objectives

The zone objectives of the 3(c) zone are:

Primary objective

- *to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres.*

Secondary objectives

- *to provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.*
- *to allow for other development that is compatible with the primary function of the zone.*

The proposed change of use to a car repair station is consistent with the clause, by providing a light industrial activity which would not jeopardise the viability or function of the sub-regional or business centres.

Clause 15 - Essential Services

The proposal complies with the clause as water supply and facilities for the removal or disposal of sewage and drainage are available for that land.

Clause 16 - Height of Building

A three storey height limit applies to the site. The proposal does not propose an increase to the existing building height, which is single storey.

Clause 17 - Social Impact Assessment

A social impact assessment is not required.

Clause 22 – Development Near Designated Roads

The subject site is located upon Minjungbal Drive, which is a designated road. Given the previous approval of the building as an industrial building/warehouse, the proposed development is considered to satisfy the provisions of Clause 22 in that the proposed use is not considered to constitute a traffic hazard.

Clause 35 - Acid Sulfate Soils (ASS)

Class 2 ASS affects the site. Council's Environmental Health Unit advised that Acid Sulfate Soils is not considered to be a constraint for the proposed development.

Clause 34 - Flooding

The site is identified as being flood prone with a Q100 of 2.6m AHD. The proposal is for a car repair station within an existing industrial building and therefore considered appropriate development in terms of flooding. A flooding condition for a flood free storage area would be applied, were the application to be approved.

Clause 39 - Remediation of contaminated land

Council's Environmental Health Unit advised that contamination is considered not to be a constraint for the proposed development.

Clause 39A - Bushfire protection

The site is identified as being prone to bushfire. The proposed change of use is considered to comply with the clause as the proposal will not increase the risk of bushfire to built assets or people.

Clause 47 – Advertising Signs

Advertising is proposed under a separate development application (reference DA13/0242).

Clause 54 - Tree preservation order

Not Applicable. The removal of vegetation is not required or proposed.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

- 1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- 2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- 3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- 4) *The council must not consent to the carrying out of development:*

- (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), 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 is considered consistent with the policies listed above, as the proposal will not impede public access to the foreshore and will not overshadow adjacent open space.

Clause 47 Principles for Commercial and Industrial Development

The proposal is considered to comply with this clause as the development is located where it can be adequately serviced by the transport system and is accessible from urban areas.

Clause 81: Development adjacent to the ocean or a waterway

- 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 proposal is considered consistent with the clause as the proposal will not impede public access to the foreshore, will not detract from the amenity of the waterway.

State Environmental Planning Policy No 14—Coastal Wetlands

The proposal is considered consistent with the clause as the proposal does not involve clearing or earthworks. The coastal wetland will not be impacted by the proposal.

SEPP No. 64 – Advertising and Signage

Advertising is proposed under a separate development application (reference DA13/0242).

SEPP No 71 – Coastal Protection

SEPP 71 – Matters for Consideration

- (a) *The aims of this Policy set out in Clause 2.*
- (b) *Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.*

Existing public access is retained.

- (c) *Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.*

Opportunities to provide new public access are not available.

- (d) *The suitability of the development given its type, location and design and its relationship with the surrounding area.*

The proposed change of use is suitable in relation to the surrounding 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 impact on the coastal foreshore.

- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities.*

The proposal will not impact on the scenic qualities of the coastal foreshore.

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats.*

The proposal will not impact on 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 impact on fish or their habitats.

- (i) *existing wildlife corridors and the impact of development on these corridors.*

The proposal will not impact on wildlife corridors.

- (j) *the likely impact of coastal process and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.*

The proposal will not impact and will not be impacted upon by coastal processes and coastal hazards.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

The proposal will be serviced by Councils stormwater and sewer systems.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.*

The proposal will not impact cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.

- (m) *likely impacts of development on the water quality of coastal waterbodies.*

The proposal will not impact on the water quality of coastal waterbodies.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance.*

The proposal will not impact items of heritage, archaeological or historic significance.

- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities.*

Not Applicable to the proposal.

- (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*
- (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

No additional impacts on the environment or increase use in water and energy are expected.

The proposal is considered to comply with the policy.

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

Draft LEP 2012

The site is zoned B4 – Mixed Use. The proposal is defined as a *Vehicle Repair Station*, which is prohibited within the zone. The draft plan is considered to be “certain and imminent” in terms of previous legal precedent and as such has determining weight.

The Draft LEP 2012 defines the proposal as:

Vehicle repair stations means a building or place used for the purpose of carrying out repairs to, or the selling and fitting of accessories to, vehicles or agricultural machinery, but does not include a vehicle body repair workshop or vehicle sales or hire premises.

The applicant provided the following comments in regards to the Draft LEP 2012 in the statement of environmental effects, which is provided below.

“The draft Tweed LEP 2012 has come off exhibition and proposes to change the zoning of the land to B4 Mixed use within which the proposal is prohibited.

The proposal will make use of an existing factory building and is also generally consistent with other similar established uses in this street. Immediately north of the subject site is another car repair station and to the south are commercial building and a tyre business. To the rear or west of the site is also a commercial building. It would therefore appear that the change to mixed use development along Minjungbal Drive in this immediate vicinity will not occur overnight. It is therefore envisaged that the proposed use should not significantly hamper the aims and objectives of the mixed use zone and they should still be achievable for any future redevelopment of this site.”

The applicant provided further justification in regards to the Draft LEP 2012 on 3 July 2013, which is provided below.

“The draft Tweed LEP 2012 proposes to rezone the subject site to B4 Mixed Use within which the proposal is prohibited. It is considered that the draft LEP should not be given determining weight because it is neither certain nor imminent. There are a number of court precedents to this effect. In addition Clause 1.8A of the Draft Lep provides that a DA lodged before the Draft LEP is gazetted must be determined as if the draft LEP had been exhibited only.

The current zoning permits the proposed development and the subject site and the vacant building is suitable for a car repair station and has satisfies all statutory requirements. There are also other similar established uses in this street in the immediate locality including another car repair station, vehicle detailing premises and a tyre outlet as demonstrated in the previously submitted statement of environmental effects.

In addition the use will provide employment opportunities for up to four persons directly and will also provide opportunities for other services and persons indirectly.”

A recent article published in a Planning Institute of Australia (PIA) NSW Newsletter (June 2013) from Gadens Lawyers noted the following with respect to the determining weight of a draft LEP:

“Question: I would like to understand why a Draft LEP is highly relevant to the assessment of a DA when the draft LEP is ‘certain and imminent’, and what exactly that means?

The starting point is that s.79C of the Act expressly requires a consent authority, when assessing any development application, to take into consideration the provisions of any draft planning instrument (for example, an LEP or SEPP) that “is or has been the subject of public consultation” and that has been notified. However taking something into account is one thing – the remaining question is how much weight or emphasis to place on that EPI’s provisions when it is only a draft document, and may well be quite inconsistent with a current and in-force LEP.

In that regard, the Courts have developed a body of caselaw to the effect that a Draft LEP will be given greater weight when it is “certain and imminent”. Funnily enough, this phrase does not appear anywhere in the Act or Regulations, nor in any savings or transitional provisions that we are aware of, and although it is bandied about by judges, commissioners, lawyers, and government authorities, you’d have to search hard to find its source of origin. It actually dates back to a 1980 Judgment (Balgownie Pty Ltd v Shoalhaven City Council (1980), which well and truly predates s.79C of the Act. In that matter, the Court had some limited regard to a draft proposal to rezone the site, but only because it was said to be “the latest and best informed expert opinion” relating to the site.

It is therefore surprising that this has morphed into a general principle that any draft LEP that is ‘certain or imminent’ should be given considerable weight in the s.79C balancing act (in fact, the courts have used confusing terminology here too, referring variously to “significant weight”, or “some weight”, or “considerable weight” or “due force” or “determining weight” – see the discussion of this in Blackmore Design Group v North Sydney (2000)).

Nevertheless, what is clear is that the weight to be attributed to a draft environmental planning instrument will be greater if there is a greater certainty that it will be adopted (Terrace Tower Holdings Pty Ltd v Sutherland Shire Council (2003).) Where the LEP has been exhibited and sent by the council to the Minister for approval and gazettal, it will often be given great weight, even more than the existing and in force LEP.

But is that approach fair and correct? The answer is probably not. It can be very hard to predict when an LEP is 'certain' and 'imminent', because this depends on the future decision of the Minister and his staff at the Department. For example, our team at Gadens was involved in an appeal in the Warringah local government area in 2011 where the Court ruled that a change to the zoning of the site was certain and imminent and should be given 'determinative weight', and refused the DA. About a month later, the Minister made the LEP but carved out the site as a 'deferred' matter (its zoning did not change). The Court and Council's assessment that the proposed rezoning was 'certain and imminent' had been dead wrong. But such a task is inherently uncertain because it relies on predictions as to a decision of the Minister that has not yet been made.

Notwithstanding 'certainty and imminence', a consent authority may of course grant consent to a development application which does not comply with the draft instrument. As the Court said in the Blackmore Design Group v North Sydney Council matter:

"In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith [or "antipathetic" thereto]."

In light of the above advice, it is considered that the refusal of the proposed development is the appropriate course of action. The draft LEP has been exhibited and sent by Council to the Minister for approval and gazettal. Approval of the development would result in creating Existing Use Rights for the development, which is not considered to be good planning practice.

Additionally, the development does not accord with the objectives of the B4 zone which are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

These objectives clearly relate to residential, retail and commercial activities that are small scale and compatible with one another. The proposed development is more 'light industrial' in nature and is not considered to be compatible with residential, retail or commercial use.

As noted by the applicant, Clause 1.8A of the Draft LEP is a savings provision for development applications that have not yet been determined before commencement of the new Plan, whereby the application is determined as if the Plan had been exhibited but not commenced. Even with the savings provision within the draft LEP, the above advice from Gadens still stands in that the determining weight of the draft LEP must be taken into consideration.

Refusal is recommended based on the above prohibition, as well as the lack of consistency between the proposed development and the objectives of the zone.

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

Tweed Development Control Plan

A2 Site Access and Parking Code

The proposal complies with this policy subject to recommended conditions (were the application to be approved).

The application proposes four staff and three work bays and has a floor area of 488.3m². The proposal generates the requirement of 16 spaces with 21 spaces provided on site (five of these spaces are located within the building). One of these spaces is designated for disabled parking, with the delivery space located inside the building adjacent to the storage and reception area.

The applicant states that the delivery vehicle will have a length not exceeding 5 metres, which would be able to enter and exit the site in a forward direction (this would need to be conditioned). Figure 1 below is an extract from DCP A2 Site Access and Parking Code illustrating the plans requirements.

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking	Delivery, Service Vehicle parking Refer to Table 3.0	Resident Parking	Staff parking	Customer car parking
14	Car repair station	Customer parking requirement is inclusive of the work bay		1/2 car park	1/200m ² HRV		1/staff	4/work bay

Figure 1 - extract from DCP A2 Site Access and Parking Code.

A3 Development of flood liable land

The site is identified as being prone to flooding with a Q100 of 2.6m AHD. The policy requires commercial development to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage. This would be recommended as a condition of consent, were the application to be approved.

A4 Advertising Code

This application does not propose advertising signage. A separate development application for advertising has been lodged with Council (reference DA13/0242).

A11 Public notification of development proposals

The proposal was advertised in the Tweed Link for a period of 14 days from Wednesday 17 July 2013 to Wednesday 31 July 2013 (public holidays excepted). During the submission period Council received two submissions objecting to the proposal. The details of the submissions are provided in this report below.

B2 Tweed Heads

Being a change of use application, many of the controls under DCP B2 (such as Building Form) are not applicable. However, the proposal is not considered to be consistent with the future character of the area.

B2 identifies the site as being located within the 'Southern River Precinct', which notes the following:

It is intended that the residential character of the Tweed Southern River Precinct will be retained. Existing development controls permit three storey residential buildings on consolidated allotments in this area.

The attractiveness of these areas for tourist accommodation will be improved through the upgrading of this section of Minjungbal Drive as a boulevard and enhancements to the riverfront park on the eastern side of the Minjungbal Drive. Existing businesses in this precinct are more suited to higher exposure areas and will be encouraged to relocate southwards to the enterprise corridor on Minjungbal Drive.

As such, the proposed 'light industrial' development within a future residential/Mixed Use area is not considered to be consistent with the aims and objectives of DCP B2.

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

Clause 92(a) Government Coastal Policy

No implications.

Clause 92(b) Applications for demolition

Not Applicable.

Clause 93 Fire Safety Considerations

Council's Building Services Unit has reviewed the application and do not raise an objection to the proposal, subject to recommended conditions.

Clause 94 Buildings to be upgraded

Not Applicable.

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

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 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

The proposal is considered not likely to impact on the local natural or built environments, or economically or socially.

Noise

The proposal being for the servicing and repair of vehicles and will involve the use of air compressors, ratchet guns, electronic equipment and power and hand tools. The proposed hours of operation are 8am to 5.30pm Monday to Friday and 8am to 12.30pm Saturday, work is not proposed on Sundays. The delivery vehicle space will be located within the building.

Council's Environmental Health Officer advised that the existing building faces towards the south and east towards Minjungbal Drive so that any noise generated by the development will be directed away from the residential developments, which are located towards the west. The use is consistent with the surrounding sites therefore based on the surrounding land uses, the proximity of the site to Minjungbal Drive and the proposed hours of operation, the development is not likely to generate excessive noise. Conditions relating to noise would be recommended, if the application were to be approved.

Waste

Trade wastes and vehicle parts are to be collected and disposed of offsite. General waste is to be removed via Council's waste services. Conditions relating to waste are recommended, if the application were to be approved.

(c) Suitability of the site for the development

The site is not considered suitable for the proposed use, as the proposal is prohibited within the B4 Mixed Use zone under the draft LEP 2012 and does not comply with the B4 Mixed Use zone objectives within the draft LEP 2012.

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

The application was advertised for a period of 14 days. During the submission period Council received three submissions, the submissions objected to the proposal.

The objections raise issues such as; noise, parking, air pollution, economic impact and the proposal not being suitable for the location. Council's Environmental Health unit assessed the application and raised no objection in regards to noise and air pollution subject to recommended conditions. The proposal complies with Council's car parking requirements. A socio-economic assessment is not required for the proposed change of use. The proposed use is prohibited within the draft LEP 2012 and is not consistent with the zone objectives.

(e) Public interest

The proposed development is considered not to be in the public interest.

OPTIONS:

1. Refuse the application; or
2. Grant in-principle support for the application and a report to be brought back to a further Council meeting with recommended conditions of consent for Council to determine.

The Council officers recommend Option 1.

CONCLUSION:

The proposal is prohibited within the B4 Mixed Use zone under the draft LEP 2012 and does not comply with the B4 Mixed Use zone objectives within the draft LEP 2012. As such the proposal is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

The applicant may seek to lodge an appeal against a Council determination in the NSW Land and Environmental Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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27 [PR-CM] Development Application DA13/0202 for a Shipping Container Storage Facility Comprising a Maximum of 62 Spaces for Shipping Containers at Lot 7 DP 785566 No. 20-26 Greenway Drive, Tweed Heads South

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0202 Pt2



Civic Leadership

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
-

SUMMARY OF REPORT:

The proposed development is for a shipping container storage facility comprising a maximum of 62 shipping containers. The containers would be leased to customers and used for private storage. Potential customers may be tradespeople, small businesses and local residents.

The shipping containers are 6m long and will be grouped in seven clusters within the upper portion of the subject site (the lower portion contains the existing Boating Camping Fishing (BCF) development).

10 parking spaces are proposed as well as parking at the front of each container.

The site is currently zoned 2(c) Urban Expansion and the development would be defined as a 'storage unit' under the current Tweed Local Environmental Plan 2000. Whilst the proposed storage facility could be considered as permissible under the 2(c) Urban Expansion zone, it is prohibited under the proposed B4 Mixed Use zone of the Draft Tweed Local Environmental Plan 2012. In addition, the proposal is not considered to be consistent with the objectives of the B4 Mixed Use zone under the draft plan.

There are various legal precedents created under the NSW Land and Environment Court, which require consent authorities to give greater weighting to their draft environmental planning instruments which are 'certain and imminent'. Previous case law suggests that this weighting has greater relevance once a draft LEP has been publically exhibited, adopted by Council, and forwarded to the Minister for final making and gazettal.

Following an earlier public exhibition, Council at its meeting of 31 May 2013 resolved to adopt the exhibited Draft Tweed LEP 2012, subject to certain changes. The modified draft LEP has been referred to the Department of Planning and Infrastructure, and gazettal of the plan is expected within a number of months.

On that basis, it is the officer's view that Draft Tweed LEP 2012 should be given increased weighting in the determination of the subject development application, and as a prohibited use, should therefore be refused.

It is noted that the applicant has not yet satisfied all applicable planning controls or matters raised in submissions for the subject application. As such, an option is to defer determination of the application to enable the applicant to satisfy all outstanding matters. Notwithstanding, the above advice with regard to the weight of the Draft Tweed LEP 2012 remains the same.

The development application has been referred to Council to determine given the current legal status which does not preclude Council from granting consent to the Development Application.

It should be noted that approval of the application would result in Existing Use Rights being relied upon once the Draft LEP 2012 is gazetted, which is not considered to be good planning practice.

RECOMMENDATION:

That Development Application DA13/0202 for a shipping container storage facility comprising a maximum of 62 spaces for shipping containers at Lot 7 DP 785566 No. 20-26 Greenway Drive, Tweed Heads South be refused for the following reasons:

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – *the provisions of any Draft Environmental Planning Instruments* in that the development is prohibited within the B4 Mixed Use zone.**
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) – *the provisions of any Draft Environmental Planning Instruments* in that the development is inconsistent with the objectives of the B4 Mixed Use zone.**
- 3. The development is not considered to be in the public interest.**

REPORT:

Applicant: Expo Park Bagcorp Pty Ltd & Bagcorp Pty Ltd in Joint Venture
Owner: Expo Park Bagcorp Pty Ltd & Bagcorp Pty Ltd
Location: Lot 7 DP 785566 No. 20-26 Greenway Drive, Tweed Heads South
Zoning: 2(c) Urban Expansion
Cost: \$150,000

Background:

The application proposes the development of a storage facility, comprised of a maximum of 62 individual shipping containers located on the subject site. The containers would be imported to the site and arranged in groups. A covered roof structure would be constructed over each group of containers.

The site comprises an irregular shape with frontage to Greenway Drive and the Pacific Highway (no access exists off the Highway). The site is known as the old SOHO site and contains a bulky goods retail outlet on the lower portion of the site BCF.

The shipping containers are proposed to be located on the upper portion of the site. The site has been the subject of bulk earthworks and subdivision works and driveway access exists to the upper portion.

The business is proposed to operate 7 days a week from 7.00am to 6.00pm. No night time or after hours access is proposed.

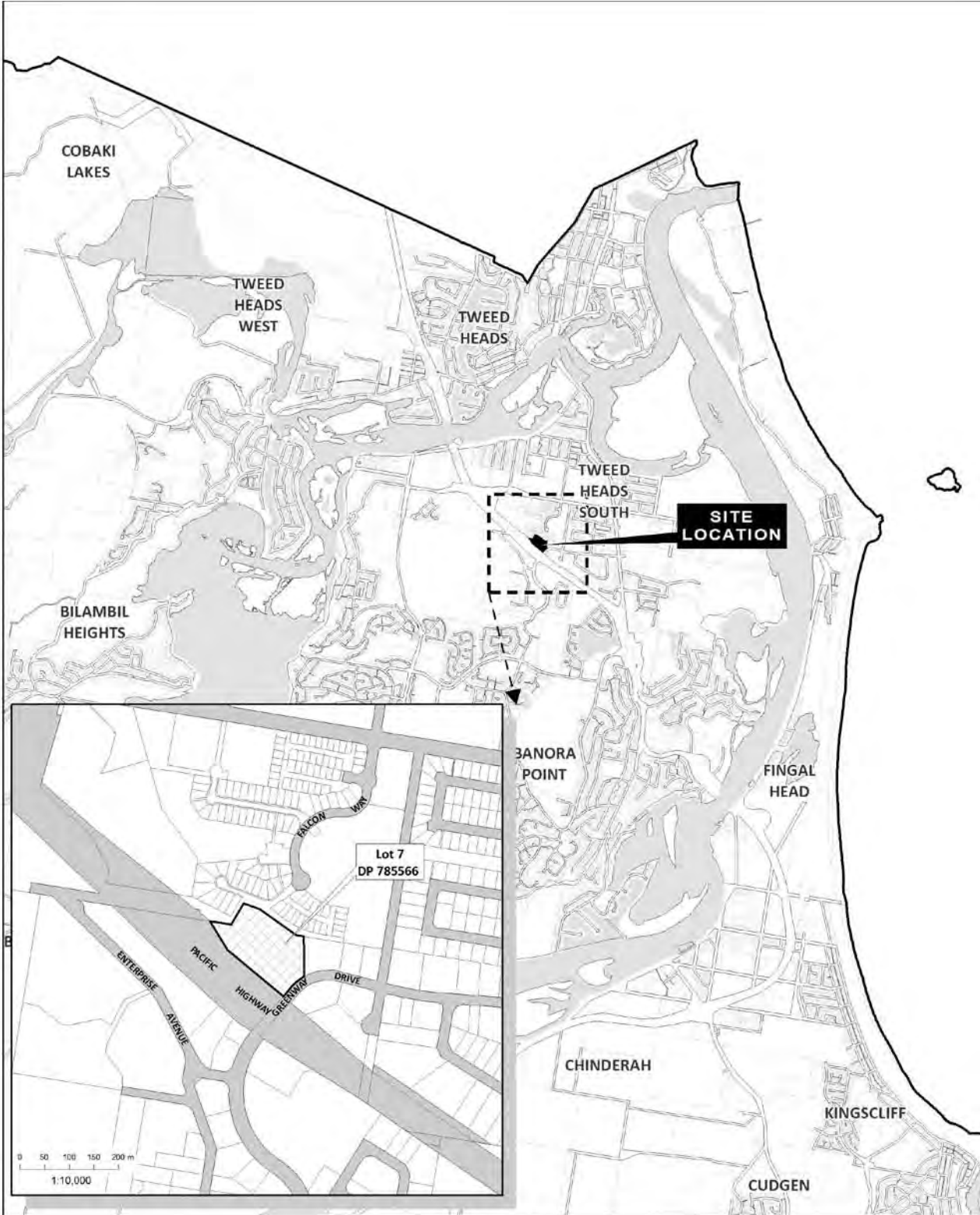
There are no staff required and access would be controlled via time clock controlled security gates and fencing. Customers would access the site via the security gates which would be activated with a security PIN. Parking would be provided in 10 designated parking spaces as well as at the front of each container.

The development is defined as 'storage units' under the current Tweed Local Environmental Plan 2000 which are permissible with consent in the 2(c) Urban Expansion zone.

Under the Draft Tweed Local Environmental Plan 2012, the proposal would be defined as 'self storage units' which are a form of 'storage premises'. Storage premises are prohibited in the B4 Mixed Use zone.

The applicant was requested to withdraw the application based on non compliance with the Draft LEP however they indicated they did not wish to pursue this option. As such, the application is being reported to Council with a recommendation for refusal.

SITE DIAGRAM:



Locality Plan

DA13/0202 - Lot 7 DP 785566
 No. 20-26 Greenway Drive, TWEED HEADS SOUTH

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or assurance expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any enclosures a "flag before you dig" enquiry must be made by calling 1300. This information contained on this document remains valid for 30 days only from the date of issue.

Cadastral 25/07/2013
 © Land and Property Information (LPI) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

0 0.2 0.4 0.6 0.8 1 Km
 1:50,000 @ A4 Portrait
 DO NOT SCALE
 COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator
 Horizontal Datum: GDA
 Vertical Datum: Geoid Datum of Australia 1994
 Map Grid of Australia, zone 56

GDA

Civic and Cultural Centre
 3 Turnbullgun Road
 Murwillumbah NSW 2484
 PO Box 818
 Murwillumbah NSW 2484
 T | (02) 6670 2400 | 1300 282 872
 F | (02) 6670 2425
 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au

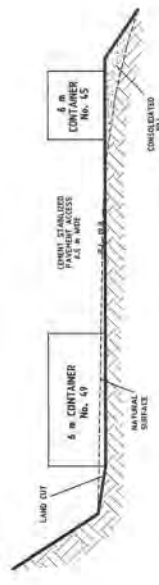


DEVELOPMENT/ELEVATION PLANS:

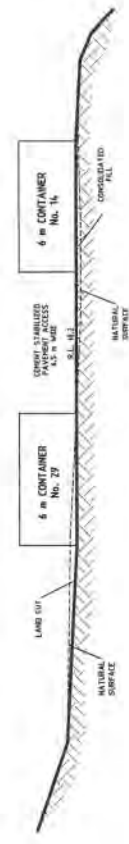


**PROPOSED STORAGE CONTAINER FACILITY
20 - 26 GREENWAY DRIVE, TWEED HEADS SOUTH**

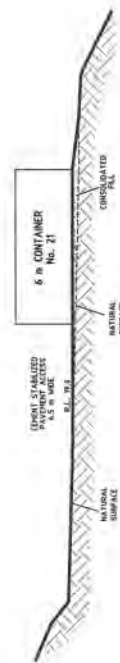
TWEED SHIRE COUNCIL
File No. DA13/0202 PL-1
Doc No. 3053/177



CROSS SECTION A - A



CROSS SECTION B - B



CROSS SECTION C - C



TYPICAL SIX METRE CONTAINER

ANNEXURE M

NOTE: ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METRES AND ARE BASED ON AUSTRALIAN STANDARDS AND THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA.

NOTE: ALL DIMENSIONS TO BE VERIFIED BY SURVEYOR TO BE UNDERTAKEN AT SITE.

PROJECT NO.	31000001
CLIENT	TWEED SHIRE COUNCIL
DESIGNER	GAVIN DUFFIE
DATE	14/3/13
SCALE	1:100
PROJECT NAME	PROPOSED STORAGE FACILITY ON PART LOT 7 D.P. 765546
PROJECT ADDRESS	20 - 26 GREENWAY DRIVE, TWEED HEADS SOUTH, TWEED SHIRE COUNCIL
PROJECT LOCATION	74 MORRISDALE CRE., TWEED HEADS SOUTH, TWEED SHIRE COUNCIL

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 of the plan relate to sustainable development and the limiting of certain development to specific areas. It has not been demonstrated that the aims of the plan have been satisfied.

Clause 5 - Ecologically Sustainable Development

The development raises no specific concerns or implications in respect of ecologically sustainable development.

Clause 8 - Consent Considerations

Whilst the development is permitted in the zone as an Item 2 matter, it has not been demonstrated that the proposed development (which is commercial/light industrial in nature) is consistent with the primary objective of the 2(c) zone which is to utilise land for its optimum residential purpose.

The aims of the plan are not considered fully satisfied, nor has it been demonstrated that the development would not have an unacceptable cumulative impact on the area.

Clause 11 - Zone Objectives

Whilst the proposed development is permissible in the 2(c) Urban Expansion zone, the applicant has not adequately demonstrated that the development is consistent with the zone objectives. The objectives do permit non residential development which meets the commercial or employment needs of residents (as a secondary objective). It is not clear that the development would provide for the commercial or employment needs of residents. Note that the primary objective is residential in nature and the proposed development does not provide any residential component.

Clause 15 - Essential Services

Essential services are available to the site.

Clause 16 - Height of Building

The shipping containers would be set in single storey rows only with a roof over which would not exceed the height limit of the site.

Clause 17 - Social Impact Assessment

Social impact assessment is not required for the proposed development.

Clause 35 - Acid Sulfate Soils (ASS)

The subject site is in an elevated position and contains Class 5 ASS with a small area of Class 2 ASS on a lower section of the site. The placement of containers would be on the Class 5 area and no excavation works would be conducted on the area of Class 2 ASS. Clause 35 is considered satisfied.

Other Specific Clauses

Clause 22 –Development Near Designated Roads

The site has frontage to the Pacific Highway which is a classified road. However, access is not proposed from the highway, nor is the proposed development (which is recommended for refusal) considered to impact on any of the matters prescribed by Clause 22.

Clause 23 – Control of Access

Access to a classified or designated road is not proposed by this application.

Clause 24 – Setbacks to Designated Roads

The site is not located in a zone to which this clause applies.

Clause 32 – Aircraft Noise

The site is within the 20-25 ANEF airport noise contour. The development is not of a type which is restricted by Clause 24 and no further considerations apply.

Clause 33 – Obstacles to Aircraft

The proposed development would not present obstacles to aircraft however it is noted that the site is within the airport lighting zone in which the use of non reflective roof surfaces is mandatory. Compliance with this could be conditioned, were the application ultimately to be approved.

Clause 39 – Contamination

Council's Environmental Health Officers have reviewed the application with regard to contamination and provided no objections. Clause 39 references SEPP 55 for the Remediation of Land, both are considered to be satisfied.

Clause 39A – Bushfire Protection

The site is bushfire prone. A bushfire report was submitted which makes recommendations for the development and indicates that acceptable solutions can be reached on the site.

Whilst the recommendations could be applied as conditions were the development to be approved, detailed assessment of the ramifications of the conditions (i.e.: required access arrangements) has not been undertaken as the application is recommended for refusal.

Clause 47 – Advertising Signs

The development proposes the installation of a sign on the existing BCF signage structure at the entrance to the site off Greenway Drive. Details of the proposed sign have not been supplied at this stage and Clause 47 is not considered satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B – Coastal Lands

- 1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*

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

Clause 43: Residential development

Development for residential purposes is not sought, though that is the intent of the 2(c) zoning. Clause 43 relates to the issue of consent for residential purposes only.

Clause 47 Principles for Commercial and Industrial Development

The land is accessible to the road network and existing urban areas. Clause 47 is considered satisfied.

SEPP No. 64 – Advertising and Signage

Assessment against SEPP 64 has not been carried out as details of the proposed signage have not been submitted.

SEPP No 71 – Coastal Protection

The site is covered by SEPP 71. Though a detailed assessment has not been undertaken, the development is not considered to contravene any of the matters for consideration. Whilst there are provisions relating to visual impacts, these are specific to coastal foreshore areas which the subject site does not comprise.

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

The Draft Tweed Local Environmental Plan is considered to be “certain and imminent” in terms of previous legal precedent and as such has determining weight.

This plan zones the subject site B4 – Mixed Use. The relevant definition of the proposed development would be ‘*self storage units*’, which is a type of ‘*storage premises*’. Storage premises are prohibited in the B4 zone.

A recent article published in a Planning Institute of Australia (PIA) NSW Newsletter (June 2013) from Gadens Lawyers noted the following with respect to the determining weight of a draft LEP:

“Question: I would like to understand why a Draft LEP is highly relevant to the assessment of a DA when the draft LEP is ‘certain and imminent’, and what exactly that means?”

The starting point is that s.79C of the Act expressly requires a consent authority, when assessing any development application, to take into consideration the provisions of any draft planning instrument (for example, an LEP or SEPP) that “is or has been the subject of public consultation” and that has been notified. However taking something into account is one thing – the remaining question is how much weight or emphasis to place on that EPI’s provisions when it is only a draft document, and may well be quite inconsistent with a current and in-force LEP.

In that regard, the Courts have developed a body of caselaw to the effect that a Draft LEP will be given greater weight when it is “certain and imminent”. Funnily enough, this phrase does not appear anywhere in the Act or Regulations, nor in any savings or transitional provisions that we are aware of, and although it is bandied about by judges, commissioners, lawyers, and government authorities, you’d have to search hard to find its source of origin. It actually dates back to a 1980 Judgment (Balgownie Pty Ltd v Shoalhaven City Council (1980), which well and truly predates s.79C of the Act. In that matter, the Court had some limited regard to a draft proposal to rezone the site, but only because it was said to be “the latest and best informed expert opinion” relating to the site.

It is therefore surprising that this has morphed into a general principle that any draft LEP that is ‘certain or imminent’ should be given considerable weight in the s.79C balancing act (in fact, the courts have used confusing terminology here too, referring variously to “significant weight”, or “some weight”, or “considerable weight” or “due force” or “determining weight” – see the discussion of this in Blackmore Design Group v North Sydney (2000)).

Nevertheless, what is clear is that the weight to be attributed to a draft environmental planning instrument will be greater if there is a greater certainty that it will be adopted (Terrace Tower Holdings Pty Ltd v Sutherland Shire Council (2003).) Where the LEP has been exhibited and sent by the council to the Minister for approval and gazettal, it will often be given great weight, even more than the existing and in force LEP.

But is that approach fair and correct? The answer is probably not. It can be very hard to predict when an LEP is ‘certain’ and ‘imminent’, because this depends on the future decision of the Minister and his staff at the Department. For example, our team at Gadens was involved in an appeal in the Warringah local government area in 2011 where the Court ruled that a change to the zoning of the site was certain and imminent and should be given ‘determinative weight’, and refused the DA. About a month later, the Minister made the LEP but carved out the site as a ‘deferred’ matter (its zoning did not change). The Court and Council’s assessment that the proposed rezoning was ‘certain and imminent’ had been dead wrong. But such a task is inherently uncertain because it relies on predictions as to a decision of the Minister that has not yet been made.

Notwithstanding 'certainty and imminence', a consent authority may of course grant consent to a development application which does not comply with the draft instrument. As the Court said in the Blackmore Design Group v North Sydney Council matter:

"In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith [or "antipathetic" thereto]."

In light of the above advice, it is considered that the refusal of the proposed development is the appropriate course of action. The draft LEP has been exhibited and sent by Council to the Minister for approval and gazettal. Approval of the development would result in creating Existing Use Rights for the development, which is not considered to be good planning practice.

Additionally, the development does not accord with the objectives of the B4 zone which are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

These objectives clearly relate to residential, retail and commercial activities that are small scale and compatible with one another. The proposed development is more 'light industrial' in nature and is not considered to be compatible with residential, retail or commercial use. The development relies on vehicular access which the zone objectives try to minimise.

Refusal is recommended based on the above prohibition, as well as the lack of consistency between the proposed development and the objectives of the zone.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The DCP requires that 'mini storage units' provide 0.5 spaces per staff member (with a minimum of two) and sufficient aisle width to accommodate customer parking (beside or at the front of each storage unit) whilst still allowing for through traffic.

The plans submitted with the application indicate that 10 spaces for customer parking are to be supplied on the site. A 6.5m aisle width is available with the access proposed to be constructed "*with a cement stabilised pavement material*". This type of surface is not considered appropriate due to the dust that could be generated, and particularly the effect this may have on the existing adjacent residential development on lower level land to the north. Erosive potential is also high with the proposed surface finish. All internal access driveways will be required to be sealed. This requirement could be applied as a condition of consent, were the application to be approved.

A4-Advertising Signs Code

Signage details have not been provided and detailed assessment has not been undertaken.

A11-Public Notification of Development Proposals

The application was advertised from 15 May to 29 May 2013. During this time, 88 submissions (objections) were submitted raising a range of issues. As the application is recommended for refusal based on non compliance with the Draft LEP 2012, the applicant has not yet had the opportunity to respond to such matters which include amenity concerns, landscaping, suitability of the site for the development, traffic and the proximity to residential development.

Should Council resolve to defer the application to enable the applicant to supply additional information, matters raised in submissions will be forwarded to the applicant.

DCP A15 – Waste Minimisation and Management

This DCP requires that a Waste Management Plan be submitted. This could be conditioned, were the application to be approved. Note – this plan would cover construction (expected to be minimal) but also operational waste management.

B2-Tweed City Centre

The site is located in the Tweed South Business Core Precinct and the development is consistent with the objectives of that precinct as presented by the DCP. It is noted however that the DCP has an emphasis on quality and refined commercial development in this area. It is considered that further refinements could be made to the proposed development to improve the final quality.

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

Clause 92(a) Government Coastal Policy

The development does not contravene the Coastal Policy.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

There are no Clause 93 considerations.

Clause 94 Buildings to be upgraded

There are no Clause 94 considerations.

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

Tweed Shire Coastline Management Plan 2005

The site is not affected by this plan.

Tweed Coast Estuaries Management Plan 2004

The site is not affected by this plan.

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

The site is not covered by this plan.

(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

Impacts of the development have not been fully assessed as the application is recommended for refusal. Concern is raised at this time with potential impacts on the amenity of the area for surrounding residential properties, including noise, dust and visual amenity impacts.

To date these remain unresolved.

It is noted that Council's Traffic Engineer has reviewed the submitted traffic study and advised that the scale of the development does not warrant any road upgrading. Contributions under the Tweed Road Contribution Plan would be applicable at the rate of 36.24 trips per day.

Council's Building Unit and Development Assessment Engineer require further information in order to complete final assessment of the application. Additionally, further information with regard to the adequacy of landscaping and visual impact (among others) would likely be required. To date, the outstanding matters have not been referred back to the applicant as the application is recommended for refusal for other reasons.

(c) Suitability of the site for the development

The site is not considered to be suitable for the proposed development as the future (imminent and certain) zoning under Draft LEP 2012 will prohibit the proposed use.

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

88 submissions were received (many were pro forma letters) which raised the following issues:

- There will be visual amenity impacts, especially for residents of 'The Oasis' residential estate which is located directly behind the proposed development site. Many dwellings in this estate would have a direct line of sight to the development, especially considering the elevated nature of the site.
- House values in 'The Oasis' estate would be negatively affected.
- Potential noise impacts. The access road to the development is in proximity to many bedrooms and living areas of dwellings in 'The Oasis' estate. The access gate is situated immediately behind dwellings in the estate. There are no noise barriers proposed. Noise will be generated by the opening and closing of the containers.
- The site could be floodlit during the night which could disturb sleep.
- The development is incompatible with residential development. The development does not meet the status quo i.e. there is a conflict between the existing residential use of the area and the proposed commercial use.
- There are potential impacts on wildlife.
- The development is inconsistent with the primary objective of the 2(c) zone which is residential in nature. There is no association between the proposed development and residential development which is required by the secondary objective.

- Traffic flow along the long, narrow access road may pose a risk to residents of 'The Oasis' estate. Residents are worried that delivery of the containers themselves may also pose a risk by a container falling off when a truck ascends the site or through traffic accidents off Greenway Drive when delivery trucks and/or customers enter and exit the site. There may also be increased congestion on Greenway Drive as a result of the development.
- An application for a similar development on the site was rejected by Council. This one should be treated the same way.
- Potential impacts from dust/runoff if more earthworks are required to prepare the site.
- Potential impacts from stormwater runoff.
- The applicant themselves acknowledges that the development is not the optimal use for the site. The 'temporary' nature is not ideal.
- A query was raised as to whether a toilet would be provided on site.
- The proposed landscaping is not sufficient. It will take years to grow and will not provide sufficient screening during the short to medium term.
- Containers could be painted a variety of colours which would worsen the visual impact.
- The containers could attract graffiti artists which would worsen the visual impact.
- If there are no staff on the premises, who will monitor the storage of dangerous goods?
- The area immediately behind the site is a private park (within 'The Oasis' estate). Children often play in the park and would be subject to unacceptable risk from vehicles accessing the site. There are no safety barriers proposed along the access road. A risk assessment should be undertaken on the proposed driveway access.
- When the original earthworks were undertaken, the residents of 'The Oasis' were not consulted. The site is ugly and should be bulldozed and made into a park.
- The developers do not have a record of finishing development on the site in an aesthetically pleasing manner. Concerned this development will be the same.
- The temporary nature of the development will limit investment in landscaping and site beautification by the developer.

Whilst some of the above matters could be addressed by conditions of consent, were the application to be approved, to date detailed assessment has not been finalised, nor has the applicant had a chance to comment on the issues as the application is recommended for refusal for other reasons.

(e) Public interest

Whilst the proposed development at present complies with the zoning controls under Tweed Local Environmental Plan 2000, it is certain and imminent that the Draft LEP 2012 will prohibit the development. Additionally, it has not been fully demonstrated that impacts of the development would be minimal, nor has it been demonstrated that the site is suitable for the development. As such, the development is not considered to be in the public interest.

OPTIONS:

1. Refuse the application for the reasons supplied; or
2. Defer the application to enable the applicant to address outstanding matters. However, even if all outstanding issues were to be satisfied, the issue of prohibition under the Draft LEP 2012 would still remain.

Council officers recommend Option 1.

CONCLUSION:

The development is prohibited by and inconsistent with the Draft LEP 2012, specifically the objectives of the B4 Mixed Use zone. It is therefore recommended that the development be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may seek to lodge an appeal against a Council determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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28 [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 and Road 5900 Wharf Street, Murwillumbah

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0620 Pt1



Civic Leadership

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
-

SUMMARY OF REPORT:

Updated Information

At its meeting of 18 July 2013, Council resolved the following in respect of this matter:

"RESOLVED that this item be deferred to the August meeting of Council to allow Council staff to continue to negotiate with the owner for an alternative structure."

The applicant has been requested to attend a Councillors Workshop on 8 August 2013.

The report is now submitted for Council determination.

Previous Report

At its meeting of 20 June 2013, Council resolved the following in respect of this matter:

"RESOLVED that this item be deferred for a Workshop."

A Councillors Workshop on this matter was held on 11 July 2013. There was no formal decision made on this Development Application at the Workshop.

The previous report has been re-submitted to Council for their determination.

Original 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.

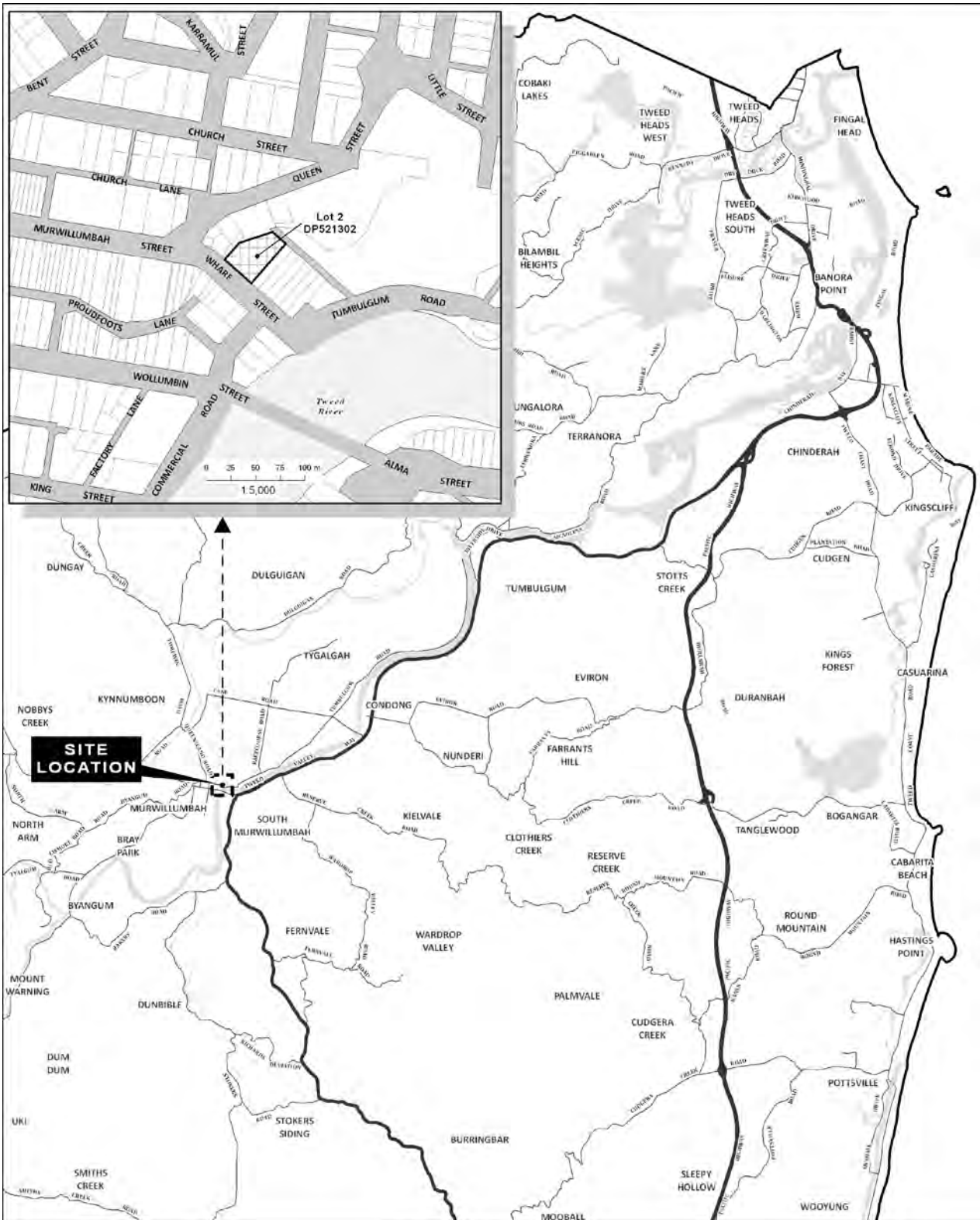
From a design perspective, shade structures attached to existing awnings have the capability to intrude on the fabric of the host building as well as impact on the amenity and appearance of streetscapes and the pedestrian environment. The proposed structure is considered to be relatively light weight 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

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and declines all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and disseminated only. It should not be used for survey or construction purposes and prior to any excavations a 'Call Before You Dig' enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 30 May 2013
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 Boundaries shown should be considered approximate only



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 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484
 T | (02) 5670 2400 | 1300 292 872
 F | (02) 5670 2429
 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au



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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

29 [PR-CM] Development Application DA13/0111 for a Detached Dual Occupancy at Lot 1 DP 790119 No. 75 Laura Street, Banora Point

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0111 Pt1



Civic Leadership

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
-

SUMMARY OF REPORT:

A development application has been received for the construction of a secondary dwelling to create a detached dual occupancy on Lot 1 DP 790119, otherwise known as No. 75 Laura Street. In summary, whilst the proposal complies with the minimum lot size requirements it comprises a number of variations to Section A1 of the Tweed Development Control Plan (DCP) 2008 and concerns have been received from neighbouring properties.

This application follows a previous development application for a dual occupancy development which was withdrawn by the applicant after Council Officers raised concerns with the design. Council Officers have again relayed very similar concerns to the applicant in relation to the suitability of the site to accommodate an additional dwelling of the scale proposed and that a smaller building may be more appropriate on the site. The applicant considers that the proposed development provides adequate consideration of surrounding development and should be supported. In light of the degree of non-compliance to DCP A1, and objections received, it is considered appropriate that the application be reported to Council for determination of the application.

The site is located within an established low density residential area of Banora Point. The existing site is irregular in shape due to its location at the end of a cul de sac, comprises a two storey brick residence at the northern section of the lot, and has a 3.05m wide easement running along the southern boundary of the site.

The proposed secondary dwelling would be located toward the western boundary of the site aligned in a north south configuration. The proposed secondary dwelling would comprise an open plan living and kitchen area with external living area, guest room with ensuite, study, double garage and laundry on the ground floor. The first floor would comprise three bedrooms, storeroom, bathroom and lounge area leading to a balcony. The total Gross Floor Area (GFA) of the proposed structure is approximately 225m² (not including decks) compared to the GFA of the existing structure which is approximately 200m². The primary outdoor living space would be a 6.3m x 4m 'alfresco' area adjacent to the living room on the ground floor. Open space would be located to the south of the proposed dwelling, accessed via the laundry from an internal corridor.

The proposed secondary dwelling would be two storeys with a maximum building height of approximately 8.5m above ground level. The proposed secondary dwelling would be of a contemporary design with a skillion roof and covered entry area, with a variation in window size, design and placement and utilises contemporary materials. The proposed dwelling incorporates an attached single storey garage, located at the southern portion of the site. The location of the proposed dwelling would necessitate the removal of the existing access point to the existing dwelling. A single carport and adjacent car parking space is therefore proposed at the front of the existing dwelling to provide off street car parking. The topography of the site is relatively steep, sloping from Laura Street to the north-west. The applicant advises that the building has been designed with a step in the house, ensuring that significant retaining walls, external to the building, are not required.

The application has been referred to the relevant internal departments for consideration with Council's Building Services Unit and Development Engineering Unit being satisfied with the proposed development, subject to a number of conditions being applied to any development consent. Council's Urban Designer has also provided comments in relation to the proposal in relation to Section A1 of the Tweed Development Control Plan (DCP) 2008, further detailed within this report.

The application was notified to surrounding properties for a period of 14 days with a total of four submissions being received. The matters raised within these submissions are considered further within this report.

In response to a detailed further information request in relation to a number of concerns with the proposal, sent to the applicant on 23 April 2013, amended plans and supporting information, including an assessment of Section A1 of the current Tweed Development Control Plan (DCP) 2008, have been received. Those that had originally sent a submission to Council in relation to the original plans were notified of the proposed amendments and given an additional opportunity to provide any further comments. Three additional submissions have since been received and the applicant has been given an opportunity to comment on the issues raised. A letter of support has also recently been received from the owner of Unit 1, No. 50 Elsie Street, as detailed further within this report.

An assessment of the proposal has revealed a number of variations are proposed to Section A1 of the Tweed DCP 2008, particularly in relation to: the siting of the proposed building, overall building form, materials and compatibility with surrounding built development in Laura Street as well as in relation to the location of the principle outdoor amenity space and lack of integration with the internal living spaces. Further, it is considered that the proposal would have an unacceptable impact on the residential amenity of surrounding properties, namely in regard to inappropriate overlooking and invasion of privacy issues.

For the reasons outlined within this report it is considered that the proposed dwelling is too large for the irregular shaped site, which has resulted in a number of non-compliances with Section A1 of the Tweed DCP 2008 and an unacceptable impact on the residential amenity of surrounding properties. On this basis it is recommended that the proposed development be refused.

RECOMMENDATION:

That Development Application DA13/0111 for a detached dual occupancy at Lot 1 DP 790119 No. 75 Laura Street, Banora Point be refused for the following reasons:

- 1. The application is not considered to be consistent with Section 79C 1(a) of the Environmental Planning & Assessment Act 1979 as it does not satisfy the following applicable planning instruments:**
 - The Tweed Local Environmental Plan 2000 including: Clause 4 Aims of the Plan; Clause 8 Consent Considerations; Clause 11 The Zones; and Clause 56 Suspension of covenants, agreements and similar instruments;**
 - The Draft Tweed Local Environmental Plan 2012 including the Objectives of the RU2 Low Density Residential Zone as detailed within the Land Use Table and Clause 1.9A Suspension of covenants, agreements and instruments [local];**
 - The North Coast Regional Environmental Plan including Clause 32B Development Control - Coastal Lands and Clause 43 - Residential Development;**
 - Tweed Development Control Plan Section A1 Residential & Tourist Development Code as the bulk and scale of the development results in non compliances with various controls as follows:**
 - A predominantly two storey building that would be out of character in terms of building siting, height, overall building forms and materials, with the existing built form character in Laura Street;**
 - Non-compliance with the setback provisions on the rear (western) boundary would result in reduced provision for landscaping, useable outdoor space and would result in inappropriate overlooking and invasion of privacy issues, primarily from the elevated decks;**
 - The principle outdoor amenity space, being located along the side (southern) boundary, would not be integrated with internal living spaces and would not provide a useable, private and sunny space for future residents.**
- 2. The application is not considered to be consistent with Section 79C 1(b) of the Environmental Planning & Assessment Act 1979 as it would have a negative impact on the surrounding low density residential environment by unreasonably overlooking adjoining properties and invading privacy, primarily from the large elevated decks.**
- 3. The application is not considered to be consistent with Section 79C 1(c) of the Environmental Planning & Assessment Act 1979 as the proposed development has not responded to the site constraints or surrounding development, as the elevated structure impacts on privacy and would present larger than surrounding built development.**

4. **The application is not considered to be consistent with Section 79C 1(e) of the Environmental Planning & Assessment Act 1979 as the proposed development is not considered in the public interest, as the original covenant specified only one dwelling per property and the extent of variations proposed under the Tweed Development Control Plan 2008 Section A1 are considered to be excessive.**

REPORT:

Applicant: Ms Design Pty Ltd
Owner: Mr Murray A Martin & Mrs Angela M Valentine
Location: Lot 1 DP 790119 No. 75 Laura Street, Banora Point
Zoning: 2(a) Low Density Residential
Cost: \$320,000

Background:

A development application has been received for the construction of a secondary dwelling to create a detached dual occupancy on Lot 1 DP 790119, otherwise known as No. 75 Laura Street. The site is located within an established low density residential area of Banora Point. The existing site is irregular in shape due to its location at the end of a cul-de-sac, comprises a two storey brick residence at the northern section of the lot, and has a 3.05m wide easement running along the southern boundary of the site.

It is of importance to note that a previous development application for a secondary dwelling to create a detached dual occupancy was received by Council in 2011 (DA11/0008). A number of concerns were raised with the proposed development in relation to: discrepancies with the submitted plans; the design, height and appearance of the proposal and resultant impact on streetscape character; resultant impact on the residential amenity of surrounding properties (overlooking, loss of view and privacy issues); as well as a number of variations with Section A1 of the Tweed DCP 2008. The proposed dwelling was located within the same location as that currently proposed and comprised two storeys across the length of the building with an external deck located at the northern elevation of the building. This application was subsequently withdrawn by the applicant.

Following the withdrawal of DA11/0008, Council Officers have provided feedback to the applicant in relation to the requirements of Section A1 of the Tweed DCP 2008 and the potential difficulties in achieving a compliant building on the subject site, given the constrained nature of the site, in relation to topography, site configuration and surrounding development.

The subject application currently before Council was received on 18 March 2013.

The proposed dwelling would be located toward the western boundary of the site aligned in a north south configuration. The proposed dwelling would comprise an open plan living and kitchen area with external living area, guest room with ensuite, study, double garage and laundry on the ground floor. The first floor would comprise three bedrooms, storeroom, bathroom and lounge area leading to a balcony. The primary outdoor living space would be a 6.3m x 4m 'alfresco' area adjacent to the living room on the ground floor. Open space would be located to the south of the proposed dwelling, accessed via the laundry from an internal corridor.

The proposed dwelling would be two storeys with a maximum building height of approximately 8.5m above ground level. The proposed dwelling would be of a contemporary design with a skillion roof and covered entry area, with a variation in window size, design and placement and utilises contemporary materials. The dwelling incorporates an attached single storey garage, located at the southern portion of the site.

An assessment of the submitted details revealed a shortage of information to enable Council Officers to properly assess the proposed development as well as a number of discrepancies with Council policies, as detailed further within this report. A formal request for further information was sent to the applicant on 23 April 2013 requesting that, given the application would be unlikely to be supported in its current form and would require substantial redesign in order to achieve a compliant proposal, that the application be withdrawn.

The applicant subsequently engaged a Town Planning firm to address the issues raised within Council's request for information. On 7 June 2013 a revised Statement of Environmental Effects (SEE), an assessment of the newly adopted Section A1 of the Tweed DCP 2008 were received and a number of modifications to the development were proposed as follows:

1. The proposed carport on the existing dwelling has been changed to a single car carport and its design modified to match the existing roof shape and materials for the existing house (brick and tile construction);
2. The proposed dwelling has been reduced in size (to provide an additional 1m setback at the southern boundary (total 5.5m to the building line); to provide an additional 300mm setback to the western boundary (total 1.8m); by removing the workshop from the garage to decrease the degree of impact to the dwelling to the south).
3. Foam mouldings have been provided to the window surrounds on the street elevation to improve the presentation to the street;
4. The raised platform at the northern side of the dwelling has been removed to increase the size of the deep soil zone and the stairs from the alfresco to the ground level being moved to the southern side of the alfresco area.

The applicants amended Statement of Environmental Effects (SEE) considers that whilst the proposal seeks a number of variations to Section A1 of the Tweed DCP 2008, the above changes significantly improve the level of compliance with Section A1 and address some of the concerns of surrounding residents. The SEE also advises that the '*modified proposal demonstrates an acceptable degree of compliance with Council's LEP and DCP and demonstrates sufficient planning merit to justify approval*'.

The application has been referred to the relevant internal departments for consideration with Council's Building Services Unit and Development Engineering Unit being satisfied with the proposed development, subject to a number of conditions being applied to any development consent. Council's Urban Designer has also provided comments in relation to the proposal in relation to Section A1 of the Tweed DCP 2008, as detailed within this report.

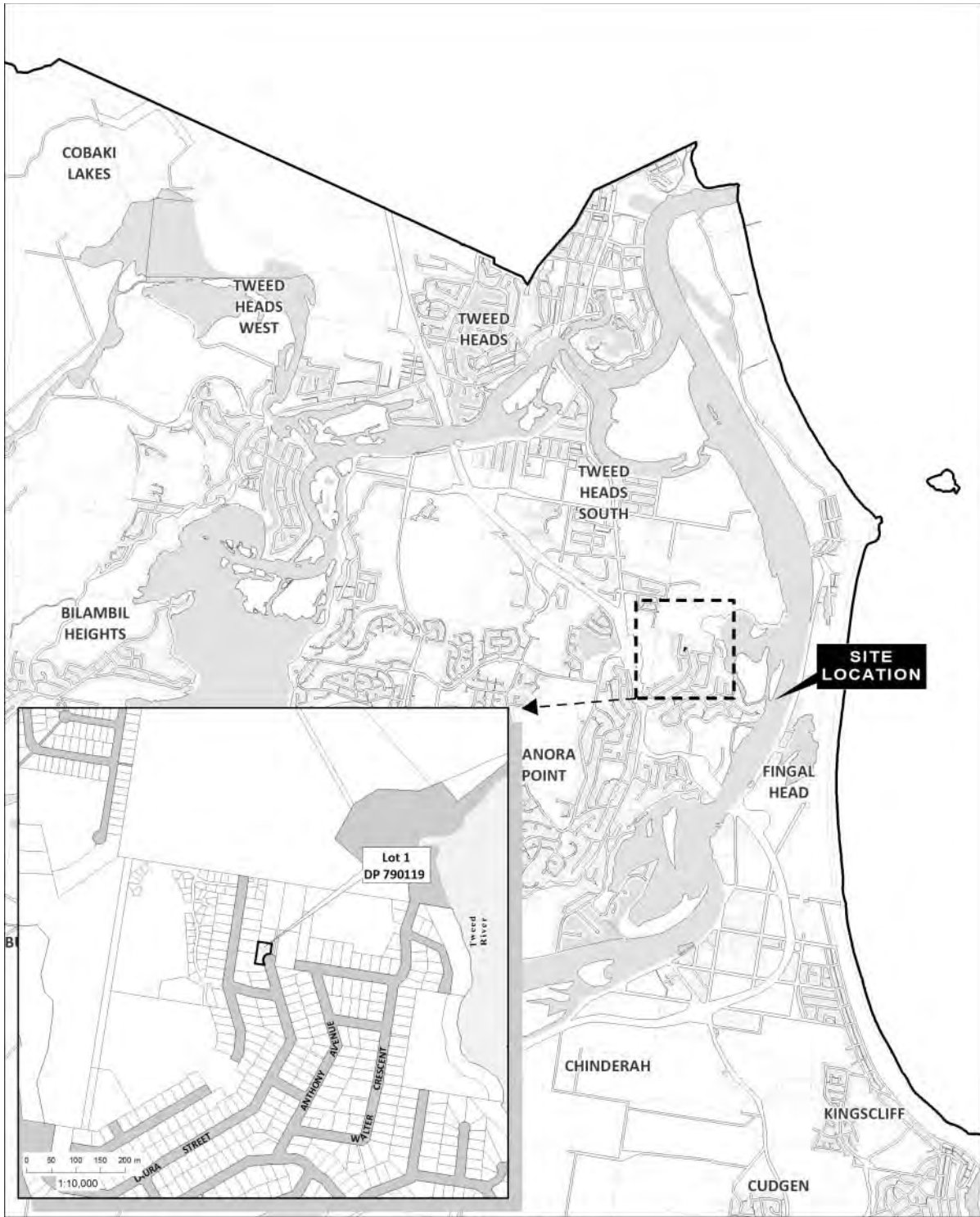
The application was notified to surrounding properties for a period of 14 days with a total of four submissions being received. The matters raised within these submissions are considered further within this report. Those that had originally sent a submission to Council in relation to the original plans were notified of the proposed amendments and given an additional opportunity to provide any further comments. Three additional submissions have since been received and the applicant has been given an opportunity to comment on the issues raised. Of note, a letter of support has recently been submitted by the applicant from the owner of Unit 1, No. 50 Elsie Street, to the west of the subject site in relation to overlooking.

An assessment of the proposal has revealed that a number of variations are proposed to Section A1 of the Tweed DCP 2008. Council Officers consider that the proposed variations, particularly in relation to: the siting of the proposed building, overall building form, materials and compatibility with surrounding built development in Laura Street as well as in relation to the location of the principle outdoor amenity space and lack of integration with the internal living spaces, would not result in a favourable outcome and would be contrary to the intent of Section A1 of the Tweed DCP 2008. Further, it is considered that the proposal would have an unacceptable impact on the residential amenity of surrounding properties, namely in regard to inappropriate overlooking and invasion of privacy issues primarily from the elevated decks.

For the reasons outlined within this report it is considered that the proposed dwelling is too large for the irregular shaped residual site which leads a number of non-compliances with Section A1 of the Tweed DCP 2008 and an unacceptable impact on the residential amenity of surrounding properties.

It is therefore recommended that the application be refused.

SITE DIAGRAM:



Locality Plan

DA13/0111 - Lot 1 DP 790119
No. 75 Laura Street, BANORA POINT

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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

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TWEED
SHIRE COUNCIL

Date Printed: 13 July 2013

DEVELOPMENT/ELEVATION PLANS:



1 Landscape Plan
Scale: 1 : 150

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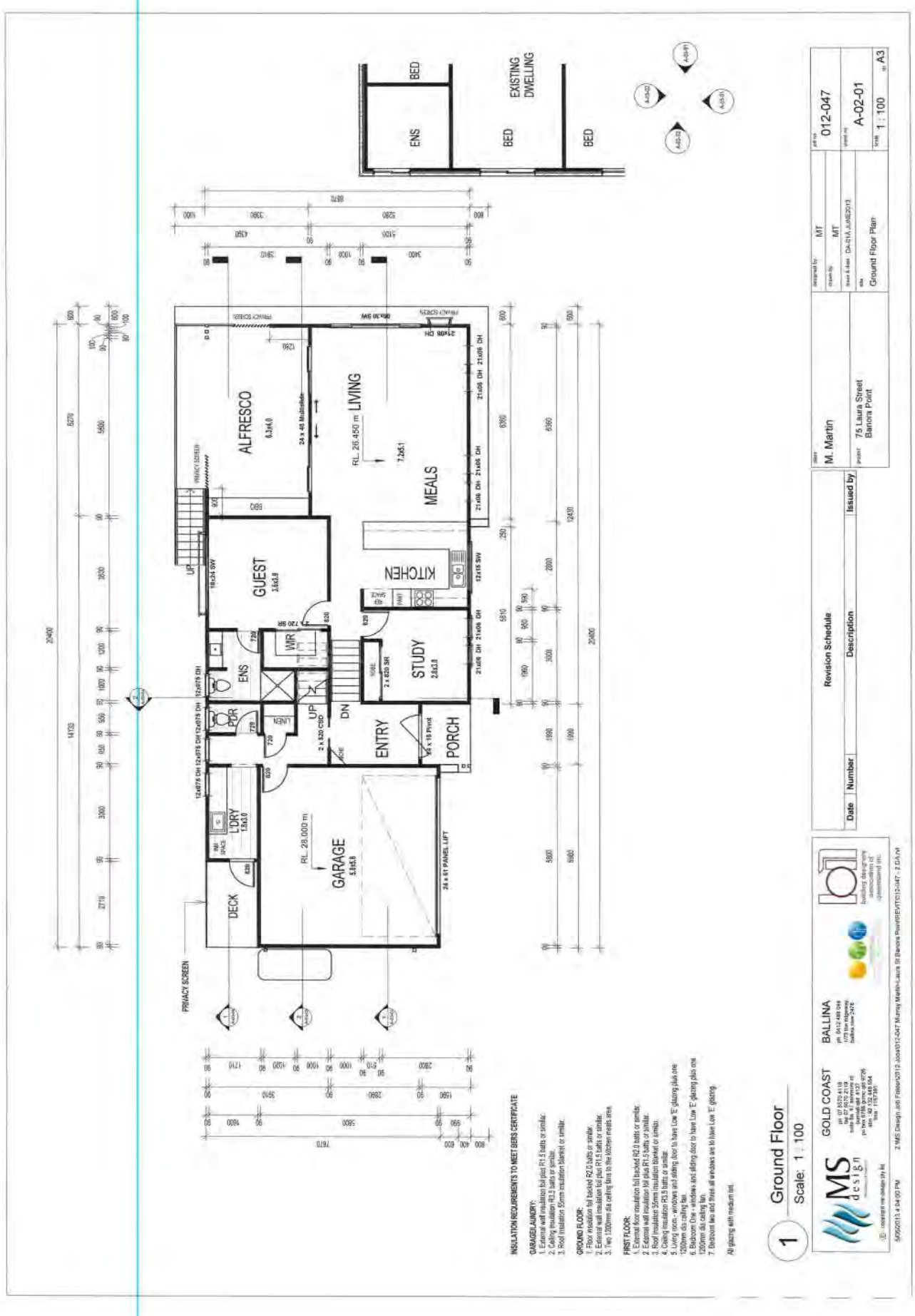
ISSUED BY
 M. Martin
 7/5, Jarvis Street
 Ballina NSW 2460

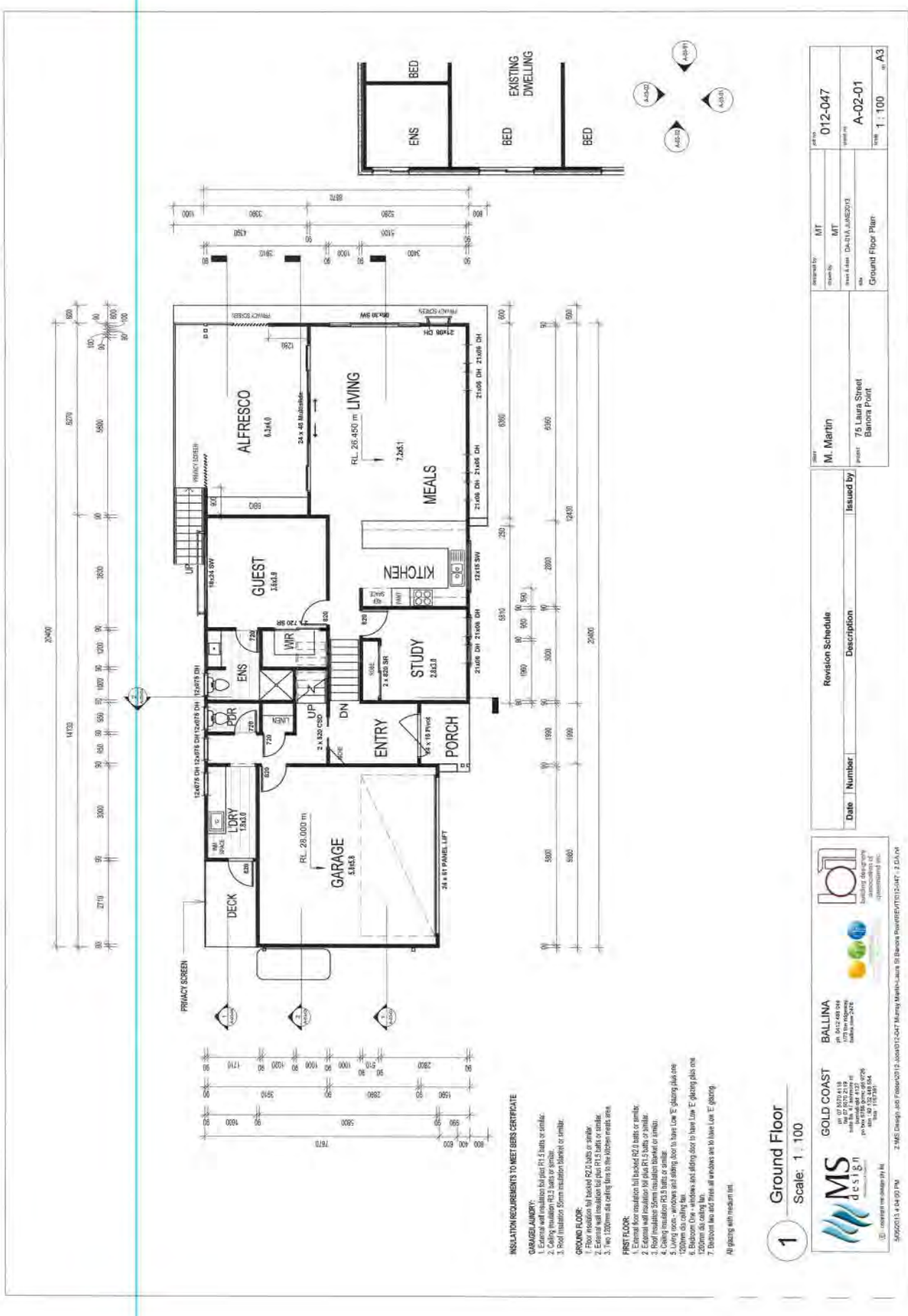
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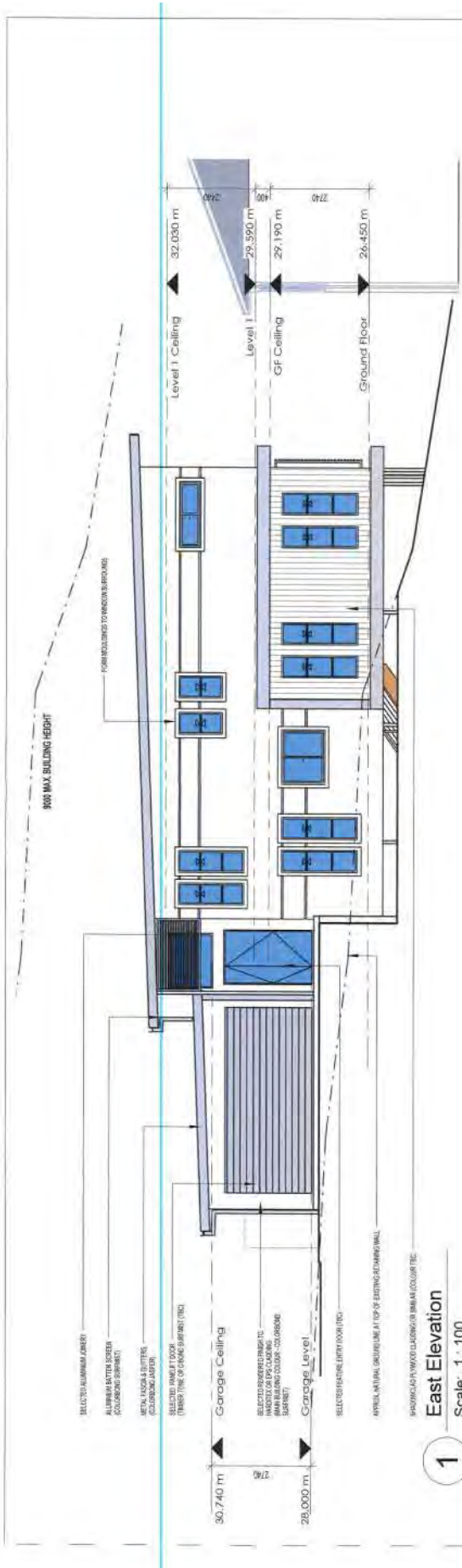
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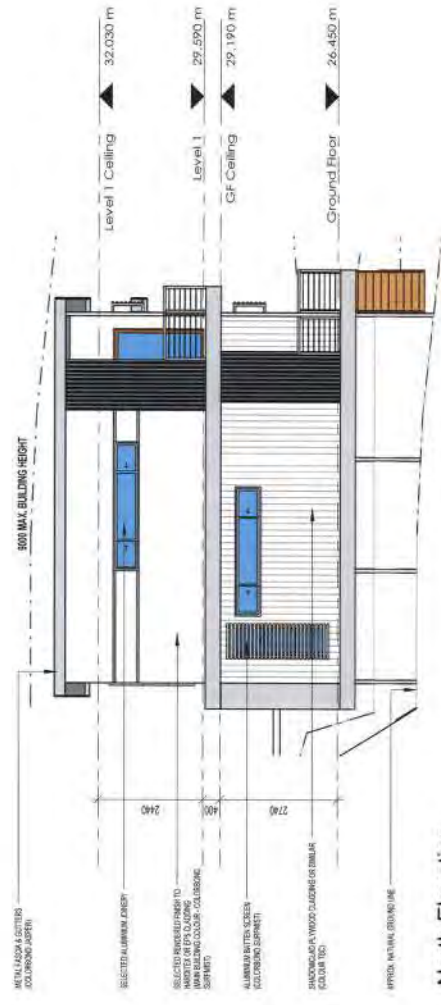








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North Elevation
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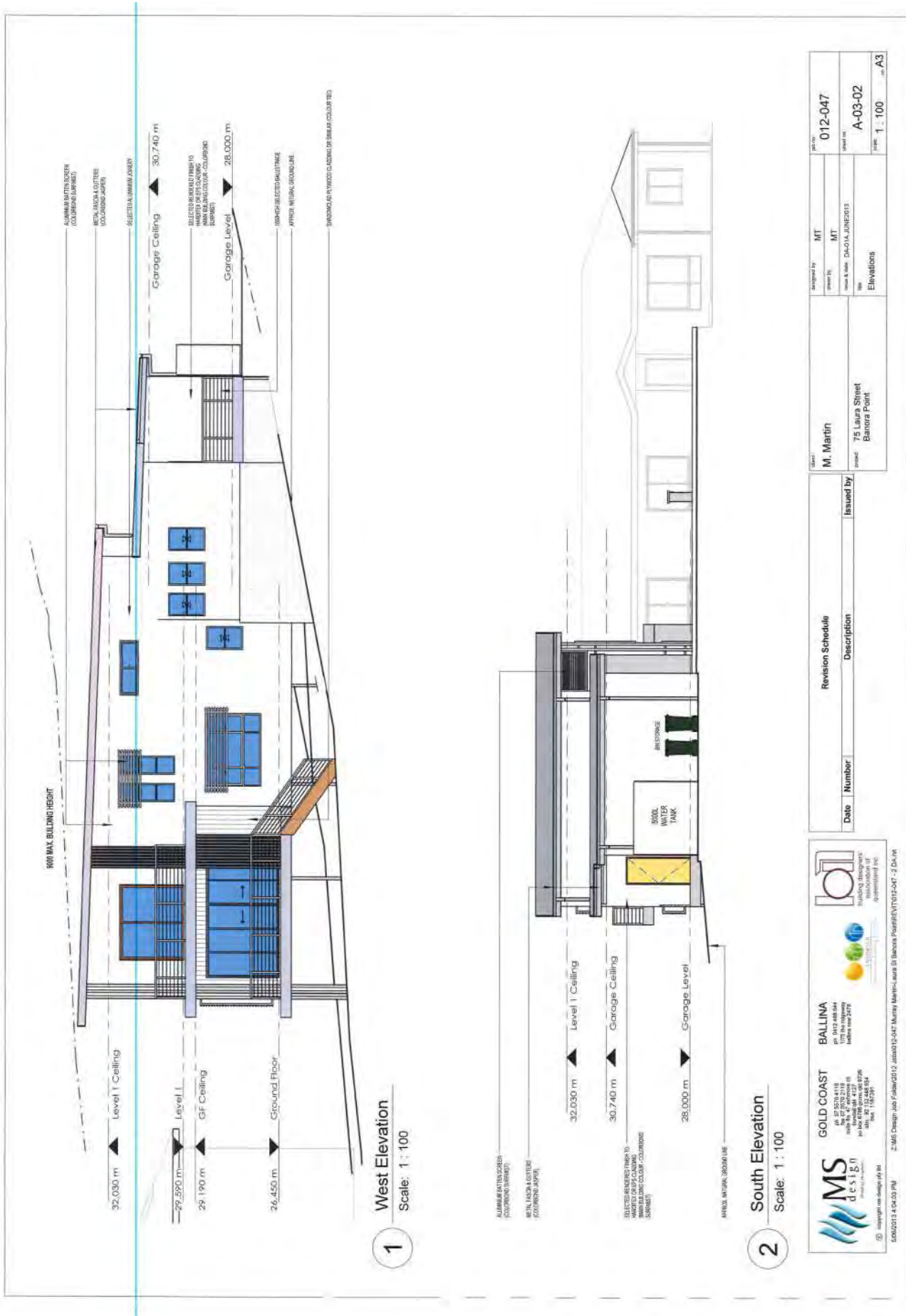
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Revision Schedule

Date	Number	Description
		Issued by

ISSUED BY: M. Martin
 DRAWN BY: MT
 CHECKED BY: DA-DIA JUNE 2013
 DATE: 75 Laura Street
 Ballina Point
 SCALE: 1 : 100

JOB NO: 012-047
 SHEET NO: A-03-01
 TOTAL SHEETS: 1 : 100



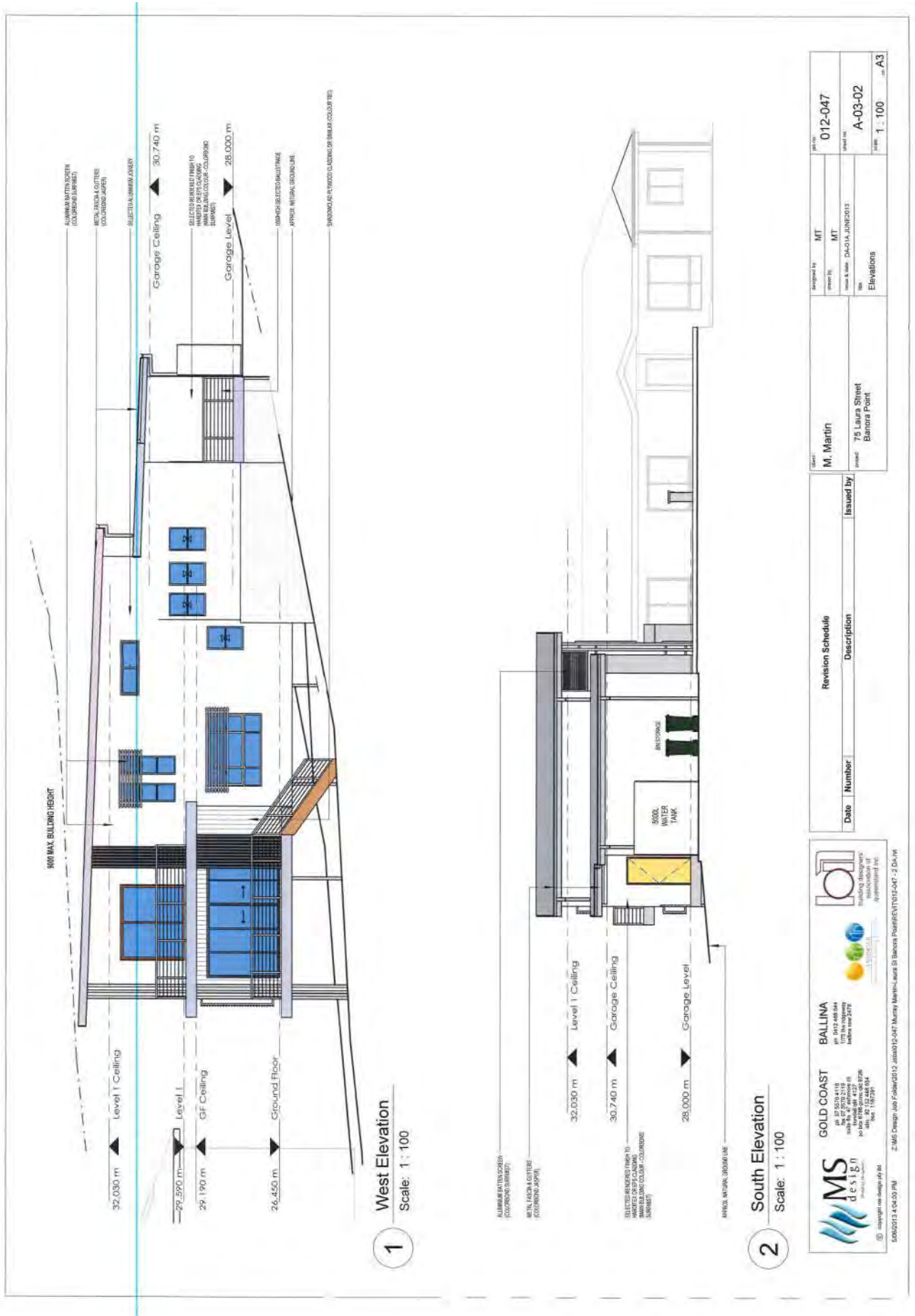
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ISSUED BY		DRAWN BY	MT	ISSUE NO.	A-03-02
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1 West Elevation
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2 South Elevation
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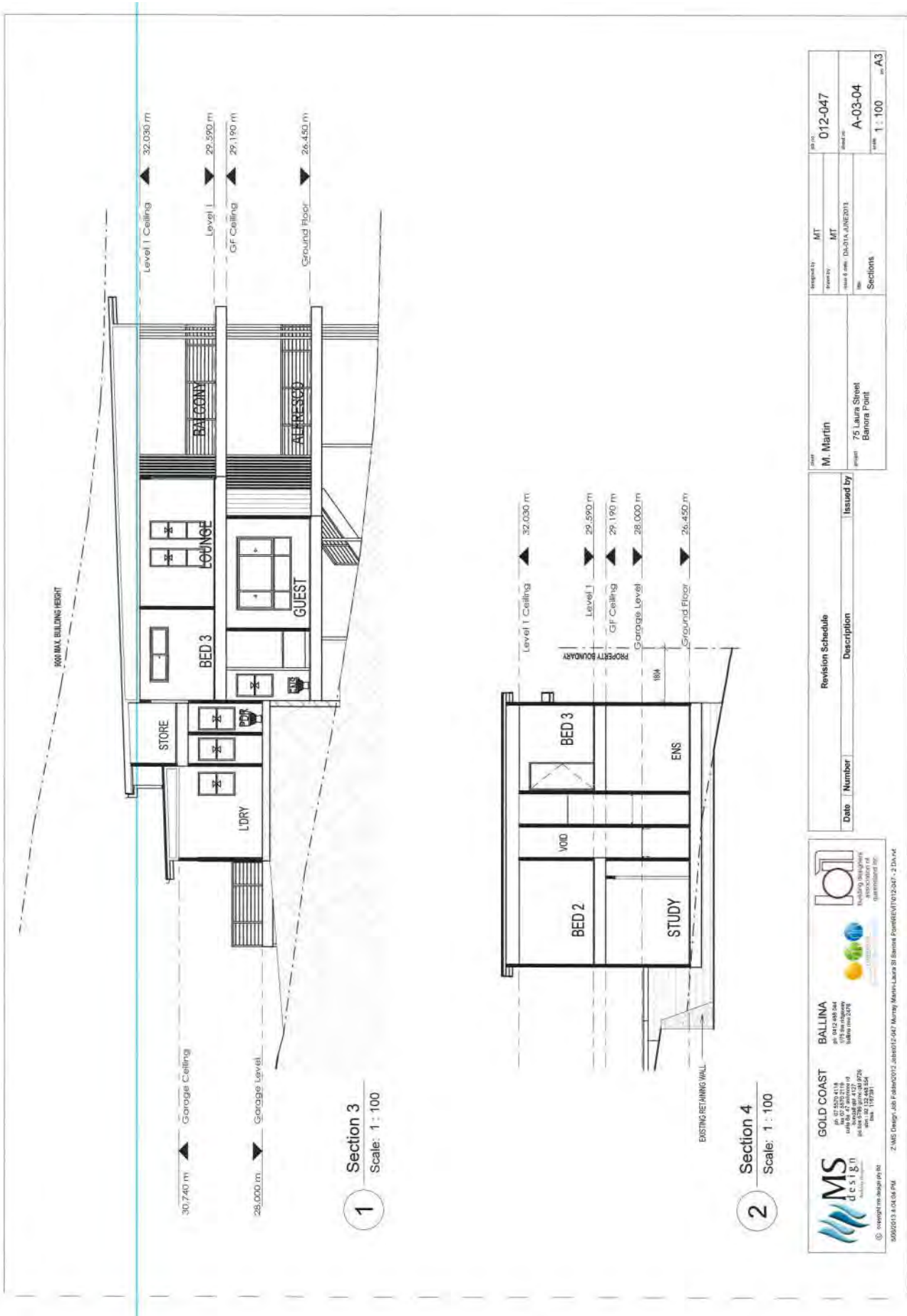
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REVISION SCHEDULE

Date	Number	Description
		Issued by

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 M. Martin
 75 Laura Street
 Banana Point

DESIGNED BY
 MT
ISSUED BY
 MT
DATE
 012-047
PROJECT NO.
 A-03-02
SCALE
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PROJECT NO.	012-047
DATE	A-03-04
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DESIGNER	M. Martin
CLIENT	25 Lains Street Edmore Point
SECTION	Sections
DATE	DATE
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MT	MT
DATE	DATE
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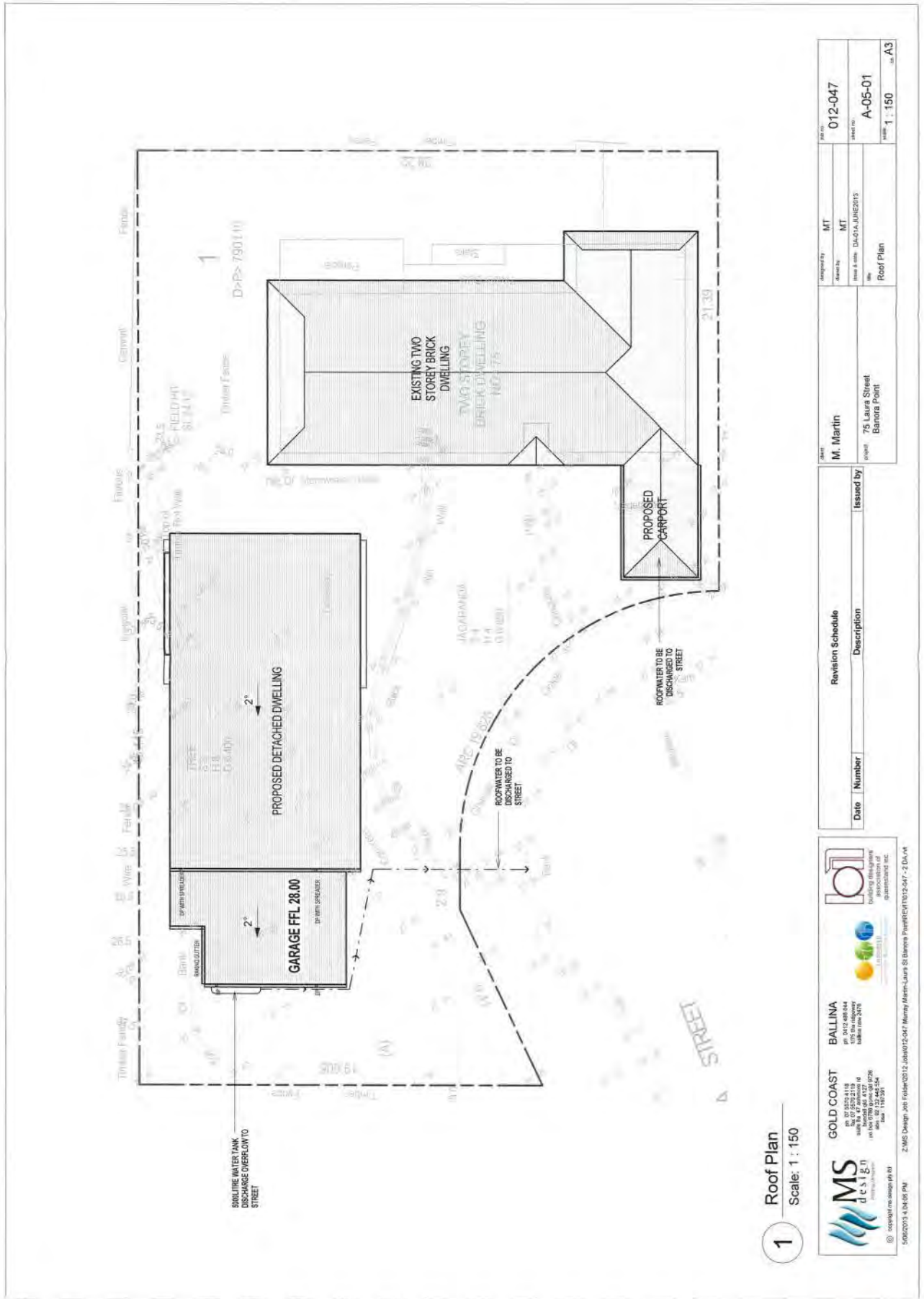
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Drawn by	MT	Sheet No.	A-05-01
Issue & date	D-COAJUNE2013	Scale	1 : 150
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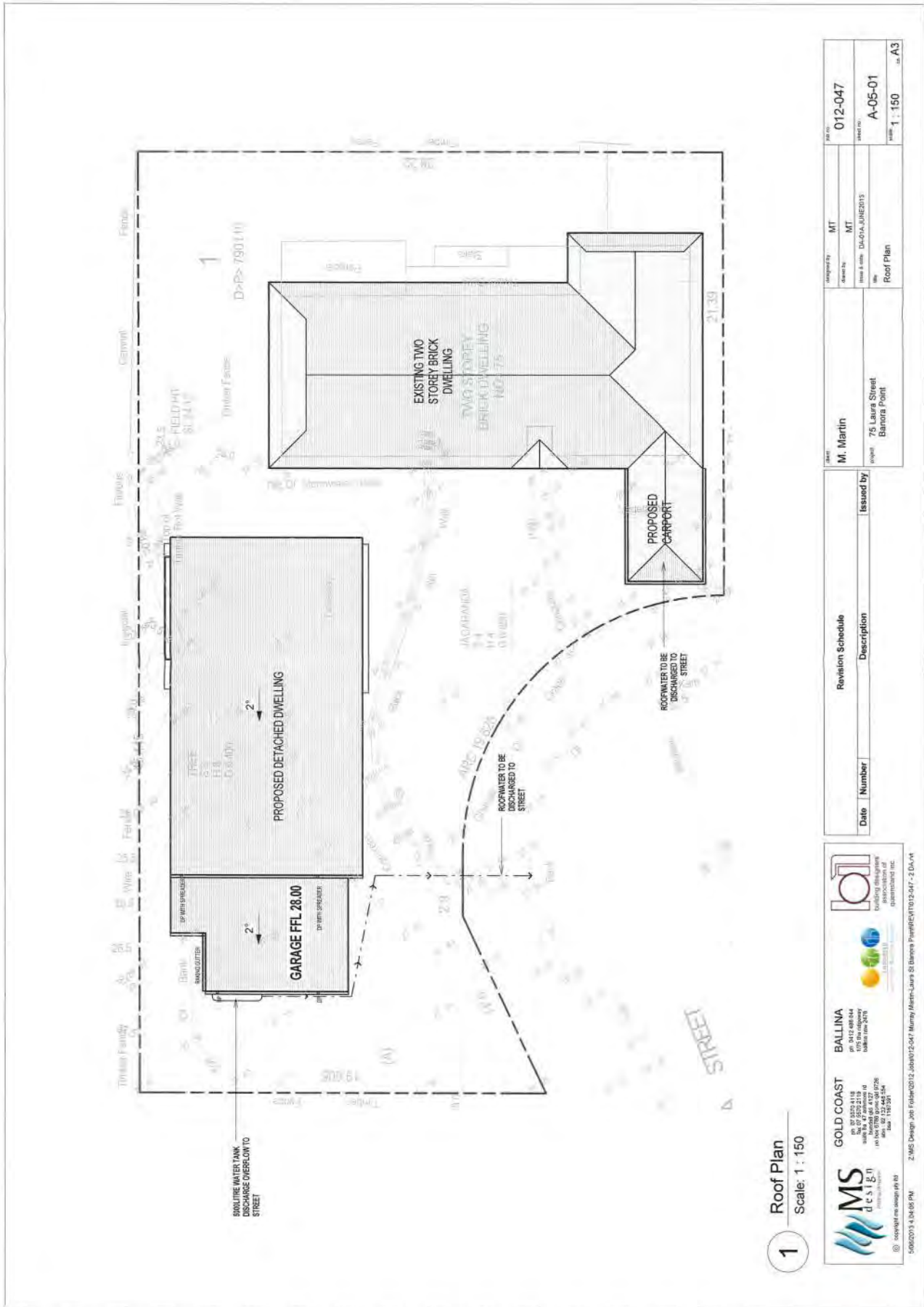
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designed by	MT	proj no	012-047
drawn by	MT	issue no	A-07-01a
issue date	DA-04 JUNE 2013	scale	1 : 300
site	Shadows March 22	sheet	A3

client	M. Martin	issued by	
address	75 Laura Street Banora Point	date	

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EXISTING TWO STOREY BRICK DWELLING

PROPOSED DETACHED DWELLING



EXISTING TWO STOREY BRICK DWELLING

PROPOSED DETACHED DWELLING

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Revision Schedule

Date	Number	Description
		Issued by

client: **M. Martin**

address: **75 Lakara Street
Boronja Point**

designed by: **MT**

drawn by: **MT**

issue & date: **24.07.13 JUN 2013**

job no: **012-047**

sheet no: **A-07-02**

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Date	Description

client M. Martin	approved by MT	job no. 012-047
project 75 Laura Street Benora Point	approved by MT	issue date A-07-02
date Shadows June 22		scale 1 : 300
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		issue & date	DA-01A-20120313	scale	1 : 300
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drawn by	MT	
date & scale	04-01-A JUNE 2013	
site	Shadowe September 21	A-07-03a
scale	1 : 300	A3

client	M. Martin	
address	75 Laura Street Banora Point	
revision schedule		
Date	Number	Description
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 PH: 0412 488 544
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 Gold Coast QLD 4217

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Revision Schedule	
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author: **M. Martin**

project: **75 Laura Street Ballara Point**

issued by: **Shadowe September 21**

date: **1 : 300**

sheet no: **A-07-03a**

plan no: **012-047**

scale: **1 : 300**

sheet no: **A3**



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Project No	012-047
Client No	A-07-04a
Scale	1 : 300
Drawn by	MT
Checked by	MT
Issue & Date	DAVIDA JUNE 2013
Issue	Shadows December 22
Sheet	M. Martin
Address	75 Laura Street Banora Point
Scale	A3

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project	75 Laura Street Bancora Point	drawn by	MT	issue no.	A-08-01
		issue & date	24/01/2013	scale	
		file	Perspectives	sheet	A3

Revision Schedule	
Date	Description
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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

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.

The development proposes the construction of a large, predominantly two storey building on a constrained allotment surrounded by residential development. It is considered that the proposal would impact negatively on the character of the surrounding low density residential environment.

On this basis it is considered that the proposal would not be consistent with Clause 4.

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 proposal seeks the construction of an additional dwelling within a residual portion of an existing allotment, located within an established residential area. It is therefore considered unlikely that the proposal would impact on matters relating to the principles of ecological sustainable development, such as ecological or environmental factors.

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 2(a) Low Density Residential Zone within the current Local Environmental Plan (LEP) 2000.

The proposed dwelling house, by reason of its siting, bulk, height would not be consistent with the primary objective of the 2(a) Low Density Zone, as detailed below. Further, it is considered that the proposal would not be consistent with other aims and objectives of the LEP 2000 and, if approved, would have an unacceptable cumulative impact on the community and locality.

Clause 11 - Zone Objectives

The subject site is located in the 2(a) Low Density Residential Zone. The objectives of the zone are as follows:

Primary objectives:

- To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.

Secondary objectives:

- To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.
- To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.

Multi-dwelling houses are an Item 2 form of development within the 2(a) Low Density Residential zone, provided that each dwelling house is on an allotment of at least 450m², as specified with Clause 51A of the Tweed LEP 2000, as detailed below. The subject site has a site area of 1031m² and therefore, in principle, satisfies this requirement.

The proposal seeks the construction of a second dwelling to form a detached dual occupancy development within a residual portion of an existing allotment. It is noted that one of the secondary objectives seeks to allow for some diversity of housing types, provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

For reasons outlined within this report, it is considered that the proposed dwelling is too large (consisting of four bedrooms, study and two separate lounge areas) to be accommodated within the site. The proposal does not achieve adequate setback distances, useable and private open space that is sufficiently integrated with the dwelling and on the basis of its bulky two storey presentation with the long elevation to the street, would not be compatible with the existing built form character of the surrounding area. Further, it is considered that the proposal would result in an inappropriate level of overlooking and invasion of privacy issues, primarily as a result of the elevated deck areas.

On this basis it is considered that the proposal would not be consistent with Clause 11.

Clause 15 - Essential Services

The site is connected to essential services with Council's reticulated water and sewer services available to the locality. Should the application be approved, conditions will be applied to any consent to ensure the provision of new and adequate services for the new dwelling.

Clause 16 - Height of Building

The subject site is located within an area that has a maximum building height of three storeys. The proposal seeks a two storey building which is below the maximum allowable height limit.

Clause 17 - Social Impact Assessment

This clause requires Council to consider whether a proposed development is likely to have a significant social or economic impact. The nature and scale of the proposed development did not require the applicant to prepare a Social Impact Assessment (SIA). When considered in isolation the proposed development would be unlikely to have a significant social or economic impact. However, if approved, the proposal may set a precedent for similar 'infill' development within the Shire that may collectively impact on the residential amenity and character of the area.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as comprising Class 5 Acid Sulfate Soils. Limited earthworks are proposed and it is considered unlikely that the proposal would have any significant impact on relation to Acid Sulfate Soils.

Other Specific Clauses

Clause 51A - Multi-dwelling housing densities in Zone 2(a)

The objective of the clause is to control the density of multi-dwelling housing in Zone 2(a) (the Low Density Residential zone) by the use of a development standard, as follows:

- 2) *Multi-dwelling housing proposed to be erected on land within Zone 2(a) is to be at a density not greater than:*
 - (a) *One dwelling per 450 square metres of site area, or*
 - (b) *If the site is within 300 metres of a business centre as indicated on the Business Centres Map - one dwelling per 250 square metres of site area.*

The subject site is 1031m² and therefore the density of the proposed development is satisfied.

Clause 54 - Tree Preservation Order

The subject site is covered by the Tweed Shire Council 2011 (Koala Habitat) Tree Preservation Order (TPO). The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

The site is located within an established residential area and the proposed development would not necessitate the removal of any significant vegetation such as primary Koala feed trees.

Clause 56 - Suspension of covenants, agreements and similar instruments

Council records indicate that there is a Section 88B Instrument over the subject allotment that stipulates the following:

'Terms of Restrictions as to User fifthly referred to in the above Plan:

- a) *That not more than one main building shall be erected or permitted to remain on any lot and such main building shall not be used for any purpose other than a single private dwelling house and shall have an overall floor area excluding any attached garage or carport of not less than 125 square metres'.*

Clause 56 allows some discretion to override Section 88B Instruments and reads as follows:

- (1) Objective
 - to enable development to be carried out in accordance with this plan or a consent.
- (2) For the purpose of enabling development to be carried out in accordance with this plan or a consent under the Act, any covenant, agreement or similar instrument that restricts or prohibits development allowed by this plan shall not apply to the development to the extent necessary to serve that purpose.
- (3) Nothing in subclause (2) affects the rights or interests of any public authority under any registered instrument.
- (4) Pursuant to section 28 of the Act, before the making of this clause the Governor approved subclause (2).

The applicant has been requested to address this restriction within the Section 88B Instrument and demonstrate why the site is suitable and capable of accommodating a compliant dual occupancy development, with reference to Clause 56. The applicant was advised that Council would only allow some discretion in this regard where the applicant has sufficiently demonstrated that the site is capable of accommodating a compliant dual occupancy development.

In response the applicant has advised the following:

"The Section 88B instrument took effect in 1989 at the time of the original land subdivision. It was one of a number of restrictions that appear to have been imposed by the developer. The nature of the restrictions placed at the subdivision stage, eg. Minimum dwelling size of 125m², do not appear to relate to any policy position of Council but were probably more sales tools intended to convince purchasers that housing in the estate will achieve a certain standard.

It is our view that the relevance of a restriction that dates back 24 years should be considered against current town planning and government policy. Clearly in the 24 year period the policies of the Council have evolved in response to broad policies like urban consolidation and efforts to efficiently use urban land and infrastructure. Further changing demographics and affordability issues have meant that smaller houses and reduced maintenance is preferred by a number of household types. Council, in its planning controls have supported these policies by allowing for lot sizes to 450m² and for a range of housing types to establish in residential zones.

In this case, the subject land achieves the minimum land area to support a dual occupancy development. The ability to achieve a development that is compliant with DCP A1 or meets the objectives of its provisions will be assessed in the attached SEE.

As the development is lawfully able to be carried out under the Tweed Local Environmental Plan 2000 (LEP) it is considered appropriate that Council use Clause 56 of the LEP to suspend the Section 88B Instrument."

The applicants SEE considers that the likely reasoning behind the imposition of the Section 88B Restriction was that it was likely to be more of a 'sales tool' and

that the restriction should be considered against current town planning and government policy.

With this regard, it is acknowledged that the site area is 1031m², and therefore, in principle, the 450m² minimum allotment size requirement of the 2(a) Low Density Zone is satisfied. However, it is evident that the subject site is significantly constrained in both topography and configuration, being influenced in shape by the cul-de-sac formation at the end of Laura Street, the location of the existing dwelling and a 3.05m easement. The existing landscaped and open space area at the southern portion of the site contributes to the low density character of the area and provides extensive views out to the rural hinterland. It is also considered likely that the existing dwelling was located at the northern section of the lot, in a west to east configuration, to allow for such views from surrounding properties and to mitigate overlooking impacts to properties to the west (below the subject site).

For the reasons outlined within this report, it is considered that the proposed development is too large to be accommodated on this constrained site and would be contrary to current planning policy. On this basis it is considered that the proposed relaxation of the Section 88B Restriction is not justified and the proposal would be contrary to Clause 56.

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.

It is considered that the proposed development would be unlikely to raise any implications in relation to the NSW Coastline Management Manual. Given the location of the subject site, matters relating to beach erosion and other related hazards are not applicable.

The North Coast Urban Design Guidelines provide a guide in relation to advancing quality urban design and aims to manage development to reflect and enhance the unique visual and built character values of North Coast towns and villages. These guidelines are based on a broad analysis of the existing urban design character of various settlements throughout the region, and are therefore not specifically relevant to a single development application for a dual occupancy development. However, these guidelines do seek to ensure that the unique natural and urban character of the settlements in the region are enhanced and maintained.

The development proposes the construction of a large predominantly two storey dwelling with minimal setbacks and useable open space, located on a constrained lot surrounded by low density residential development. The subject development is not considered to maintain or enhance the visual amenity or character of the area and would therefore be contrary to the intentions of these guidelines.

Clause 43: Residential development

Clause 43 states that Council shall not grant consent to development for residential purposes unless, amongst other things, it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land.

As detailed within this report, it is considered that the character and amenity of the low density residential zone would be comprised should the development be approved.

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The Policy aims to, amongst other things, protect and manage the natural, cultural, recreational and economic attributes of the NSW coast; protect and improve existing public access to and along the coast; to protect and preserve Aboriginal cultural heritage; to ensure visual amenity of the coast is protected; to protect beach environments and beach amenity as well as coastal vegetation and the marine environment; to manage the coastal zone in accordance with the principles of ecologically sustainable development; to ensure the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area; and encourages a strategic approach to coastal management.

The development seeks the construction of a predominantly two storey building that would comprise a double garage, four bedrooms, study and two separate living areas. Whilst the proposal will clearly not impact on matters relating to beach access, overshadowing of the foreshore and so on, it is considered that, by reason of the siting, bulk, scale and size of the proposed development, that it would not be appropriate on the subject site.

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

The Draft Tweed Local Environmental Plan is yet to be gazetted but has been endorsed by Council. In this Draft the site is nominated within the R2 – Low Density Residential Zone. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment, and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

A detached dual occupancy development would be permissible with consent in the R2 Zone. The minimum lot size for subdivision purposes would remain consistent with the current LEP 2000 requirement of 450m². The maximum building height under the Draft is 9m to which the proposed building would also comply. The required Floor Space Ration (FSR) for the subject site is 0.8:1. The estimated GFA of the buildings on the subject site is 425m². As the site area is 1031m², the FSR is estimated to be 0.4:1, which complies with the FSR requirements.

However, by reason of the siting, bulk and scale of the proposed dwelling that would be constructed in close proximity to the boundaries of the site, it is considered that the proposal would not be compatible with the surrounding low density residential development and would therefore not meet the objectives of the R2 Zone.

Further, Clause 1.9A of the Draft LEP 2012 relates to the Suspension of covenants, agreements and instruments [local]. The clause reads as follows:

- (1) *For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a development consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*

The intention of this clause is akin to Clause 56 of the current LEP 2000 in that it allows a relaxation of any covenant or restriction pertaining to the land where it would be carried out, should the development be carried out in accordance with the Draft LEP 2012.

As detailed within this report, it is considered that the proposed dwelling would not be in accordance with the objectives of the low density residential zone. Council Officers are of the opinion that sufficient justification has not been received to allow a relaxation of the Section 88B Restriction (that permits only one habitable dwelling on the site) should not be permitted in this instance.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant was required to address the provisions of Section A1 of the current Tweed DCP 2008 and where variations to the controls were proposed, provide a sufficient justification with this regard. A summary of the principle A1 controls relevant to the proposed development is provided below:

3. Context and Site Analysis (Preliminaries Section)

- C1. *A site analysis, including details as relevant but not limited to the criteria in the Site Analysis Checklist (Appendix 7.3) is required for all dwelling development applications involving external building work, and is to demonstrate how the proposed development responds to the site analysis.*

A written site analysis has been provided that discusses the urban form and character of the locality. Further, photo montages of the site and proposed building have been provided in relation to view analysis and shadow diagrams. However, the applicant was required to provide details of how the proposed building is responsive to the lot configuration and existing built development as well as demonstrate any privacy implications to neighbouring properties.

It is considered that the supplied information (photo montages and building elevations) suggest that the building will present as a large, predominantly two storey building to the street that would be out of character with surrounding built development. The proximity of the two storey building to the rear setback will result in an inappropriate level of overlooking and loss of privacy to neighbouring dwellings.

Further, whilst not a reason for refusal in itself, the proposed two storey building would impact on views from the street and surrounding dwellings.

In conclusion, it is considered that the submitted information has insufficiently demonstrated to Council Officers that the proposed development responds to the site configuration and topography, or the location of surrounding development.

3.1 Streetscape

- C1. *All dwellings should address the street by ensuring important elements such as front doors and building entry areas are prominent from the building facade.*

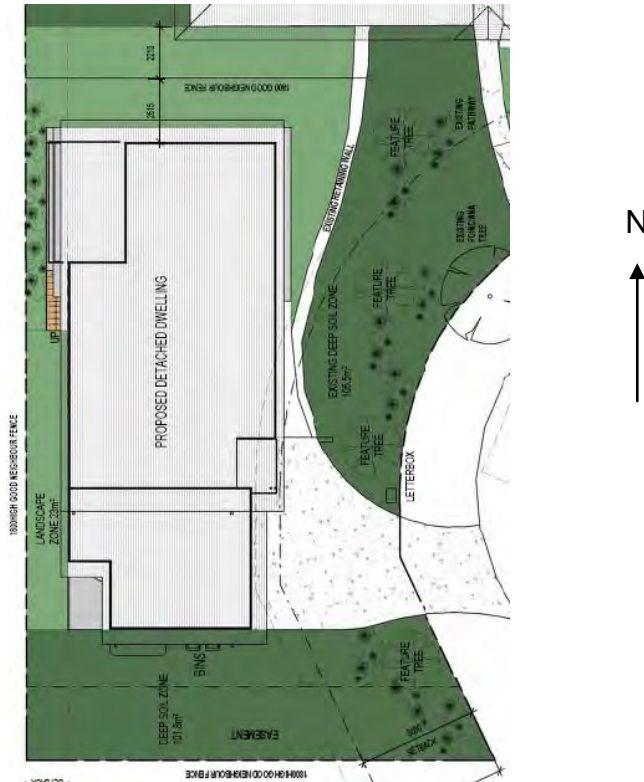
In general, the proposed dwelling would address the street with front door and garage being clearly visible from Laura Street.

- C2. *Site design, building setbacks and the location and height of level changes are to consider and be compatible with other buildings and sites along the street, particularly those that are older and more established.*

The subject site adjoins the north western edge of the cul-de-sac and therefore, the allotment comprises an irregular shape with its south eastern street boundary reflecting the arc of the cul-de-sac geometry. A further constraint is the 3.05m easement that runs along the southern boundary of the site. Taking into consideration the existing two storey residence located at the northern most part of the site, the residual vacant part of the block occupies a reasonably constrained section of the site, as shown in the following aerial imagery:



Further, once a side, front and rear setback is applied across the site, the remaining 'developable' footprint is a narrow north south envelope. In this instance, the applicant has redefined what would constitute the front, side and rear boundaries in order to maximize a developable footprint envelope over the residual portion of the site, as shown in the following image:



The submitted plans illustrate that the rear setback (and location of deep soil zone) is to the south, the side is to the west and the front boundary faces east. Matters relating to building setback are considered in greater detail within this assessment however, it is considered that the proposed building configuration and setback arrangement would disrupt the building envelope to allotment configuration that is found throughout Laura Street.

Further, it is considered that the proposed dwelling would not be compatible with surrounding built form.



The above image details the existing predominantly single storey brick and tile residence located on the subject site. The following provides a perspective of the proposed new dwelling and carport addition on the existing dwelling:



As detailed within this report, it is considered that the proposed (predominantly) two storey building, with a limited rear setback, located within a constrained site, would not be consistent with surrounding built, low density residential development, particularly in relation to the height and built form of the existing dwelling on the subject site.

It should be noted that the proposed secondary dwelling would be approximately 1.5m higher than the existing dwelling and has a larger GFA by approximately 25m² (not including the external decks).

3.2 Views and Vistas

- C1. *Building siting and height is, as far as it is practical, to be designed to minimise the impact on views from surrounding properties, and follow the Planning Principles (refer note) of view sharing between properties.*
- C2. *The location and height of new development is not to significantly diminish the public views to heritage items, dominant landmarks, public buildings from public places or unreasonably obscure public district views of major natural features such as the water, ridgelines or bushland.*

The site slopes away to the north-west with long distance views of what are considered to be significant natural features of the rural hinterland and border ranges, as depicted in the following image:



The configuration of the dwelling, with its long, predominantly two storey elevation to the street, will block hinterland views from the street as well as from those dwellings on the upslope of Laura Street, as shown in the following photomontage, as provided by the applicant:



The loss of view from Laura Street and from properties to the east is acknowledged. The question is how reasonable would it be to expect the view from the public realm and from surrounding properties located across the road from the subject site to be retained. Whilst the impact to views of the rural hinterland is acknowledged, this is not considered to warrant refusal of the proposal alone, given the site is located within a residential zone and the sloping nature of the area. However, the height of the building and the resultant impact on views adds to the opinion that a smaller building with a more considered approach of distribution of massing (such as reconfiguring the main 'mass' of the building up slope rather than down slope of the single storey garage component) would reduce this overall impact.

Concerns have been raised from the residents of the property immediately to the south of the subject site (No. 73 Laura Street) in relation to the impact on views from the living areas of their property.



The above image provides an indication of the approximate impact on views to the north from the property to the south of the site. Whilst the restricted views to the north is acknowledged, the dwelling to the south will retain its predominant views over to the west. Reducing the height of the proposed building to single storey and increasing the side setback to 5.5m has also assisted in increasing view sharing between these two properties.

1. General

- C1. *Dwellings and development must be consistent with the scale and character of surrounding dwellings or as envisaged through an adopted concept plan, locality plan, design statement/covenant or the like.*

A Section 88B Restriction that permits only one habitable dwelling on the allotment is relevant to the subject site. As detailed within this report, it is considered that the proposed development (building height and length across the site, limited setback, lack of useable open space) would not be consistent with the scale and character of surrounding dwellings. Further, it is considered that the proposed dwelling would result in unacceptable implications to the residential amenity of surrounding properties in relation to overlooking and loss of privacy.

Council Officers remain of the opinion that the proposed dwelling is too large to be accommodated on the site without impacting on the low density character of the locality, as well as on the residential amenity of surrounding properties.

Dual Occupancy

- C2. *Dual occupancies are considered as two separate dwellings, each of which are required to meet the requirements setout in Part A.*

As detailed within this assessment, a number of variations to the A1 controls are proposed in relation to the development.

- C3. This control requires dual occupancy developments within a low density zone to be a minimum of 900m². The site is 1031m² and therefore satisfies this requirement in principle, however a detailed breakdown of each site area has not been provided.
- C5. *In all dual occupancy developments, applicants are to nominate front, rear and side boundaries and apply setback and landscape area requirements accordingly. The nomination of these boundaries, setbacks and configuration of the development is to be justified through a site analysis.*

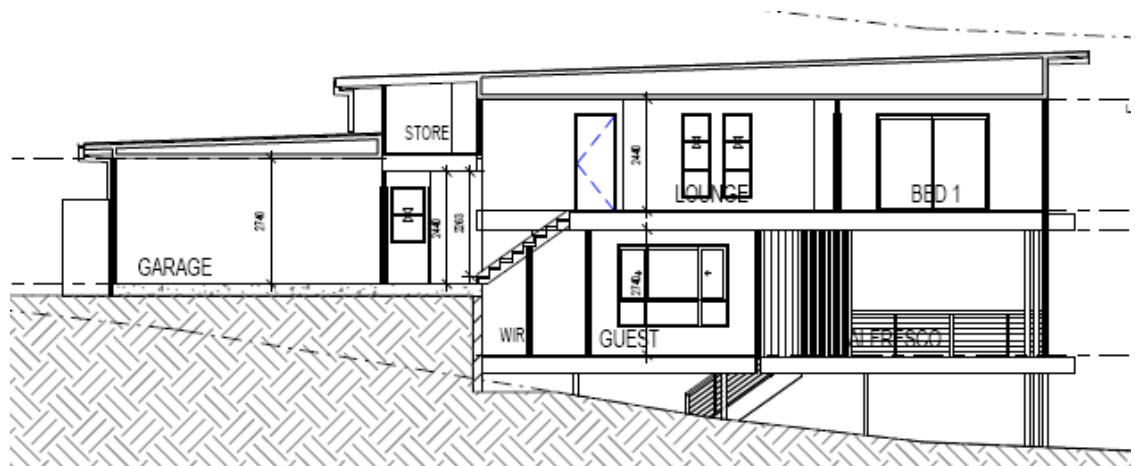
Due to the configuration of the subject site and location of existing dwelling the applicants have redefined what constitutes the front, side and rear boundaries of the proposed new dwelling house. The SEE advises that consideration of the site and surrounding development 'drove the nomination of these boundaries' as the provision of the rear boundary to the south, for example, would provide a greater separation distance to the existing dwelling on the adjacent lot and also opportunities to provide landscaping and screening.

In some respect the proposed variation to the setback configuration are justified in this instance. Locating the rear setback to the south does increase the distance of the proposed new dwelling to the dwelling to the south (No. 73 Laura Street). The land immediately to the west of the subject site is steeply sloping and comprises a natural rock formation which would pose limitations on the viability of future development on this site. However, there are concerns about the lack of integration of the 'rear' setback with the dwelling house (as the deep soil zone and open space area is not located off an internal living area) as well as the impact of the development on the overall character of the surrounding area.

2.1 Topography, cut and fill

The development proposes a split slab, post and beam form of construction that will limit the extent of cut and fill. The SEE advises that the areas outside of the building footprint are predominantly at natural ground level which is in the 10-14% slope range.

The SEE advises that *'all new proposed retaining is within the building footprint area'* and *'the retaining consists of engineer designed block retaining walls up to 2m in height and contained predominantly in the garage subfloor area'*, as shown in the following image:



The SEE advises that excavations of greater than 1m, as detailed within C3, are not proposed. C10 requires that no building works or earthworks are proposed within the easement. It is noted that no works are proposed within the easement to the south of the site.

In general, it is considered that the proposal raises no significant concerns in relation to cut and fill.

2.2 Landscaping, deep soil zones and external living areas

C1. C1 requires that a lot must include a total landscaped area consistent with Table 2. Table 2 requires that sites with a lot size of 900m² but less than 1500m² require a landscaped area and deep soil zone of at least 40% of the site, including at least 2 deep soil zones measuring a minimum of 5m in any direction.

A detailed breakdown of landscaped areas has not been received although a Landscape Plan has been provided. Based on the submitted Landscape Plan (Sheet A-01-02), proposed landscape areas would comprise an approximate area of 420m². Based on a site area of 1031m², the total landscape area would comprise approximately 40% of the site area, and would therefore be consistent with this control.

- C3. *C3 requires that the submitted landscape plan include the following details:*
- i. Calculations of the landscaped area, deep soil zones and site coverage;*
 - ii. Demonstrate how the landscaping complements and integrates with the amenity of the dwelling, the streetscape and any topographical features;*
 - iii. Demonstrate how each dwelling achieves integration of the dwelling, landscaped areas, private open space and external living areas;*
 - iv. Demonstrate suitable privacy and solar access for each dwelling and its outdoor and landscaped spaces; and*
 - v. Detail of plant species to be used and their locations. Species are to comprise no less than 80% native species.*

The SEE advises that the proposal provides a total landscaped area through a combination of deep soil zones and soft landscaping and that, due to the irregular shape of the lot, the deep soil zone has been provided to the southern boundary (nominated as the rear boundary). A detailed planting schedule has not been provided however if the application were to be approved, such details may be requested via a condition of consent.

The only area available for landscaped area and open space is at the southern portion of the lot, which the applicant nominates as the 'rear' setback. Stepped access to this area would be via a laundry to a small external deck. The location of the only area available for outdoor amenity space to the south of the site, with no access from internal living spaces, is considered to be inappropriate. It is considered that the eastern portion of the yard space, within the front setback, would provide a better opportunity for integration between internal and external spaces.

External living areas would be located on two levels of elevated decks, the lower deck comprising steps to the 'side' or western setback. In relation to C3 ii, iii and iv, there are concerns that the proposed development fails to sufficiently integrate the only area available for useable outdoor space with the dwelling, as shown in the following image:



Further, there are concerns about the level of useability and privacy of this area, with potential for overlooking from the upper floors of the dwelling to the south of the site (No. 73 Laura Street) and from the street. Future boundary treatment such as fences, that may increase the useability, privacy and security in this space, may further reduce streetscape amenity as well as limit the potential for view sharing.

Of note, there are concerns that the new driveway and carport located within the front setback of the existing dwelling may necessitate the removal of a significant Jacaranda tree that, whilst not a native species, greatly enhances the visual amenity of the area and its loss would be unfortunate.

- C6. *Locate and design landscaping to increase privacy between neighbouring dwellings without excessive shadowing or blocking primary views or existing solar panels.*

The SEE advises that locating the landscaped area to the southern boundary increase the level of privacy to the property to the south (No. 73 Laura Street). However, as the primary area of open space for the proposed new dwelling is located at the southern boundary, this may further result in privacy issues to the residents of the property to the south in relation to noise and disturbance.

C8 and C9 relate to the treatment of runoff where possible as well as details relating to stormwater system and geotechnical stability of the site. Further details have been received with this regard to which Council's Development Engineer consider acceptable. Roofwater is to be collected in an on-site rainwater tank for re-use on the site, with overflow tank water to be discharged to the street.

3. Setbacks (front and rear)

- C1. *The minimum setback from the street and rear boundary for a dwelling is to comply with Table 3 - Front and Rear Setbacks in DCP A1 - Part A.*

For an allotment measuring between 900m² and 1500m², the required front setback is 6m and rear setback is 12m (for a building of 4.5m in height or greater). The front setback is generally consistent with this requirement, taking into consideration that the proposed dwelling would be located within an established area and would be an infill site.

However, the applicant nominates the southern boundary would be the 'rear' setback in this instance. The proposed 'rear' setback is 5.5m, which is clearly a significant variation to the requirement of 12m. Further, should the 'rear' setback be considered to be the western boundary (at the rear of the dwelling), a setback of only 1.8m at most is proposed (reduced to 1m from the outer edge of the proposed deck).

Should the 'rear' setback be defined as the western boundary, the significantly reduced rear setback and proposed location of living spaces (particularly given two levels of elevated decks are proposed) directly adjoining this boundary, would have significant invasion of privacy impacts to dwellings located to the west of the site. Council Officers are of the opinion that the proposed variation to the rear setback requirement, combined with the lack of integration of landscaped areas with the proposed dwelling, cannot be supported.

- C5. *Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front façade, unless it can be demonstrated how the design mitigates the dominance of the garage door to the street elevation.*
- C7. C7 sets out various criteria where a carport may be permitted to encroach within the front setback.

In relation to C5 and C7, the proposed carport for the existing dwelling would be located forward of the building line. The SEE advises that there is no alternative location for the proposed carport and has provided a number of examples of carports located within the front setback of the site in the vicinity of the site. The proposed carport would be setback a minimum of 900mm which complies; would not exceed 33% of the width of the allotment frontage and would be of an open design (with a minimum of two sides being open).

The proposed design of the carport has been amended to incorporate a pitched roof integrated with the existing dwelling as well as brick and tile materials. The proposed design and use of materials would be compatible with the existing dwelling and would be in keeping with surrounding streetscape character.

Side Setbacks

C13. This control requires a two storey dwelling to be setback a minimum of 1.5m from the side boundary.

The SEE advises that, given the irregular shape of the allotment the *'proposed dwelling has been located to provide the greatest possible setback to the southern boundary and adjoining residence. We contend that the 2m setback to the western boundary satisfies the side boundary setback requirements'*.

It is noted that the maximum 'side' setback distance at the western boundary would be 1.8m with external decks located only 1m from the boundary, which does not comply with this control.

In some respects, given the lot configuration and the location of surrounding dwellings, the applicant's nomination of the side and rear setbacks may be considered to be acceptable; increasing the southern, or 'rear' setback (maximum of 5.5m) will reduce the impact of the proposed dwelling on the property to the south (No. 73 Laura Street).

However, by redefining what constitutes the rear and side setbacks, the applicant has been opportunistic to maximise a developable building envelope over the residual part of the site. Should the applicant's nomination of what constitutes a side and rear boundary be accepted, the construction of the proposed two storey dwelling, only 1m from the western boundary, would have significant overlooking impacts, particularly given the proposed location of living spaces and two levels of elevated decks.

Further, by locating the 'rear' setback to the southern elevation has reduced the capacity for adequate integration of the dwelling and its external living areas with landscaped areas and useable, private open space.

C19. *External living areas adjoining side boundaries are to be setback a minimum of 900mm from the side boundary. This external living area may be required to be appropriately screened and/or the setback increased where there may be overlooking and/or privacy impacts.*

The SEE advises that the proposal complies with this control. It is noted that the proposed decks would be located a maximum of 1m from the western boundary.

However, the proximity of the proposed two storey building and location of elevated decks, only 1m from the boundary, would have significant overlooking and invasion of privacy impacts, particularly within the garden area and directly into the properties located at No. 50 Elsie Street, as shown in the following image, taken at ground level noting the proposed structure would be a maximum of 8m in height with a 1m setback, overlooking adjoining properties.



The applicant has been advised of Council Officer's concerns with this regard and a letter of support has since been received from the owner of Unit 1 No. 50 Elsie Street, located immediately to the west of the site. The submission states that no concerns are raised with regard to overlooking into the rear garden, which they consider is already overlooked from No. 73 Laura Street. It is acknowledged that, given the sloping nature of the locality, a degree of overlooking from dwellings located on higher ground is to be expected.



However, please note the above image outlining the location of the proposed new dwelling up to the western boundary, location of external decks on lower and upper floor (outlined in red) and the location of surrounding dwellings and their garden areas. It is considered that the proposed secondary dwelling, by reason of its height, proximity to the western (rear) setback and location of external living areas, will have the capacity to impact on surrounding properties to the west, including Unit 1 and 2 of No. 50 Elsie Street and No. 52 Elsie Street.

The following image provides a perspective view of the proposed dwelling and elevated decks. Please note the height difference with the existing dwelling house, located in the foreground of the image.



The applicant was requested to address the perceived impact on privacy to neighbouring properties and has advised that the planting proposed along the western boundary (adjacent to the external deck) will achieve sufficient screening within 12 months (*Syzygium* that would grow up to 3m in height) to mitigate overlooking impacts.

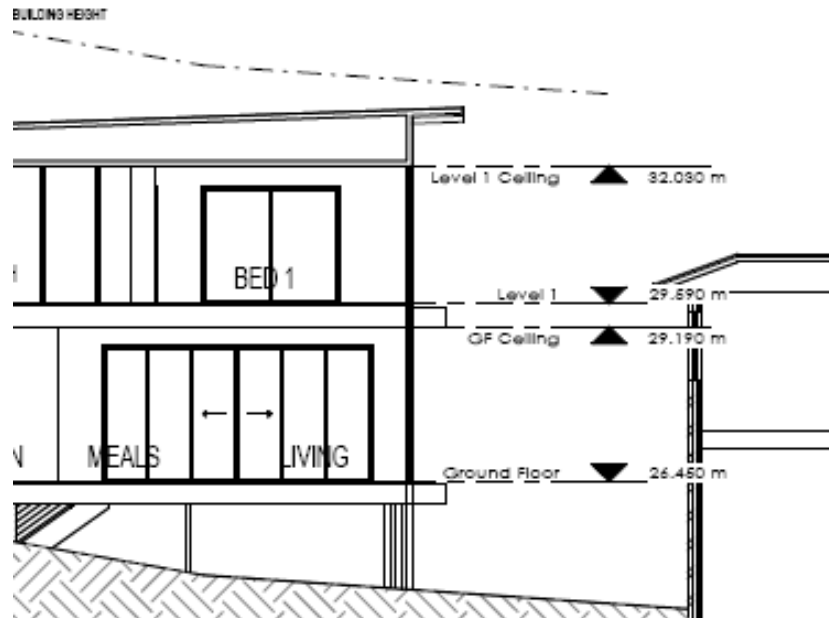
It is noted that the lower level deck (25m²), located adjacent to the primary living and kitchen area, will be the principle external living space. Whilst landscaping may mitigate the level of overlooking from this area, it is the feeling of being overlooked, noise and disturbance from this deck that will also negatively impact on the residential amenity of surrounding properties. Further, planting of a maximum of 3m in height will not mitigate overlooking impacts from the upper floor deck.

It is also noted that overlooking will also occur from the decks to the north and over the side setback of the existing dwelling. The applicant has advised that the principle outdoor area and external living space is located to the rear (north) of the existing dwelling and therefore the proposal would have minimal impact on the residential amenity of the occupants of this dwelling.

Council Officers are of the opinion that the proximity of the proposed two storey building to the boundary, combined with elevated decks and proposed location of living spaces, will significantly impact on the residential amenity of the dwellings to the west.

3.2 Building Height

C1 states that the overall maximum building height is 9m. The proposed dwelling would be consistent with this control.



The image above provides an indication of the height of the proposed dwelling (maximum RL 8m AHD above ground level) in relation to the height of the existing dwelling on the site. The overall building height (although below the 9m height limit with split floor plate and attempt to design to the slope) and the distribution of the two storey element in a north south configuration, will result in a development that presents itself as a significant building within the street.

On this basis it is considered that the proposed dwelling would be out of character with other dwellings in the street, including the existing dwelling on the subject site.

3.3 Site Coverage

The objectives of 3.3 are to ensure a balance of built form and landscaped area and to ensure that residential development is sympathetic with the existing topography, water cycle and amenity of the site and neighbourhood.

C1 requires that the maximum site coverage of a dwelling must be consistent with Table 4. Table 4 requires that sites with an area of at least 900m² but less than 1500m² has a maximum site coverage (not including driveways) of 40%. The SEE advises that the proposed site coverage is 36% and therefore complies.

There are however concerns about the layout of the site and whether the development achieves a sufficient balance between the built form and landscaped area, particularly in comparison to the character and amenity of the locality.

4.2 Passive Design

C1 requires that new dwellings are sited to encourage a balance of solar access and shade to windows and doors of primary living spaces and external living areas. In general the proposal would achieve these requirements however it is considered that there would be limited opportunity for solar gain to the external living areas.

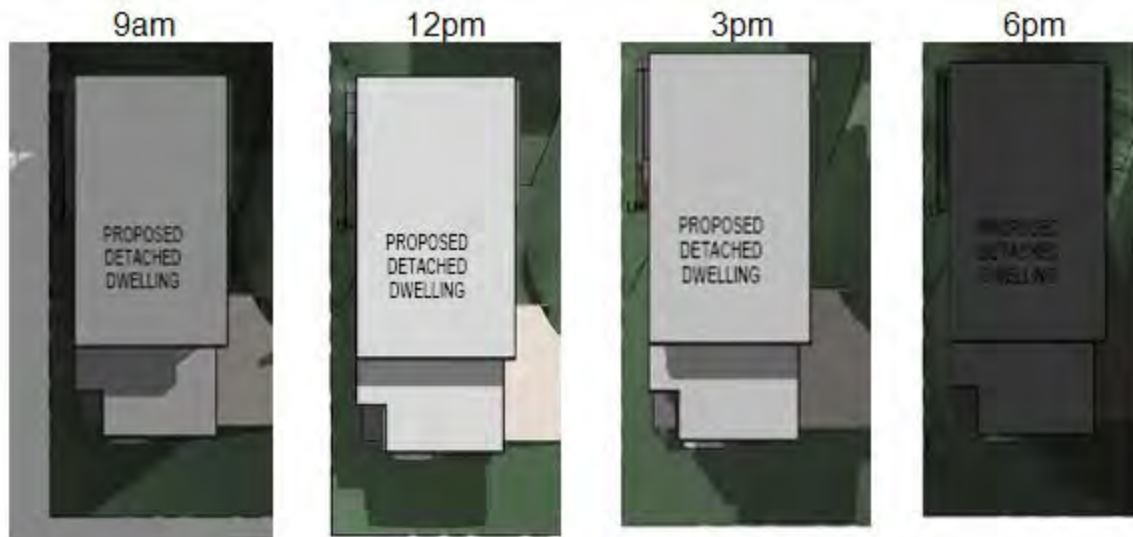
There would also be limited opportunity for solar gain from the northern aspect of the proposed building, as window placement and size has been restricted to mitigate overlooking to the north.

4.3 Solar Access and Natural Ventilation

C1 requires that two storey development must prepare shadow diagrams over the subject and adjoining sites for both the summer (December 21) and winter (June 21) solstice. The submitted shadow diagrams generally indicate that there would be minimal overshadowing to neighbouring properties, with the most significant overshadowing occurring in June at 9am.



C2 requires private open space to receive at least two hours of sunlight between 9am and 3pm during the winter solstice. The SEE considers that the proposal complies with this control however, the following snapshots of the submitted shadow diagrams indicate that minimal sunlight would be available to the southern setback, the only area available as open space, which further highlights Council Officer's concerns about the usefulness and liveability of this area.



C4 requires that sunlight is received in at least 50% of the principle area of private open space to neighbouring properties. It is considered that this requirement would be achieved and that the proposed building would not result in such significant overshadowing to neighbouring properties to warrant refusal of the proposal.

4.4 Building Form

C1. *Building siting, height, scale, and roof form must to relate to the surrounding development, topography and the existing site conditions.*

As detailed, the site is of an irregular shape located at the edge of a cul-de-sac and is further constrained by the location of the easement on the southern boundary; topography, existing dwelling house and location of surrounding development.

Issues relating to the building form have been discussed in detail within this report. In summary, the proposed detached dwelling would be predominantly two storeys (with single storey to garage) and considerable in size, comprising four bedrooms, a study and two separate lounge areas. Significant variations to the setback requirements have been proposed, with the applicant redefining what constitutes front, side and rear boundaries to achieve a developable building envelope.

Typically within the surrounding subdivision pattern, Council's Urban Designer has advised that a deeper rear setback increases building separation and allows landscaping to grow up between the building and boundary to reduce overlooking and privacy impacts. It is considered that the proposal would disrupt this building envelope to allotment configuration found throughout Laura Street. It is considered that the awkward allotment shape is not justified reason enough to vary the rear setback requirement and impose a significant overlooking and invasion of privacy amenity impacts on the down slope allotments. The unusual shape allotment shape indicates that two large dwellings are not suitable for the constrained site.

Concerns relating to the height of the proposed dwelling and its compatibility with surrounding development *have been considered within this report.*

The area is characterised by single and two storey unfinished brick dwellings with tiled roofs. Council's Urban Designer has advised that whilst it could be argued that the proposed dwelling's materials (rendered cladding with metal fascia and roof) are more considered in terms of passive design, its overall appearance (materials and colour) would be out of character with other dwellings in the street, including the existing dwelling on the subject site.

Council Officers are of the opinion that the proposed dwelling remains too large to be adequately accommodated on the subject site and that the dwelling would comprise a bulky, two storey presentation with a long elevation to the street. On this basis it is considered that proposed development would not be in keeping with the surrounding area in terms of building siting, overall building forms and materials with the existing built form character in Laura Street.

4.5 Visual and Acoustic Privacy

- C1. *Terraces, balconies, living room and kitchen windows are to avoid a direct view into neighbouring dwellings or neighbouring private open space.*

The concerns in relation to the location of the proposed elevated decks and the resultant impact on the residential amenity of adjoining properties has been considered in detail within the Side Setback controls. The following image indicates the elevated level of the proposed dwelling and location of proposed windows and decks on the western elevation, where the greatest potential for overlooking will occur:



In summary, the proposed elevated decks and windows would allow future occupants to look directly into the neighbouring private open space and into the dwellings to the west, as well as into the private open space for the existing dwelling to the north.

- C2. *Decks, verandahs, terraces, balconies and other external living areas within 4 metres from a side or rear boundary may require a privacy screen unless it can be demonstrated that there will be negligible overlooking and/or privacy impacts, as demonstrated on a site analysis.*

The proposed decks would be located a maximum of 1m from the western boundary and therefore is a considerable variation to the 4m requirement.

As detailed within the Side Setback control, planting has been proposed along the western boundary to mitigate the potential for overlooking from the lower floor deck. Council Officers concerns in relation to overlooking and other privacy implications in relation to noise and disturbance are not alleviated with this regard.

In relation to C2, the SEE advises that *'the proposed upper floor balcony has the potential to create an overlooking situation however given the sloping topography of the site it wouldn't matter if the building was setback 20m from the rear boundary. This balcony will predominantly be used by the occupants of the main bedroom and is unlikely to be used for entertainment purposes thereby limiting the overlooking potential'*.

The two storey dwelling, with a non-compliance with the rear setback, would lead to significant inappropriate overlooking and invasion of privacy issues. Whilst the applicant's justification for the upper floor deck is noted, future occupants of the dwelling house would be entirely within their right to establish this area as a useable living area and enjoy the extensive views that the upper floor would offer. The argument that setting the building back by 20m would not reduce the potential for overlooking is not accepted.

It is considered that the level of overlooking lends support to the argument that a two storey dwelling is not suitable on the subject site and that a smaller building with a more considered approach to building massing, height and setback requirements would help to reduce impacts to surrounding residential amenity.

4.6 Garages, Driveways and Car Parking

- C1. *Car parking and driveways are to be in accordance with Section A2 of the Tweed Shire Development Control Plan and Council's Driveway Design Specification.*

A2 requires two spaces per two bedroom unit or more, plus provision for driveway parking of another vehicle. The development comprises a double garage for the proposed new dwelling, with sufficient space for driveway parking for an additional vehicle.

The existing dwelling would comprise a single carport and additional space for one other vehicle.

Two new driveway accesses are to be constructed to the existing dwelling and new dwelling. Should the application be approved the proposed accesses would be subject to a Section 138 application and approval and would need to comply with the requirements of Council's Driveway Design Specification.

It is noted that details of the treatment and conversion of the existing double garage that serves the existing dwelling have not been received.

- C2. This control requests that carports and garages visible from the street should be compatible with building design and be treated with materials and colours that ensure reduced visual intrusion to the streetscape. It is generally considered that the proposed modification (design and materials) would be in keeping with the existing dwelling and would not impact on streetscape character.
- C4. This control requests that vehicular movement, driveways and parking areas are to be minimised to reduce hard surfaces on the lot and increase the area available for landscaping. The topography and configuration of the lot does not lend itself to a shared communal driveway. As the proposed driveway and parking area for the existing dwelling has been minimised it is considered that the proposal generally complies with this requirement and enables sufficient landscaped areas within the front setback.

A2-Site Access and Parking Code

As detailed above, site access and parking availability is considered to be in accordance with Section A2 of the Tweed DCP 2008. Should the development application be approved, conditions would be applied to any consent to ensure that a Section 138 approval is obtained to the satisfaction of Council's Development Engineers.

A11-Public Notification of Development Proposals

The original application was notified for a period of 14 days from Wednesday 10 April 2013 to Wednesday 24 April 2013. Four submissions were subsequently received. These four parties were subsequently notified of the amended details and were provided an opportunity to provide any additional comments. Three additional submissions have subsequently been received.

The issues raised within these submissions are detailed further within this report.

(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 it would not pose any implications in relation to the restriction of access to any foreshore areas nor result in any overshadowing of beaches or foreshores.

Clause 92(b) Applications for demolition

The development application does not comprise any demolition works.

Clause 93 Fire Safety Considerations

The development application does not involve the change of use of a building. Council's Building Services Unit have not raised any concerns subject to a number of recommended conditions of any consent.

Clause 94 Buildings to be upgraded

The application does not propose any building work that would represent more than half the total volume of the existing building. Council's Building Services Unit considered that the proposal would comply with the requirements of the Building Code of Australia.

- (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 subject site, within an established residential area and a significant distance from the coastal foreshore, it is considered that the proposed development would be consistent with the objectives of the clause.

Tweed Coast Estuaries Management Plan 2004

This Plan is not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

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

This Plan is not applicable to the proposed development as the subject site is not located in the vicinity of the Cobaki or 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 subject site comprises a single dwelling house with a vacant part of the block occupying the residual, southern portion of the site. Whilst the applicant's desire to utilise this vacant portion of land is acknowledged, it is considered that development should be sensitive to the local context and surroundings.

With this in mind the proposed building is considered to be inconsistent with the context and setting of the locality for reasons detailed within this report. In summary, the siting of the proposed building (being of a north south configuration), height (predominantly two storeys and elevated above natural ground level), limited setbacks and the overall building form and materials would not be compatible with the surrounding low density character of Laura Street, particularly in relation to the existing dwelling.

Access, Transport and Traffic

Proposed access arrangements are considered to be satisfactory and as detailed, should the application be approved a Section 138 application for the proposed new driveways would be required.

(c) Suitability of the site for the development

Surrounding Landuses/Development

As detailed within this report, the site is constrained in both configuration and topography. In considering the irregular shape of the allotment, the existing dwelling, location of the easement and surrounding development, the potential for an additional dwelling, particularly one of the size and scale proposed, is limited.

Residential development within the locality comprises a low density subdivision pattern with deep rear setbacks, private garden areas and open landscaped front setbacks. The proposed configuration of the development would not be compatible with surrounding built development and would disrupt the building envelope to allotment configuration found throughout Laura Street.

Whilst there are examples of two storey dwellings within the locality, the proposed dwelling (on a north to south configuration) would present itself as a bulky predominantly two storey building to the street that would be out of character with the locality. A smaller building, of reduced building height and mass, would reduce the impact of the development on streetscape character, as well as ensure principle district views from the street and surrounding dwellings are retained.

The size of the proposed dwelling combined with limited rear setback would also lead to inappropriate overlooking and invasion of privacy issues, primarily from the elevated decks.

For these reasons it is considered that the proposal would not be compatible with surrounding land uses/development.

Flora and Fauna

The site comprises a residential dwelling with limited landscaping or mature vegetation within the southern portion of the site. A significant Jacaranda tree is located within the front setback in close proximity to the existing driveway. It is understood that this tree will not be affected by the proposal however concerns are raised with this regard and its loss would be unfortunate.

Topography

The site is relatively steeply sloping and the applicants advise that the proposal has been designed in response to the site. The main living spaces drop down half a storey from the entry foyer with the main kitchen, dining and living spaces opening onto a generous north-facing deck. It is the elevated nature of the dwelling, particularly when viewed from the western elevation that will cause significant impacts to surrounding residential amenity and will result in a building of considerable bulk and scale.

Site Orientation

The orientation of the proposed dwelling is as a result of the constrained residual developable footprint on the subject allotment. The orientation of the predominantly two storey dwelling (in a north south configuration) and the location of the principle outdoor amenity space to the south, will result in a shaded and redundant space that lacks integration with the dwelling. This report has considered at length that the reduced setbacks and lack of sensitive design response to the existing dwelling and surrounding development is not supported in this instance.

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

Four submissions were received in response to the original notification process. Submitters were then provided an additional opportunity to provide any further comments in relation to the amended details. The main issues raised within these submissions are summarised as follows:

Site configuration

- Will result in a loss of amenity (in relation to boundary setbacks, loss of privacy, views and management of water runoff) for the residents of No. 73 Laura Street (immediately to the south);
- Site is extremely constrained (orientation, depth and topography);
- Insufficient lot size to accommodate two dwellings, associated living space and parking;
- Proposed dwelling would not be in keeping in character, size or construction materials with streetscape or the existing dwelling;
- Proposed dwelling would not complement the existing dwelling (would be dominated by proposed dwelling as a result of height and design);
- Dwellings in the vicinity have not significantly altered the standard boundary setbacks to support their design;
- Insufficient deep soil zones and landscaping;
- Significant variations to the 5m setback requirement and building should be reduced to comply with current requirements or should be disallowed based upon the future impact of the proposed design;
- Applicant using easement area to support their application even though no building works would be permitted in this location;

Privacy and amenity issues

- Impacts in relation to privacy and future use of site immediately adjacent to western boundary of the site (particularly in relation to proximity of decks);
- Impact of the proposal on the amenity of the residents of No. 73 Laura Street;
- Significantly reduced views from the living and front garden area of No. 84 Laura Street (located to the east of the site);
- If proposed dwelling was reduced by approximately 1m it would allow the retention of some of the views that No. 84 Laura Street currently enjoys;

Impact to views

- Significant impact to views and vistas, particularly from main living areas at front of dwelling of No. 73 Laura Street;
- Impact to views from the dwelling at No 84 Laura Street (immediately opposite the site). No. 84 Laura Street (single storey dwelling) was constructed to capture views of the hinterland and the proposed dwelling will obliterate this view;

- Lowering the ground floor to ceiling height to that of the first floor and excavating below ground level would retain a proportion of the views that this dwelling currently enjoys;

Drainage and runoff

- An elevated dwelling located above the existing ground level should not be supported as it would be likely to impact on runoff issues to the southern and western boundaries;
- Easement located along the southern boundary has already been altered by build up of materials/landscaping so that water runoff is exacerbated at No. 73 Laura Street;
- Reduced landscaping would increase surface runoff and drainage issues;
- Uncertainties in relation to method of construction and potential for surface runoff to property to the south (including lack of retaining walls and fencing along western boundary);

Other concerns

- Height of proposed building not being in keeping with surrounding area;
- Concerns over loss of vegetation on the site and alleged removal of a Moreton Bay fig tree within the proposed building footprint;
- Concerns about level of cut and whether in accordance with Council policies;
- Concerns in relation to the design of the proposed double carport.

Assessment of submissions

The matters raised within the submissions have been considered throughout this report. It is considered that concerns in relation to the impact of the proposed dwelling on the character of the area and on the residential amenity of surrounding properties are well founded, particularly in respect of building height, reduced setbacks and insufficient outdoor space. The height of the predominantly two storey building and the resultant loss of outlook and view, particularly from the street and the properties to the east of the site, is also considered to be a material consideration.

Matters relating to surface runoff and drainage issues have been considered by Council's Development Engineering Unit. Provided roof water is directed to the rain water tank to be reused on site and overflow directed to the street, it is considered that the proposed development would be acceptable in relation to stormwater management. Should runoff be entering the property to the south from the existing drainage easement, a form of bunding could be constructed on either the subject site or adjacent property to redirect surface water to the street.

Please note that one letter of support has been recently provided from the owner of Unit 1 No. 50 Elsie Street, located to the west and down slope of the site. The letter implies that the resident has no issues with the proposed new development in relation to overlooking given the topography of the area. Whilst the support from the owner of Unit 1 is acknowledged, the scale of the proposed building combined with its proximity to the western boundary, and location of elevated external living areas would result in an unacceptable level of impact to surrounding residential amenity in relation to overlooking and loss of privacy to which current and future residents could reasonably expect to enjoy.

(e) Public interest

It is acknowledged that the subject site meets the minimum lot size criteria and provides for a mixture of housing types to meet market demand. However, the proposed dwelling would constitute a large, four bedroom dwelling with two separate living areas, study and large elevated decks. The lack of useable private, sunny outdoor space, reduced setbacks and resultant impact on surrounding residential amenity calls into question whether a secondary dwelling is suitable on the site.

If approved, a precedent would be set for similar 'infill' development that cumulatively, may significantly impact on the character, visual and residential amenity of the Shire. For this reason it is considered that the proposal would not be in the public interest.

OPTIONS:

1. That Council refuses the application in accordance with the recommended reasons for refusal; or
2. Gives in-principle support for the application and that the application be reconsidered at a later Council meeting with recommended conditions of consent.

Council officers recommend Option 1.

CONCLUSION:

The development application before Council seeks approval for the construction of an additional dwelling house to create a detached dual occupancy development on an infill site that is significantly constrained in configuration and topography.

An assessment of the proposal has revealed a number of substantial variations are proposed to Section A1 of the Tweed DCP 2008, particularly in relation to: the siting of the proposed building, overall building form, materials and compatibility with surrounding built development in Laura Street as well as in relation to the location of the principal outdoor amenity space and lack of integration with the internal living spaces. Whilst the applicant's justification for each of the variations to A1 are acknowledged and why the Section 88B Restriction (only one habitable structure on the site) should be relaxed, Council Officers are of the opinion that the site is too constrained to accommodate a building of this scale.

Further, it is considered that the proposal would have an unacceptable impact on the residential amenity of surrounding properties, namely in regard to inappropriate overlooking and invasion of privacy issues primarily from the elevated decks.

On this basis it is recommended that the proposed development be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may seek to lodge an appeal in the Land and Environment Court in respect of Council's determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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30 [PR-CM] Development Application DA13/0239 for the Construction of a Carport (Unit 1) at Lot 1 SP 50344 No. 1/10 Chardonnay Crescent, Tweed Heads South

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0239 Pt1



Civic Leadership

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
-

SUMMARY OF REPORT:

A development application has been received for the construction of a carport at Unit 1 No. 10 Chardonnay Crescent, Tweed Heads South, otherwise known as Lot 1 SP 50344. The carport would be constructed of a flat roofed metal attached to the eastern wall of Unit 1 and would be 4.2m wide and 8.15m long, extending from the existing eaves line to within 100mm of the property boundary.

The site comprises a single storey brick and tile dual occupancy located within a residential cul-de-sac of similar style properties. Originally, both dwellings would have been accessed from a driveway located to the west of the site however a secondary driveway has been constructed without Council approval to the eastern side of Unit 1. This application seeks the construction of a carport over the unlawful secondary driveway.

Surrounding properties have been notified of the proposal however no submissions have been received. Council's Building Unit have provided conditions of any consent and the development application did not require referral to any external parties.

The secondary driveway however has been constructed without Council approval and Council's Traffic Engineer has advised that secondary access points for dual occupancy dwellings are generally not supported. Further, a Section 138 approval notice cannot be issued for the secondary driveway as the steel placements were not sited prior to the concrete pour and the gradient for the driveway has not been checked.

The application also comprises a number of variations to Section A1 of Council's Development Control Plan (DCP) as detailed within this report. Of note, variations to the: maximum site coverage for impermeable surfaces; provision of useable and private outdoor space; provision of landscaped areas and deep soil zones are proposed as part of this application. Of note, Section A1 of the DCP states that carports must not necessitate an extra driveway additional to the driveway for a garage or other parking structure. The proposed carport does not comply with this requirement.

On this basis refusal of the proposed carport and Council is requested to seek legal advice to request that the applicant remove the unauthorised driveway and reinstate the land to its former state.

RECOMMENDATION:

That Development Application DA13/0239 for a carport (unit 1) at Lot 1 SP 50344 No. 1/10 Chardonnay Crescent, Tweed Heads South be refused for the following reasons:

- 1. The proposed carport structure would necessitate the approval of an unauthorised secondary driveway located in the only area available to Unit 1 for useable private open space. The development would therefore be contrary to Section A1 of the Tweed Development Control Plan 2008.**
- 2. The proposed carport structure and secondary driveway reduces the level of landscaping and deep soil zones available to the subject lot, contrary to Section A1 of the Tweed Development Control Plan 2008.**
- 3. The development, if approved, would set a precedent for similar development that would impact on the character and visual amenity of the Shire. The development would therefore be contrary to Clauses 4, 5, 8 and 11 of the Tweed Local Environmental Plan 2000.**

REPORT:

Applicant: Brians Patios
Owner: Mrs Marjorie MA Tagliapietra
Location: Lot 1 SP 50344 No. 1/10 Chardonnay Crescent, Tweed Heads South
Zoning: 2(c) Urban Expansion
Cost: \$5,000

Background:

A development application has been received for the construction of a carport at Unit 1 No. 10 Chardonnay Crescent, Tweed Heads South, otherwise known as Lot 1 SP 50344. The carport would be constructed of a flat roofed metal attached to the eastern wall of Unit 1 and would be 4.2m wide and 8.15m long, extending from the existing eaves line to within 100mm of the property boundary.

The site comprises a single storey brick and tile dual occupancy located within a residential cul-de-sac of similar style properties, originally approved under application reference D94/0495. Originally, the garages for both dwellings would have been accessed from a driveway located to the west of the site, as shown in the following image:



However a secondary driveway has been constructed without Council approval to the eastern side of Unit 1, as shown in the following image:



This application seeks the construction of a carport over the unlawful secondary driveway.

The following snapshot of Council's GIS Imagery (2012) indicates that the driveway has been constructed at some point within the last year:



The secondary driveway has since been constructed within the only rear garden area available for the subject Unit. The applicant has advised that the driveway was installed without the appropriate approvals as there has been a 'miscommunication' between the applicant and their contractor. The applicant advises that the second driveway was required as the ground in that location was susceptible to water logging in the location where cars were parked on the road reserve, as the road is considered too narrow for vehicles to be parked on the road. Further, the applicant is unable to park their second vehicle in front of the garage as it blocks access for the resident of Unit 2.

No submissions have been received as a result of the notification process and owners consent from Unit 2 has been received. The subject application has been referred to the relevant departments in Council for consideration. Council's Building Unit has advised that the proposed structure is considered to be adequate from a Building Code of Australia (BCA) perspective, provided a number of conditions are applied to any consent.

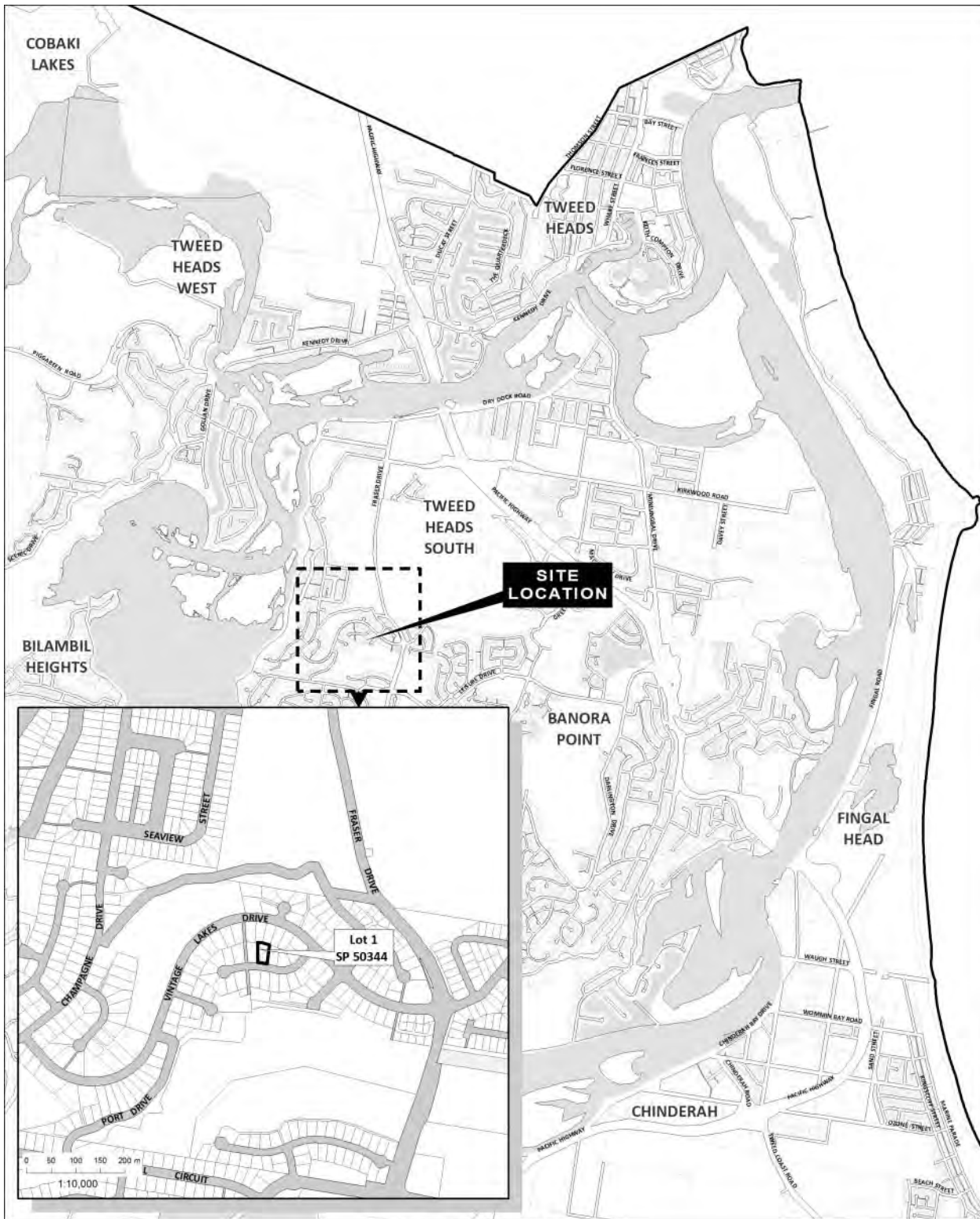
However, in relation to the secondary driveway, Council's Traffic Engineer has advised that a Section 138 approval cannot be approved retrospectively and that secondary driveways for dual occupancies are not normally supported.

In respect of Section A1 of the DCP, there are a number of variations to the Controls in relation to: maximum site coverage for impermeable surfaces; provision of useable and private outdoor space; provision of landscaped areas and deep soil. Of note, Section A1 of the DCP states that carports must not necessitate an extra driveway additional to the driveway for a garage or other parking structure. The proposed carport does not comply with this requirement.

It is considered that the approval of this application would set a precedent for the approval of similar development, which would in turn have a harmful cumulative impact on the character of low density residential environments within the Shire.

On this basis refusal of the proposed carport and Council is requested to seek legal advice to request that the applicant remove the unauthorised driveway and reinstate the land to its former state.

SITE DIAGRAM:



Locality Plan
 DA13/0239 - Lot 1 SP 50344
 No. 1/10 Chardonnay Crescent, TWEED HEADS SOUTH

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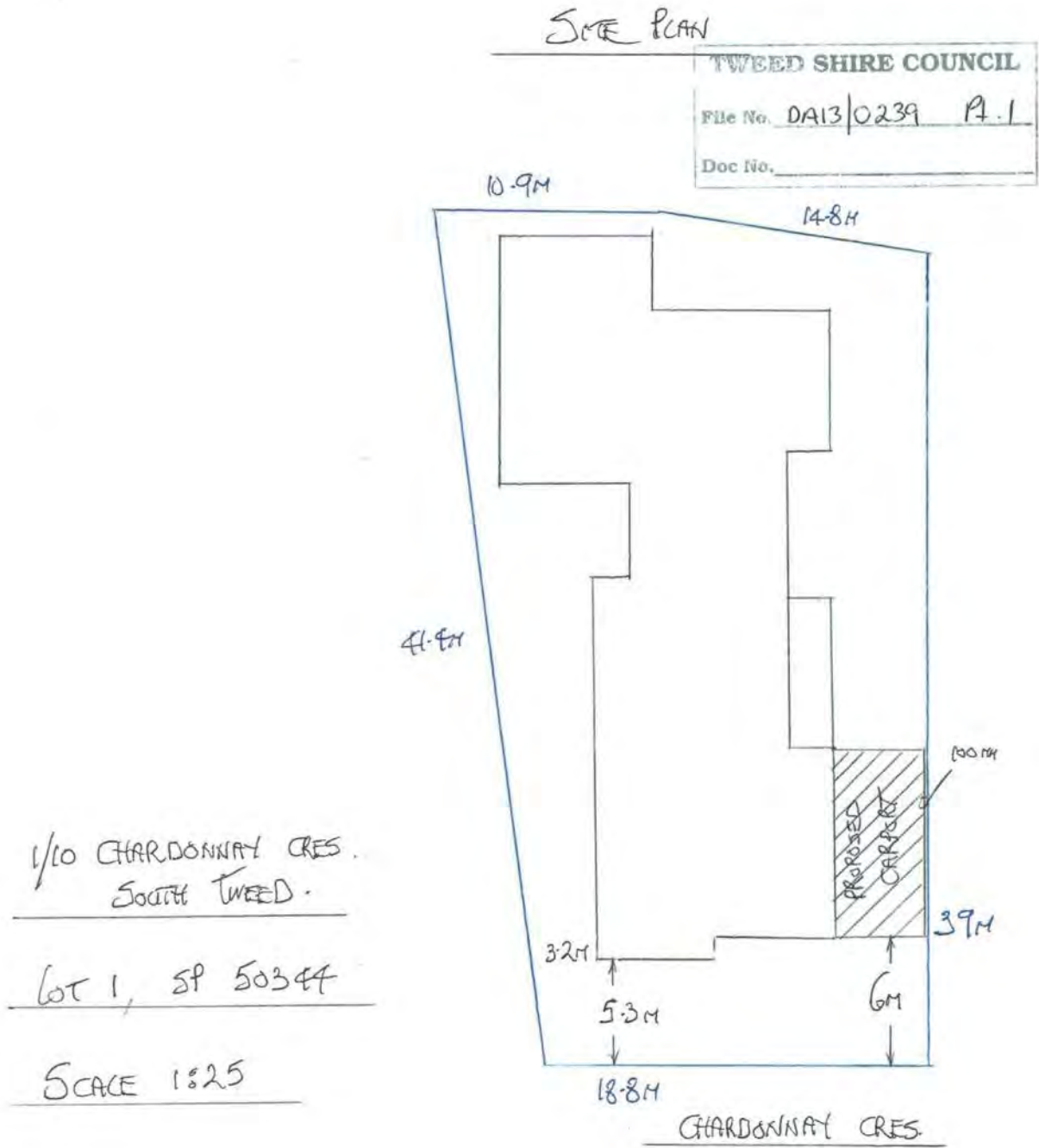
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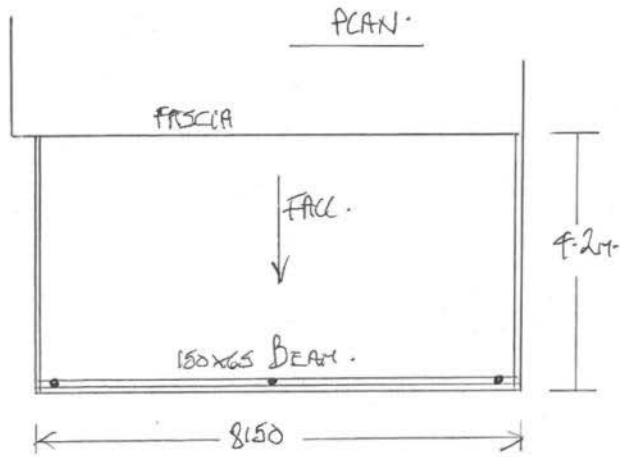
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DEVELOPMENT/ELEVATION PLANS:

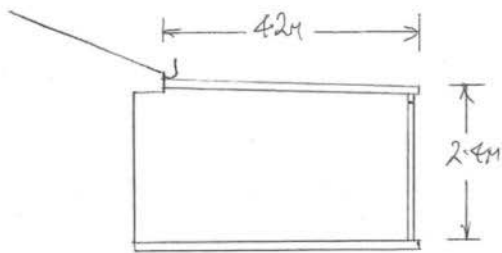




FRONT ELEV



SIDE ELEV



* SPECS

* ALLDECK COLORBOND ROOFING.

* 150x65 COLORBOND BEAM.

* 65x65 ALUM. POSTS TO SCAB

* COLORBOND GUTTER.

* O/P TO S/WATER.

* COLORS TO MATCH

* EXISTING.

1/10 CHARDONNAY CRES,
SOUTH TWEED.

LOT 1, SP 50344.

SCALE 1:100

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.

The proposed carport is of a relatively minor nature and scale however given the proposal would be located on an unauthorised secondary driveway the approval of such a development would set a harmful precedent for similar development to occur within the Shire.

It is considered that the proposal would not be consistent with Clause 4.

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.

In general it is considered that the scale and nature of the proposal is minor and, when considered in isolation, would not conflict with principles of ESD. However, if approved, the proposal would set a harmful precedent for the construction of secondary driveways, which may reduce the availability of landscape areas and sufficient deep soil zones within the subject allotment and reduce the provision of/or necessitate the removal of vegetation within the road reserve.

It is considered that the proposal would not be consistent with Clause 5.

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 2(c) Urban Expansion Zone within the current Tweed Local Environmental Plan (LEP) 2000. It is considered, for reasons outlined within this report, that the proposal would not be consistent with the objective of the zone in which it is located nor other aims and objectives of this Plan. Of note, if approved, the development may set a harmful precedent for similar development to be carried out within the Shire.

Clause 11 - Zone Objectives

The subject site is located in the 2(c) Urban Expansion Zone. The objectives of the zone are as follows:

Primary Objective

- To identify land for urban expansion (which will comprise mainly residential development focussed 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.
- To enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.

The proposal seeks the construction of a carport structure in association with a previously approved dual occupancy development located in an established residential area. Therefore the proposal would have limited repercussions on the long-term development potential of the 2(c) Zone.

However, the proposed carport would be located over an unauthorised secondary driveway located in the only area available to the Unit for private open space. Further, the approval of a secondary driveway in this location would set a harmful precedent for similar development within the Zone.

On this basis it is considered that the proposal would not be consistent with the Primary Objective of the Zone, that seeks to ensure the optimal utilisation of such land consistent with environmental constraints.

Clause 15 - Essential Services

The site is connected to essential services. The proposed carport would not raise any concerns in relation to such services.

Clause 16 - Height of Building

The proposed carport would be single storey and therefore raises no implications in respect to Clause 16.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as comprising Class 2 Acid Sulfate Soils. Council's Environmental Health Unit have informally advised that for development that results in excavations of less than 10 tonnes of material, within the Class 2 Acid Sulfate Soils, that an ASS Management Plan for Minor Works would have been carried out prior to works. Such a plan would have detailed the method of treatment of soils if transported from the site.

Given the subject site is located within an established residential area, where much of the soil has already been disturbed, it was considered unlikely that matters relating to ASS would be considered a significant issue in this instance.

Clause 34 - Flooding

The site is flood prone being affected by the Probable Maximum Flood (PMF) inundation area. The proposed carport raises no significant implications in respect of flood evacuation. The proposed structure would not be enclosed and would be constructed of flood compatible materials.

Other Specific Clauses

Clause 39A – Bushfire Protection

The subject site is partially bushfire prone and therefore this clause applies. Given the proposal relates to the construction of a carport only, to be constructed of non-combustible materials such as metal sheeting and aluminium supports, the proposal would be considered unlikely to result in any additional risk to built assets or people nor increase the threat of bushfire to ecological or environmental assets.

It is considered that the proposal would be consistent with this clause.

Clause 54 - Tree Preservation Order

The subject site is covered by the Tweed Shire Council 2011 (Koala Habitat) Tree Preservation Order (TPO). The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

Details of tree removal to necessitate the construction of the secondary driveway access have not been received. Council's aerial imagery (2012) appears to indicate that no trees were removed to necessitate the driveway, either within the side setback of Unit 1 or within the road reserve. Given the site is located within an established residential area it is considered unlikely that the proposal would impact on matters relating to Koala feed trees.

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.

The proposed carport does not raise any issues of significance in relation to Clause 32B given the scale and nature of the proposed development, ancillary to an existing dual occupancy development within an established residential area. However, if approved, the proposal would set a harmful precedent for the construction of secondary driveways on dual occupancy lots. This may impact significantly on the visual amenity and character of residential land within the Shire as well as necessitate the removal of street trees and vegetation within road reserves.

Therefore the proposal is considered to be contrary to the objectives of this clause.

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The Policy aims to, amongst other things, protect and manage the natural, cultural, recreational and economic attributes of the NSW coast; protect and improve existing public access to and along the coast; to protect and preserve Aboriginal cultural heritage; to ensure visual amenity of the coast is protected; to protect beach environments and beach amenity as well as coastal vegetation and the marine environment; to manage the coastal zone in accordance with the principles of ecologically sustainable development; to ensure the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area; and encourages a strategic approach to coastal management.

The nature of this application is relatively minor in scale and when considered in isolation has no serious implications in respect of this Policy. However, approval of the proposal would result in the loss of the only available private open space for the Unit and would result in the approval of a secondary driveway. As detailed within this report, the approval of this application would set a harmful precedent for similar development within the Shire.

Therefore the proposal is considered to be contrary to the objectives of this Policy.

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

The Draft Tweed Local Environmental Plan is yet to be gazetted. In this Draft the site is nominated within the R2 – Low Density Residential Zone. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment, and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

In general the proposal would be consistent with the objectives of the zone, being ancillary to the existing and previously approved dual occupancy development. However, the loss of the only area of private open space and deep soil zones available to the Unit would erode the low density character of the locality.

If approved the proposed development would set a harmful precedent for similar development within the R2 - Low Density Residential Zone.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A detailed assessment of Section A1 of the DCP has been carried out. The proposed carport and secondary driveway comprises a number of variations to Section A1 as summarised below:

3.1 Streetscape (Preliminaries Section)

C1. *All dwellings should address the street by ensuring important elements such as front doors and building entry areas are prominent from the building facade.*

As Unit 1 incorporates two driveways that are clearly identifiable from the street it is unclear as to which entry is the primary dwelling, exacerbating the reduced level of privacy available to the Unit.

1. General

- C1. *Dwellings and development must be consistent with the scale and character of surrounding dwellings or as envisaged through an adopted concept plan, locality plan, design statement / covenant or the like.*

Secondary driveways are generally not encouraged and the construction of a hard surface over the only area available for private open space is not supported, as detailed further within this report, and will erode the low density character of the area.

2.2 Landscaping, deep soil zones and external living areas

- C1. *A lot must include a total landscaped area consistent with Table 2 DCP A1 Part A.*

A breakdown of landscaped areas on the site has not been received however the site has an approximate area of 888m². Table 2 states that for land at least 600m² in site area, but less than 900m², 35% of the site should include two deep soil zones measuring a minimum of 4m in any direction.

The site coverage of built structures is approximately 87%, (not including driveways). Therefore the only area available for landscaping and deep soil zones is approximately 13% of the site area. Whilst it is noted that the development was approved before the commencement of recent requirements for adequate landscaping areas, this represents a significant variation to this control. Further, there is limited opportunity for deep soil zones within the site which is further exacerbated by the construction of the unauthorised secondary driveway.

- C3. *Sections iii and iv require each dwelling to achieve integration with landscaped areas, private open space and external living areas, and to demonstrate suitable privacy and solar access for each dwelling.*

The only area available for landscaping and deep soil zones is within the front and side (eastern) setback of Unit 1, with the side setback being the only area available for private open space. Therefore the construction of the secondary driveway has removed any opportunity for useable private open space or external living areas. The proposal is not consistent with this control.

- C7. *Deep soil zones are to have soft landscaping and cannot be covered by impervious surfaces such as concrete, terraces, outbuildings, swimming pools, tennis courts or other structures or located on structures such as basement car parks or in planter boxes.*

A breakdown of deep soil zones on the subject site has not been provided however it is evident that the most significant area available for such has been covered by a hard surface and is therefore not consistent with this control.

Controls C8 and C9 relate to details of stormwater management and request that runoff from the site is to be minimised and accommodated within the landscaped area. Whilst the secondary driveway is not considered to have serious implications from a stormwater management perspective, it is likely that increased runoff would be directed to the street as opposed to being contained on the site. The proposal would therefore be contrary to these controls.

3.1 Setbacks

C5. *Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front façade, unless it can be demonstrated how the design mitigates the dominance of the garage door to the street elevation.*

The proposed carport would not be setback from the primary elevation of the building. A justification as to why this variation should be allowed has not been received and it is considered that the combined impact of both the garage and the proposed carport would dominate the front facade of the Unit.

C7. Control C7 sets out the various criteria for a carport that encroaches within the front setback of the building line. With this regard, the proposed carport would not encroach forward of the front facade of the Unit, however, of note is C7.iii that requests that in this circumstance, a carport should not exceed *33% of the width of the allotment frontage, or 6m measured between supporting posts, whichever is the lesser.*

The proposed carport would measure approximately 4.2m in width; the existing garage measures approximately 5m in width, with the remaining frontage of the dwelling being 6.5m in width. Therefore the combined frontage of the carport and garage would equate to approximately 56% of the Unit, which is a significant proportion of the building's frontage.

3.3 Site Coverage

C1. *The maximum site coverage and all ancillary development on a lot must be consistent with Table 4 Site Coverage within DCP A1 - Part A.*

Table 4 states that the maximum site coverage for a lot at least 450m² but less than 900m² is 50%. Please note that driveway structures are not included within the calculation of site coverage. A detailed breakdown of site coverage has not been provided however the site area is approximately 888m². Unit 1 has an approximate area of 378m² and Unit 2 is 400m², as approved under D94/0495. Existing site coverage is therefore approximately 88%. It is acknowledged that the dual occupancy development was approved some time ago and prior to the current controls in relation to site coverage. However, this represents a significant variation from this requirement.

4.6 Garages, Driveways and Car Parking

C1. *Car parking and driveways are to be in accordance with Section A2 of the Tweed Shire Development Control Plan and Council's Driveway Design Specification.*

Section A2 of the DCP requires one space per one bed and two spaces per two bed plus provision for driveway parking for another vehicle. Both units comprise three bedrooms. Unit 1 comprises a garage for one vehicle and one parking space on the driveway and therefore does not meet the current requirements as set out in Section A2. However, the dual occupancy development was approved prior to the current car parking standards.

Section 3.2 of Council's Driveway Access to Property Design Specification states that only one driveway is generally permitted for each property adjoining a public road. Section 4.2 states that approved driveways must be at least 6.5m apart, or multiples thereof, so as to preserve on street car parking.

Secondary driveway access is assessed on an individual basis and in most cases, Council's Traffic Engineer has advised, that secondary access for dual occupancy development is unlikely to be supported. The unauthorised secondary driveway for Unit 1 is located approximately 9m from the existing driveway on the subject site and therefore technically complies with Section 4.2 of Council's Driveway Access to Property Design Specification.

However, should a Section 138 application was to be lodged with Council for the construction of the driveway, it would need to be in accordance with Council's Design Specifications. Council's Traffic Engineer has advised that at least part of the unauthorised driveway would need to be removed and reconstructed to these standards. Further, no inspection was undertaken by Council Officers prior to concrete placement to verify reinforcing compliance or the depth of the concrete pour.

C2. *Carports and garages visible from the public street are to:*

- i. Be compatible with the building design, including roofs; and*
- ii. Be treated with materials and colours and windows which ensure the garage or carport is less visibly intrusive to the streetscape.*

The proposed carport would be of a simple, utilitarian flat roofed design constructed of metal sheeting with aluminium supports. Given the cross hipped roof formation of Unit 1 it is considered that the proposed carport, when considered in isolation, would be relatively compatible with the existing dwelling.

C4. *Vehicular movement, driveways and parking areas are to be designed to minimise dimensions, to reduce hard surfaces on the lot, and increase the area available for landscaping. Permeable driveway surface treatments are encouraged.*

An unauthorised secondary driveway has been constructed that has significantly reduced the area available for landscaping and deep soil zones within the front and side setback of Unit 1 and therefore does not comply with this control.

C12. *Carports cannot be wider than two car spaces width or 6 metres.*

The proposed carport would not be wider than two car spaces or 6m and therefore complies.

C14. *Carports must not necessitate an extra driveway additional to the driveway for a garage or other parking structure.*

The proposed carport would not comply with this control as it would be located on an additional secondary driveway.

A2-Site Access and Parking Code

As detailed above, Section A2 requires Section A2 of the DCP requires one space per one bed and two spaces per two bed plus provision for driveway parking for another vehicle. Both units comprise three bedrooms. Unit 1 comprises a garage for one vehicle and one parking space on the driveway immediately in front of the garage and therefore complies with the current parking standards. However, given the narrow nature of the driveway, there is no provision for visitor parking spaces for Unit 1 on the driveway.

The applicant has advised that there is insufficient space in the driveway in front of the garage to accommodate an additional car parking space and to allow the occupants of Unit 2 access to their property. It is considered that there is sufficient room to accommodate an additional standard vehicle, parked in a stacked formation in front of the garage. However, the applicant also advises that, given the narrow nature of Chardonnay Crescent, there is limited opportunity for on street visitor parking.

The following snapshot of Council's GIS imagery indicates that a number of vehicles park on the road reserve as opposed to on the street itself which supports the applicants claim with this regard:



However, the dual occupancy development was approved prior to the current car parking standards and the difficulty in granting a retrospective approval for the secondary driveway is that Council is uncertain as to whether it accords with Council's Driveway Access to Property Design Specification and, as detailed within this report, it would set a harmful precedent for similar development within the locality.

A3-Development of Flood Liable Land

The subject site is flood prone however it is considered unlikely that the proposed carport structure would exacerbate the risk of flooding. The structure would be open on three sides and would be constructed of flood compatible materials. It is considered that the proposal would be consistent with Section A3.

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

Clause 92(a) Government Coastal Policy

The subject site is coastal land and therefore this Policy applies. However, the proposed carport structure would have limited impact on matters relating to Clause 92(a).

Clause 92(b) Applications for demolition

The application does not comprise any demolition works.

Clause 93 Fire Safety Considerations

The development application has been referred to Councils Building unit in this regard who has advised no objections to the proposed development subject to conditions.

Clause 94 Buildings to be upgraded

The development application has been referred to Councils Building unit in this regard who has advised no objections to the proposed development subject to conditions.

(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 subject site, within an established residential area and a significant distance from the coastal foreshore, it is considered that the proposal is consistent with the objectives of the clause.

Tweed Coast Estuaries Management Plan 2004

This Plan is not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

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

This Plan is not applicable to the proposed development as the subject site is not located in the vicinity of the Cobaki or 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 approval of the proposed carport would necessitate the retention of the unauthorised secondary driveway and therefore, the removal of the only area available for the Unit for private outdoor space, landscaping and deep soil zones. The approval of this application would set a precedent for similar development within the Shire which, cumulatively, would conflict with the intentions of Section A1 of the DCP, which seeks to create liveable dwellings, integrated with external living areas, private outdoor space and reducing the dominance of driveways and hardstand areas.

Access, Transport and Traffic

As detailed within this report, the application seeks the construction of a carport over an unauthorised secondary driveway to create an additional access and parking area for Unit 1. It is considered that the approval of the secondary driveway would set a precedent for the similar development within the locality.

Flora and Fauna

It is uncertain whether the installation of the secondary driveway required the removal of significant vegetation. Council's aerial imagery of the site (2012) does not indicate any significant trees or vegetation within the front or side setback of Unit 1.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding development comprises low density detached and attached dual occupancies and single dwellings, the majority of which are single storey. The area is characterised by open and landscaped front setbacks with single driveways serving each property. Most properties in the area comprise garages with a small number of properties containing covered carports.

The proposed carport would be unlikely to impact on the residential amenity of the neighbouring property. From a design point of view, the proposed carport would be relatively light weight and unobtrusive. However, as detailed within this report, the approval of the subject carport, and therefore the retention of the secondary driveway, may create a precedent for similar development within the area. It is considered that such development would erode the low density feel of the locality, clutter front setbacks and road reserves with additional and unwarranted hard surfaces and reduce the opportunity for landscaping and deep soil zones as well as reduce the opportunity for private and useable open space for Unit 1.

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

No submissions have been received for the proposed development.

(e) Public interest

The proposed carport, when considered in isolation, raises no significant issues in relation to the public interest. However, if approved, the proposed carport (and retention of the secondary driveway) may set a precedent for similar development which may impact significantly on the character and appearance of such low density residential areas within the Shire.

OPTIONS:

1. Refuse the application for the proposed carport and seek legal advice to request the applicant to remove the secondary driveway and reinstate the land to its former condition; or
2. Refuse the application for the proposed carport and commence proceedings to issue a Infringement Notice; or

3. Give in-principle approval to the application for the proposed carport and bring back a further report to Council with recommended conditions of consent. The applicant should be requested to also regularise the secondary driveway by obtaining a Section 138 approval, and make the necessary changes to the design to ensure compliance.

Council officers recommend Option 1.

CONCLUSION:

This application proposes a carport to be constructed over an unauthorised secondary driveway within an established low density residential area. The applicant has advised that the relevant approvals for the secondary driveway was not obtained as a result of miscommunication with their builder and that the reason the driveway is required is to facilitate adequate onsite parking.

Whilst the applicants justification for the additional driveway is acknowledged, for reasons outlined within this report, it is considered that the approval of the carport (and therefore secondary driveway), would be contrary to the controls as set out within Section A1 of the DCP. Further, the approval of this application may also set a precedent for similar development within the Shire. On this basis the proposed carport is recommended for refusal and it is requested that Councillors obtain legal advice in respect of reinstating the land to its former condition.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Councillors may resolve to refuse the development application and seek legal advice to remove the secondary driveway and reinstate the land to its former condition.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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31 [PR-CM] Compliance Matters in Relation to No. 140 Turners Road, Wardrop Valley

SUBMITTED BY: Development Assessment



Caring for the Environment

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
-

SUMMARY OF REPORT:

Updated Information

Council at its meeting of 18 July 2013 resolved as follows:

"RESOLVED that item be deferred to the August meeting of Council."

Previous Report

Council has received a number of complaints from the owner of No. 50 Turners Road in respect of alleged unauthorised road works in the connecting, unsealed Council road and adjoining Crown road reserve, with the nearby property, No. 140 Turners Road. It was also alleged that there were a number of unauthorised commercial and residential land uses that had taken place within No. 140 Turners Road.

Council officers have interviewed the owners of both Nos. 50 and 140 Turners Road, and have made a number of site inspections.

In terms of the alleged road works, the officers consider that there is inconclusive evidence to determine exactly who undertook the works, and when they occurred, making any further legal action difficult to pursue. It is therefore recommended that no further compliance action be taken in respect of this activity.

In terms of the alleged unauthorised land uses, it has been identified that an unauthorised light industry (the on-site construction of two manufactured homes) has been commenced, and that the owner be instructed to cease this use immediately, or otherwise face more stringent enforcement action. It has also been concluded that there is currently insufficient evidence of any other unauthorised commercial or residential land uses being undertaken on the site.

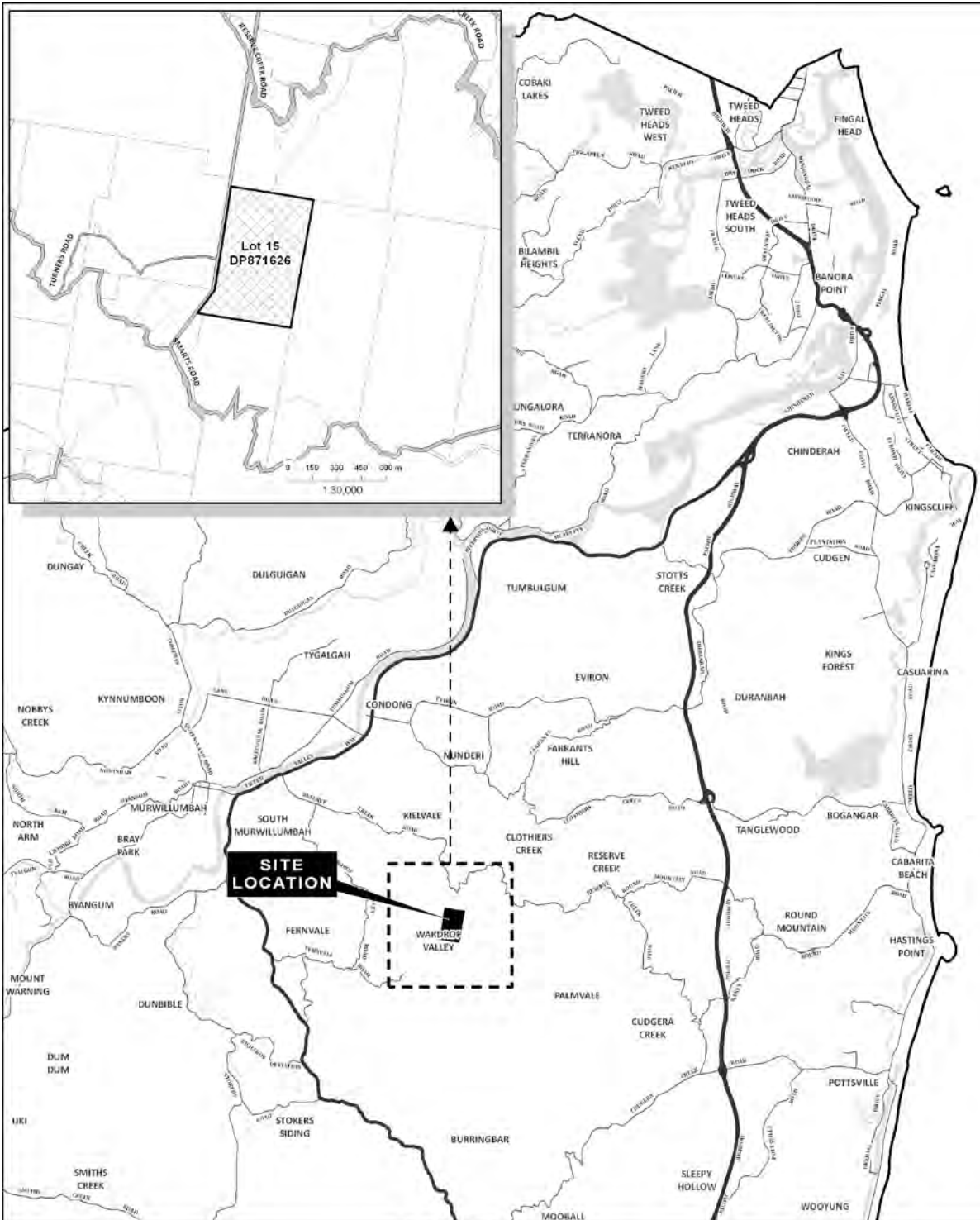
RECOMMENDATION:

That in terms of the alleged unauthorised road works and land uses being undertaken on the unsealed Council road and Crown Reserve, leading to, and within the property, Lot 15 DP 871626, No. 140 Turners Road, Wardrop Valley, Council endorses the following:

1. The owner of No. 140 Turners Road be advised to cease immediately the current, unauthorised light industry use on the site (construction of manufactured homes), or otherwise be the subject of more stringent enforcement action; and
2. The owner of No. 50 Turners Road be informed of the enforcement actions taken by Council in respect of No. 140 Turners Road.

REPORT:

SITE:



Locality Plan

Lot 15 DP 871626
No. 140 Turners Road, Wardrop Valley

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

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TWEED
SHIRE COUNCIL

Figure 1 -Aerial photo below showing the spatial relationship between the complainant, No. 50 Turners Road (Owner A), the connecting, unsealed Turners Road, and the site, No. 140 Turners Road (Owner B).



Figure 2 - Aerial photo below showing the locations of the alleged unauthorised road work issues referred to in this report along Turners Road.



Figure 3 - Aerial photo below showing the locations of the alleged unauthorised uses and works on the adjoining Crown road reserve and Right of Way, and within the premises, No. 140 Turners Road.



Site Description

Turners Road is a public rural road which runs off Smarts Road Wardrop Valley, for which Council is the roads authority.

Council only maintains the first 440 metre section of Turners Road. The remaining section, which services a number of rural properties is un-made. This limit to the maintenance of Turners Road relates to longstanding Council policy to establish "maintenance limits" for every public road in the Shire, in recognition of Council's limited sources of revenue.

The extent of the maintained section of Turners Road ends at a grid at the commencement to the property known as 50 Turners Road, which is owned by the complainant in these compliance matters.

The unsealed section of Turners Road then runs eastward towards the premises No. 140 Turners Road, for which a number of compliance complaints have been received. The road then enters into a section of Crown Road Reserve, before connecting to a right of way to the adjoining property, known as Lot 110 Turners Road.

No 140 Turners Road is a rural property, with a size of 40.41 hectares. It is currently zoned 1(a) Rural under the Tweed Local Environmental Plan 2000.

The site was the subject of a series of former banana plantations, and the owner has received an approved Private Native Forest Property Vegetation Plan (dated 3/5/2010) from the then NSW Department of Environment Climate Change and Water, to undertake rehabilitation of these former plantation areas.

Background:

Council has received a number of complaints from the owner of No. 50 Turners Road in respect of alleged unauthorised road works in the connecting unsealed Council and Crown road reserves, with the nearby property, No. 140 Turners Road. It was also alleged that there were a number of unauthorised commercial and residential land uses that had taken place within No. 140 Turners Road.

Council officers have interviewed the owners of both Nos. 50 and 140 Turners Road, and have made a number of site inspections.

Further to Council correspondence sent to the owner of No. 140 Turners Road following a site inspection of his property, the owner has replied to Council providing a response to some of the various issues raised. The owner's further response is included in the relevant issue headings. This owner has also since contacted Council's Work's Unit about Council's Section 138 Roads Act approvals processes for any future maintenance of the surface of the unsealed section of Turners Road leading to his property.

For the purposes of identification in the report below, the owner of No. 50 Turners Road will be referred to as "Owner A", and the owner of No. 140 Turners Road as "Owner B".

Please refer to Figures 1, 2 and 3 of the previous Site section for a mapped identification of the location of the subject properties and the various compliance issues.

Results of Compliance Investigations

Issue 1 – Owner A alleged that a heavy vehicle relating to Owner B's site activities had damaged the cattle grid adjoining the driveway entrance to Owner A's property.

- * Owner B claimed that he was overseas at the time that it had occurred, and that it was not related to his property, but rather the vehicles of a contractor of another user of the road, located in an adjoining property, known as Lot 110 Turners Road, who have been undertaking a private forestry use.
- * Owner B recollected an incident from 3 to 4 years ago during a period of heavy rainfall, whereby this part of Turners Road was impassable for his vehicles, so he laid down some gravel on the road in order to access his property. Owner A's family took offence to this activity and called the Police. This was the start of a series of personal issues between Owners A and B.
- * Owner B claimed that as part of a Council Works job approximately 10 years ago to seal the adjoining Smarts Road, the Council also did some grading of Turners Road from the main turn-off, through to the entrance of Owner B's property.
- * A Council Work's officer advised that he could not recall such a job, and thought that it would be unlikely that Council would undertake the grading of the unsealed section of Turners Road past Council's maintenance limit.

Recommended Action:

It is considered that this is insufficient evidence at this stage to determine how this grid was damaged, and therefore further Council compliance action would be difficult to pursue. Council's Works Unit has advised that Owner A has ultimate responsibility for the repair and maintenance of the grid.

Issue 2 – Owner A alleged that Owner B constructed a concrete bridge at a further point along Turners Road, as a more defined crossing over a water body, and that this was impacting upon the water quality and flow of the existing water body.

- * Owner B advised that he did hire contractors to construct this bridge (see photos below) in approximately 2001 to provide a safer, more accessible crossing in times of heavy rainfall. It was constructed over a box culvert pipe.
- * He claimed that he contacted Council at that time, but no formal approval was sought from Council.
- * Owner B claimed that he consulted with a family member of Owner A about this proposed structure at the time, and he thought it was a good idea.
- * In terms of impacts, Owner B acknowledged that the works could have created some sediment impact and flow restriction on the creek in times of heavy rainfall, but that there was also sediment impacts from other parts of the catchment, and that overall it is a solid structure which provides greater accessibility for the various users of Turners Road.

Recommended Action:

A Council Works officer inspected the subject concrete bridge. It generally appeared to be a safe and sound structure. The officer also advised that the unsealed section of Turners Road was created by private property owners a number of years ago, and therefore it is considered that it is not Council's responsibility to maintain it. This section of roadway only services four properties and has always been maintained privately. Whilst it was agreed that the structure could have impacted upon the quality of the intersecting waterway at the time of construction, it is concluded by the officers that, given the time elapsed since the construction of the structure, any further enforcement action would be a complex and costly exercise. It is therefore recommended that Council take no further compliance action in respect of this issue.



Issue 3: It is alleged that Owner B carried out a major dumping of rubbish and household materials in the main water body running through this valley about 12 to 18 months ago.

- * Owner B denied these allegations, and that he helped to clean out these materials. Conversely, he claimed that Owner A responsible for a major dumping of waste materials at the edge of their property, which has progressively resulted in waste materials appearing in the water body.

Recommended Action:

It is concluded that there is insufficient evidence to take any further compliance action in respect of this complaint.

Issue 4: Owner A alleged that Owner B damaged their fencing during road grading works.

- * Owner B did not have any specific recollection of this matter, as the works were carried out a number of years ago.

Recommended Action:

There is insufficient evidence for Council to take any further action in respect of this matter.

Issue 5 – Owner A alleged that Owner B had undertaken major unauthorised road works (see photos below) in a right of carriage way between the entrance of Owner B's property and the adjoining property Lot 110 Turners Road, causing environmental impacts upon the connecting water body system.

- * Owner B identified a small section of unmade Crown Reserve which located at the entrance to Owner B's property and the adjoining Lot 110 Turners Road. A ROW then leads off from the Crown Reserve to the entrance of Lot 110.
- * Owner B advised that he is currently in the process of purchasing this section of Crown Reserve.
- * Owner B confirmed that road grading and earthworks had been carried out in the ROW primarily by the owner of Lot 110. He claimed that about 75% of the traffic along the ROW and Turners Road relates to the private forestry activity from Lot 110. Council officers witnessed several vehicles entering and leaving Lot 110 in the time of the site inspection. No approval had been sought from Council for these works. Owner B advised that there had been a dispute between him and the adjoining owner about 5-6 years ago relating to the road works.
- * Owner B claimed that these works were undertaken whilst he was overseas, and he was disappointed to find on his return that the work undertaken had resulted in soil being washed into the creek.
- * There was evidence of works being carried out on this section of the ROW, involving both earthworks, road grading and the installation of a new pipe underneath to connect the flow of water from a dam on Owner B's property through to the broader creek system. No approval had been sought for these works. Council's Environmental Health officers have recently directed Owner B to provide sediment controls measures such as bunding to address the impacts on the water body. Owner B wants to do further works in this location, but is currently seeking legal advice about the ROW.
- * Owner B also advised that he undertaken the clearance of some noxious weed adjoining the Crown Road/ROW as part of a broader program of works across his entire property, jointly funded by a Federal Government environment fund (\$28,000), and \$85,000 of his own money. It involves the regeneration of former agricultural land, and the creation of regrowth rainforest.
- * Owner B also claimed that he erected fencing in this area to separate his land with the complainant's land, to prevent cows wandering into his property.



Recommended Action:

Council's Works Unit has previously provided information in respect of these road works:

- Council maintains the first 440 metres of Turners Road to a grid. The road past this grid is considered as an access to the benefitted properties and is not maintained by Council. No plans or applications were submitted to Council for any work undertaken on the subject road, nor has Council inspected the works.
- Any work that has been undertaken which damages adjoining properties is a civil matter between the property owners.

- Council approved a development application for a dwelling in 1997, no other applications for a dwelling or the conduct of a business activity have been lodged since that date.
- Altering a Right of Carriage Way - is a civil matter and is for the parties who benefit from it to investigate further.

Road works on rural zoned properties may, or may not, require development consent, or Part 5 Approval, depending on their scale and impact. It is arguable as to whether any form of Council approval was required for the above works. Following the initial complaint from Owner A, Council's Environmental Health Officers have required an appropriate range of sedimentation protection controls for the better management of these road works. It is concluded that no further compliance action is warranted for this matter.

Issue 6: Unauthorised Building Works on Former Dairy Shed on Owner B's Property

- * Owner B explained that he had demolished most of the former shed and was in the process of redeveloping an Aquaculture Nursery as exempt development. He believed that current planning laws (Exempt and Complying Development SEPP) allowed him to do this as Exempt Development.
- * Council officers pointed out that there were specific Exempt Development provisions in terms of the size of the structure, and the proposed use, given its proximity to the existing dam. Owner B advised that he had consulted with NSW Fisheries in respect of this proposal.



Owner B has since written to Council stating that, "Old Dairy repairs are under 200m2. I am not going to do any aquaculture."

Recommended Action:

No further compliance action necessary at this stage.

Issue 7: Illegal camping on Owner B's site and additional permanent dwellings

- * There was no evidence of any illegal camping on the site. The only form of habitation appeared to be within the existing dwelling house.

Recommended Action:

No further compliance action necessary.

Issue 8: Unauthorised Medical Care (Healing Centre) Use and Signage on Owner B's site and Road

- * Owner B advised that he is part of an international humanitarian group known as "The Template" that seek to assist communities in war-affected countries to restore their basic living standards, such as water supply and hygiene. He claims that the Group have meetings to discuss issues at locations around the world. The Group (up to 30 people at a time) meet on his property at a maximum of 2-3 times a year, often staying for 2-3 days at a time. PC claims that there are no direct commercial services provided or promoted to the public on the site, only a meeting of his Template friends. The signage erected has only been placed to assist with people locating his property. Most of these people camp on the site during their stay.
- * He advised that there is no commercial medical service is provided on site, only care provided by his wife for his friends and relatives.

Owner B has since written to Council stating: *"The Template is a gathering of friends. The healing centre business never got started. Template signs are just for friends to be able to find my house. Template is not a commercial business."*

Recommended Action:

No further compliance action necessary.

Issue 9 - Unauthorised Construction of Manufactured Homes on Owner B's Site

- * The officers observed that two manufactured homes were currently being constructed.
- * Owner B advised that he is a qualified builder and was building these homes to assist a friend who lives in Queensland. It was his intention to transport the homes to his friend's property when they are complete.
- * He claimed that he gained most of the materials from a Murwillumbah retail supplier.
- * Council officers advised that the activity requires development consent. Owner B commented said that he unaware of such a requirement.
- * The officers also observed that this part of the site had been excavated. Owner B advised that the majority of this excavation had occurred before he purchased the property, and he only undertook minor excavation, and clearance of weeds.



Owner B has since written to Council stating: "Cabins are a one off hobby to help a friend. The cabins are going to help a friend. The cabins are going to leave the property and go to land in Queensland."

Owner B also stated: "South western activity is area of old banana packing shed site, farm maintenance equipment and machinery is stored there."

Recommended Action:

That Council write to Owner B and advise that this use be ceased immediately, or otherwise face more stringent enforcement action

Issue 10 - Alleged storage and repair of an increasing number of vehicles on Owner B's site.

* There appeared to be no evidence of such activity, with only one van evident, seemingly in need of repair. Other farms and excavation equipment were evident.

Recommended Action:

No further compliance action necessary.

OPTIONS:

1. That Council endorse the recommended compliance action in respect of the unauthorised construction of manufactured homes on the subject site; or
2. That Council instruct Council officers to undertake more detailed investigations of these matters with a view to possible additional compliance or enforcement actions

The Council officers recommend Option 1.

CONCLUSION:

It has been a general practice of Council not to intervene in any disputes between neighbouring owners in respect to the maintenance of unmade roads. Nonetheless, it is evident that the road construction activities could have been better managed. In terms of the various complaints of unauthorised land use, it is recommended that Council endorse that Owner B be instructed to cease the unauthorised construction of manufactured homes on his site immediately, or otherwise face more stringent enforcement action

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Possible legal actions arising out of any Council compliance or enforcement action.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

32 [PR-CM] Development Application DA13/0233 for a 20 Lot Subdivision (19 Residential Lots and 1 Rural Lot) at Lot 2 DP 231691 No. 44 Station Street, Burringbar

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA13/0233 Pt1



Civic Leadership

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
-

SUMMARY OF REPORT:

The proposed development involves a 20 lot subdivision comprising 19 residential lots and 1 rural residue allotment at No. 44 Station Street, Burringbar.

Council officers have undertaken an initial assessment of the proposed development whereby a range of significant issues have been raised. The site is highly constrained which results in difficulty in the proposal being able to be compliant with all relevant Council controls.

The applicant has been provided with an extensive list of outstanding matters, which relate to ecology, water/sewer reticulation, stormwater and other major engineering issues.

The issues raised to date are considered to be of such significance that a redesign of the proposed development is likely to be required. The extensive list of outstanding matters and the likelihood of a redesign would result in an extended period of time for the applicant to address all outstanding matters.

The number of significant issues with the development also raises the question of viability of the proposal.

As such, the applicant has been advised that the proposal in its current form is not supported and should be withdrawn. Upon satisfaction of the issues raised, the applicant would then be able to lodge a new development application.

Given that the applicant has not formally withdrawn the application the proposed development has been referred to Council, with the following options available for consideration:

1. Allow the application process to continue, whereby the applicant will be required to address all outstanding matters, resulting in an extensive delay in the overall development assessment processing time; or
 2. Resolve to report the matter to the September Council meeting with a detailed assessment and recommended reasons for refusal.
-

The officers recommended that Council endorse Option 2.

RECOMMENDATION:

That a further, more detailed report be submitted to the September Council meeting in respect of Development Application DA13/0233 for a 20 lot subdivision (19 residential lots and 1 rural lot) at Lot 2 DP 231691 No. 44 Station Street, Burringbar including recommended reasons for refusal.

REPORT:

Applicant: S Parnell
Owner: Mr Stephen A Parnell
Location: Lot 2 DP 231691 No. 44 Station Street, Burringbar
Zoning: 1(a) Rural and 2(d) Village
Cost: Not Applicable

Background:

A two lot subdivision for the subject site was granted development consent on the site on 21 June 2011 (DA10/0626). The approval created a Torrens Title subdivision of the single allotment into two allotments. That part of the site that is within the 2(d) Village Zone was included within Lot 1 and that part of the site that is within the 1(a) Rural Zone (and the existing dwelling house) was included within Lot 2. The purpose of the subdivision was to separate the two zones into separate allotments. The approved subdivision has not commenced.

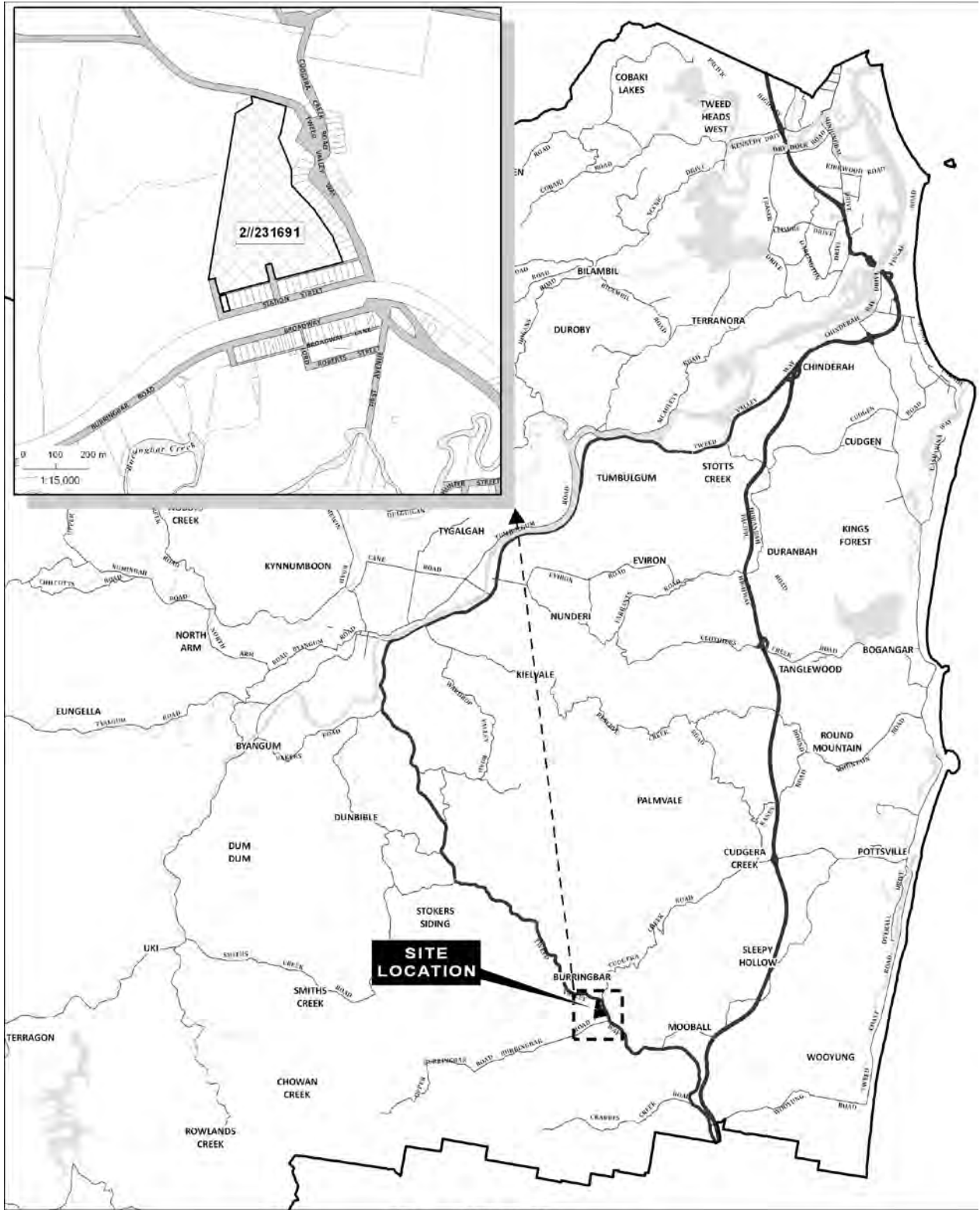
A Development Assessment Panel (DAP) meeting was held with Council officers on 9 December 2011 relating to the subject 20 lot subdivision. The DAP meeting raised the following issues:

- Bushfire prone land - integrated development;
- SEPP No. 1 Objection due to Rural 1(a) zoned lot being less than 40ha - concurrence;
- The site is identified as having high ecological status;
- Geotechnical stability of the land;
- Details on vegetation proposed to be cleared and impacts on flora and fauna;
- Proposed works including cut and fill and location/depth of retaining walls;
- Driveway access that meets Council's specifications;
- Paved footpath;
- Onsite treatment of stormwater runoff;
- The stormwater management plan shall address minor and major storm events including consideration of external catchments, inter-allotment drainage services and potential impacts on downstream property;
- Sewer, there should be no problem with connecting the proposed lots to sewer;
- Water supply is a problem for this location due to the elevation of the proposed road;
- The typical cross section indicates a batter of 1 in 2 (50%). Access into proposed lots cannot be achieved for driveway property access. Maximum permissible driveway grades are 1 in 4 (25%);
- The typical cross section indicates a footpath directly behind the kerb with a verge area of 1.2m. Tweed Shire Councils standard cross section for an access street indicates that both verge areas are to be 3.5m in width. Proposed road reserve for Road 1 does not meet the minimum required for an access road;
- The absolute maximum grade for an access street is 16%, with a desirable maximum grade of 10%. The proposed grades exceed the absolute maximum of

16%. Grades are greater than 12% for pedestrians, cyclists and waste collection vehicles. The maximum 16% is indented for short lengths not entire road lengths;

- Concerns are raised that proposed crests and sags do not provide safe sight distances. The application is to comply with vertical curves and horizontal curve radii;
- Maximum length of a cul-de-sac is 120m and cul-de-sac minimum grades for safe turn around. Variation to maximum length requirements will need to be addressed as part of the application;
- Intersection grades are to be addressed;
- There is an existing rock retaining wall near Third Avenue that is proposed to be incorporated into the new allotments. This wall will need engineering certification as to its design and construction otherwise it should be demolished and reconstructed as part of the subdivision works;
- The application should outline any intended works within the unnamed lane including proposed dual accesses to lots which will require construction of the laneway to Council's minimum standards. Future maintenance of the laneway, if it is to remain unformed, will also need to be discussed with Council officers;
- Provision would need to be made on site for storage and collection of waste. Details for collection would need to be determined in conjunction with Solo Waste; and
- Contamination report addressing previous site uses is to accompany the Development Application in accordance with Council's Contaminated Land Policy.

SITE DIAGRAM:

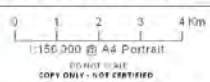


Locality Plan

Lot 2 DP 231691
No. 44 Station Street, BURRINGBAR

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of obtaining information in any way from this map. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and care to any excavations or "dig before you dig" queries must be made by calling 110. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 30 July 2013
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GDA
This map is based on the GDA 1984 datum. The GDA 1984 datum is used for all maps produced by the GDA. The GDA 1984 datum is used for all maps produced by the GDA.

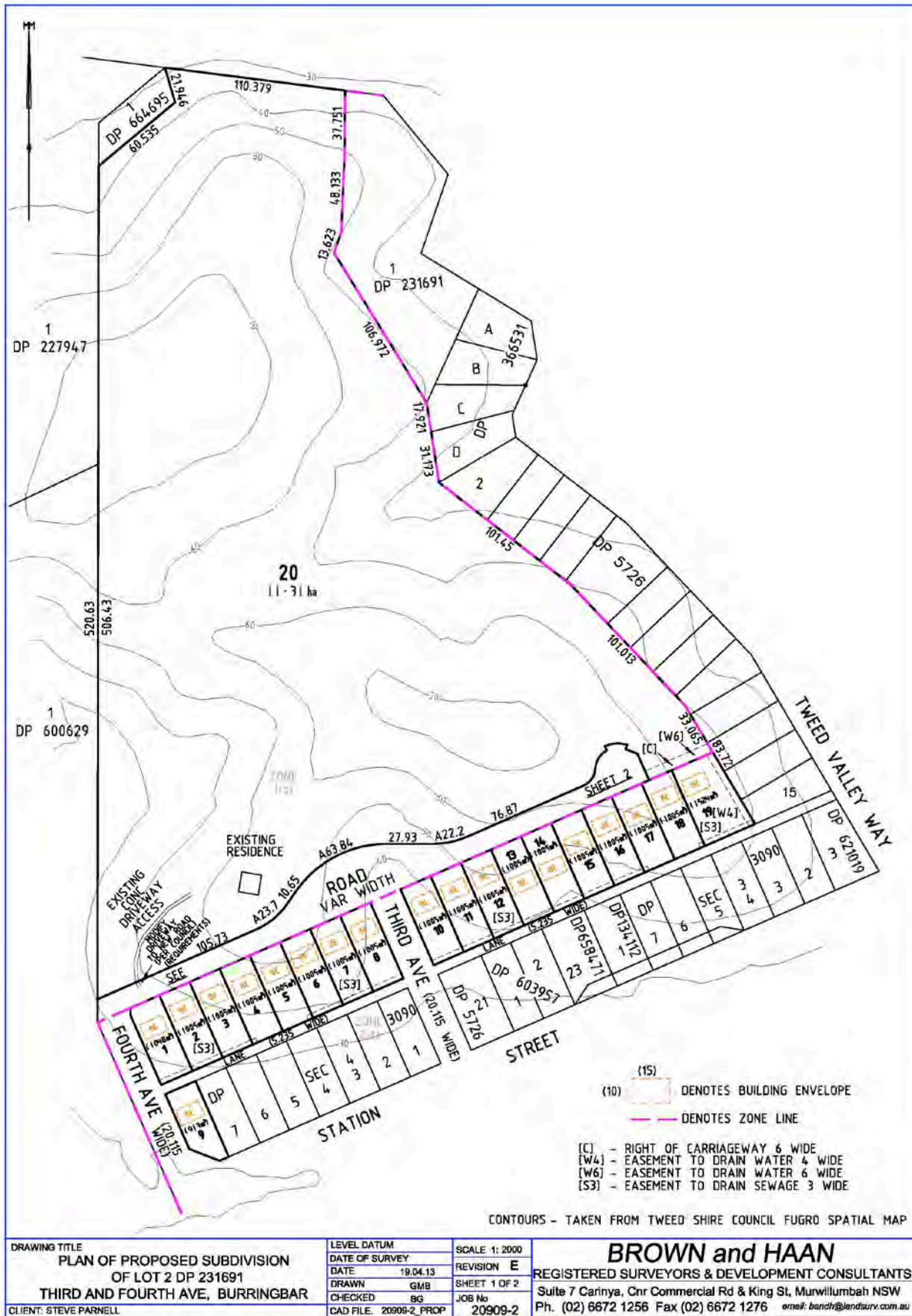
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W | www.tweed.nsw.gov.au
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DEVELOPMENT/ELEVATION PLANS:





(15) BE DENOTES BUILDING ENVELOPE
 (10) BE EACH LOT CAN COMPLY WITH A REAR DEEP SOIL ZONES OF 8m+8m

(C) - RIGHT OF CARRIAGEWAY 6 WIDE
 (W4) - EASEMENT TO DRAIN WATER 4 WIDE
 (W6) - EASEMENT TO DRAIN WATER 6 WIDE
 (S3) - EASEMENT TO DRAIN SEWAGE 3 WIDE

LEVEL DATUM: AHD		SCALE 1: 1250
DATE OF SURVEY	DATE	REVISION E
19.04.13	19.04.13	SHEET 2 OF 2
DRAWN GMB	CHECKED BG	JOB NO 20909-2
CAD FILE: 20909-2_PROF		
<p>BROWN AND HAAN REGISTERED SURVEYORS & DEVELOPMENT CONSULTANTS Cnr King St & Commercial Road, Murwillumbah 2484 Ph (02) 6672 1256 Fax (072) 6672 1276 email: bahandh@bnsurv.com.au</p>		
<p>PLAN OF PROPOSED SUBDIVISION OF LOT 2 DP 231691 THIRD AND FOURTH AVE, BURRINGBAR</p>		
CLIENT: STEVE PARNELL		

www.dia.beforeyoudig.com.au

ALL UNDERGROUND SERVICES SHOULD BE LOCATED ON SITE BY RELEVANT AUTHORITIES BEFORE ANY WORK IS COMMENCED

AERIAL PHOTOGRAPH



Lot 2
DP 231691

SOURCE: Aerial imagery taken May 2012 by AAM

Aerial Photo - taken May 2012
Lot 2 DP 231691

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Cadastre: 02 August, 2013
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Boundaries shown should be considered approximate only.

0 30 60 M
1:3,500 @ A4 Portrait
DO NOT SCALE
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

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Author: S.Scott

Date Printed: 02 August, 2013

Assessment

An initial assessment of the current application has highlighted the following issues:

Ecology

Council's Natural Resource Management Unit does not support the proposal based on the insufficient information submitted and the large amount of significant vegetation removal, including the construction of a new road through that portion of the site zoned 1(a) Rural.

The proposal would require removal and disturbance of a significant area of remnant vegetation, vegetation of high ecological value and koala habitat vegetation. Compensatory planting has not been offered. Site inspections and review of aerial photographs identified ongoing clearing within both the 1(a) Rural and 2(d) Village zoned land. The applicant has been requested to provide a copy of correspondence/approval from the relevant administering agency (Catchment Management Authority) authorising the removal of the vegetation. An accurate survey of the extent of earthworks and vegetation removal has not been undertaken and as such is required for further assessment.

A seven part test of significance in accordance with Part 5A of the EP&A Act for the additional listed flora and fauna species not evaluated in the submitted ecological assessment is required for further assessment.

The application proposes fill and modification to the Burringbar Creek, a third order tributary which comprises species representative of a candidate Endangered Ecological Community. The applicant has been requested to undertake further investigations and assessment of the vegetation community having regard to the relevant EEC NSW Scientific Committee - Final Determination and if necessary undertake a seven part test of significance to satisfy Part 5A of the EP&A Act.

The extent of vegetation removal/modification required to manage bushfire risk has not be clearly prescribed in the submitted bushfire management plan. Further detail is required in respect to asset protection zones for the site and shown on a plan of survey. Vegetation within the prescribed asset protection zones requiring removal/modification shall be identified as part of the detailed vegetation survey.

Water and Sewer Supply

Council's Water Unit does not support the proposal based on the insufficient information submitted.

Adequate information to demonstrate to Council that the proposed water supply solution will meet pressure and fire flow demands has not been provided. The proposal would require a booster system for any lot above 25m AHD and a backup generator for the booster pump to ensure all lots can receive flow so a fire fighting appliance can extract water during power failure. The system would need to ensure the booster pump can deliver the flow at peak hour rate. The applicant's Engineering Report states that Council should complete capital works plans to upgrade the full 2.3km length of the pipeline to the reservoir. This statement is not accepted by Council. Any required upgrade to water and sewer should be completed by the applicant.

The applicants Engineering Report failed to address anomaly's such as two sewer reticulation lines and manholes that extend into existing Lot 2 and the proposed provision of gravity sewer shown on sewer reticulation plan S101 for proposed Lots 18 and 19 connecting into the pressure sewer system on Tweed Valley Way is not feasible. Council Engineers advise that pressure sewer to service Lots 18 and 19 should be considered. The applicant is to address design standards for pressure sewer prior to determination.

Stormwater

Council's Planning and Infrastructure Unit does not support the proposal based on the insufficient information submitted.

The site has significant external catchments which drain through the proposed subdivision and existing houses. Minimal detail of how run on stormwater is to be catered for has been provided. The application has not provided detail of major event (Q100) flow paths (including external catchments) and their impact on existing and proposed residences.

The performance noted in the Preliminary Stormwater Management Plan (PSWMP) does not meet the required targets and seems to disregard catchments A and D. There is a small wetland at the southern end of Fourth Avenue that the applicant proposes to discharge untreated road runoff to, this may have detrimental effect on the wetland. The PSWMP also claims that a downstream swale will provide additional treatment, this is not acceptable. The proposal fails to meet the required stormwater quality treatment targets and does not meet the deemed to comply requirements of D7.

The applicant proposes to attenuate peak stormwater flows to pre-development levels through one of two options. Option one is an underground detention tank, option two is an open detention basin. Council considers option two is the preferred solution.

The proposed detention basin and underground detention tank are located on land that is part of the Casino-Murwillumbah rail corridor. This is unacceptable unless the applicant can secure a formal agreement with the state rail authority.

Road gradients exceeding standards, proposed and existing retaining walls exceeding standards, uncontrolled fill and failure of slopes

Council's Development Engineer does not support the proposal based on the insufficient information submitted.

The site contains an existing retaining wall, however, the history of the existing boulder wall is unknown. And is seemingly unauthorised, and built over an existing Council road reserve. The geotechnical report indicates options to reduce risk to acceptable levels, however, no option is chosen. The engineering plans also propose sewerage and stormwater drainage through or immediately behind the existing boulder wall, however, no design consideration has been provided for proposed sewerage and stormwater drainage services within the zone of influence on the existing retaining wall.

There are two subsurface conditions that of concern within this subdivision which is the fill and slopewash. The fill was encountered at BH6 of up to 0.7m in depth and at TP 7 of up to 0.4m. As there is no history of the fill being placed on site, it would be deemed as uncontrolled fill. Further investigation is required to identify the extent of uncontrolled fill. The applicant is to identify the extent of slopewash to be removed and illustrate how site regrading is addressed; particularly Council's cut and fill mass landform change criteria.

The description and engineering plans provided for the geotechnical report is not consistent with the plans submitted by Knobel Consulting. The drawings provided in Appendix E of the geotechnical report do not depict the drawings provided by Knobel Consulting engineering report. The engineering plans as detailed in the geotechnical report only detail batters, however, the civil engineering report provides details of a 1.8m high boulder retaining wall. The geotechnical report specifically mentions "*this report does not provide any recommendations for the construction of boulder or crib walls*". The geotechnical report is to address current engineering plans and retaining walls as proposed. In addition the geotechnical report describes that "no earthworks plans have been provided for the allotments", hence earthworks with the allotments have not been considered in the geotechnical report. The engineering plans indicate that there are significant cut and fill batters proposed within the allotments. The geotechnical report is to address the significant cut and fill batters within the proposed allotments.

As the site has slopes of up to 35 degrees, the submitted geotechnical report by Geotech Investigations Pty Ltd states there are measures required for soil failure slopes for different gradients. In particular soil failure of slopes 25 to 30 degrees and above where it is recommended that houses and associated infrastructure should not be built in areas or within 10m down slope of such areas. Therefore a plan is to be submitted that demonstrates building pad locations on each lot taking into consideration soil failure slopes as described in Table 4: Risk Mitigation Measures. In addition the plan is to clearly demonstrate the slope and direction of fall on each lot.

The maximum road grade is 16%, with a desirable maximum road grade of 10%. The proposed road long-section has gradients between +15.9% and -15.95%. For grades greater than 12% the requirements for pedestrians, cyclists and waste collection vehicles and transverse access are to be addressed explicitly in the design. It is uncertain if garbage collection and fire trucks can service and protect these allotments due to the steep roads. This information has not been provided in the application. The maximum horizontal grade for a cul-de-sac head is 5%, with the proposed cul-de-sac is between -5.250% and +1.021%. The maximum permitted cul-de-sac length is 120m with the proposed cul-de-sac length being 175.24m.

The engineering report does not adequately address sight distance. Sight lines are to demonstrate compliance in particular with intersections of Third Avenue and Road 1 and Station Street and Tweed Valley Way intersection. Particular consideration is to be provided for the curve radii of the intersection of Third Avenue and Road 1. This is to be demonstrated on both the plan of subdivision and long sections.

Retaining walls are proposed throughout the development of unknown height which are not depicted on the site plans or on section drawings. There is limited information on the extent of the retaining walls, batter and fill. Additional information is to be provided for the location of the proposed retaining walls and batters.

NSW Rural Fire Service

The site is in a bushfire hazard area as such the application required referral to the NSW Rural Fire Service for comment as integrated development. The Department advised Council on 18 June 2013 that the proposed alternative solution where a perimeter road will not achieve the 8m in width is not supported and that further justification of the alternative solution is required, specifically how compliance with the Performance Criteria is achieved. This was sent to the applicant on 19 June 2013, a response to this issue has not been received.

OPTIONS:

1. Council allows the applicant to submit amended plans and reports under the current Development Application for assessment; or
2. Council allows a further report to the September Council meeting with a detailed assessment of the current Development Application, with a recommendation for refusal.

Council officers recommend Option 2.

CONCLUSION:

Council officers have conducted an initial assessment of the subject application and consider that it is generally deficient in supporting information, and raises a range of significant engineering, infrastructure and environmental concerns, which warrant the refusal of the application. These concerns have been outlined in detail to the applicant. It is the officers' further view that any decision to continue with the application and seek amended plans and information would unreasonably extend the timeframes of the Development Application determination, and therefore it would be more appropriate for the applicant to either withdraw the application, or that the application be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may seek to lodge an appeal against a Council determination in the NSW Land and Environmental Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Council's letter requesting further information dated 2 July 2013 (ECM 3133223)

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

33 [CNR-CM] Riverbank Erosion Remediation - Murwillumbah to Tumbulgum

SUBMITTED BY: Natural Resource Management

Valid



Caring for the Environment

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
-

SUMMARY OF REPORT:

At the Council meeting of 18 April 2013, the following Notice of Motion was 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."

This report provides an update on the progress of the Tweed River Estuary Bank Management Plan; costs for recent bank revetment works and estimated costs for riparian restoration.

RECOMMENDATION:

That the report on Riverbank Erosion Remediation - Murwillumbah to Tumbulgum, be received and noted.

REPORT:

At the Council meeting of 18 April 2013, the following Notice of Motion was resolved:

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.

In response to this Motion, the following advice is provided.

Tweed River Estuary Bank Management Plan

A Bank Management Plan is currently under development that will detail areas of erosion along the estuarine reaches of the Tweed River. This plan identifies current active areas of erosion and provides possible solutions and is an update of the 1998 Plan. It is estimated that the Draft Plan will be forwarded to the Tweed River Committee and Council within two months.

Reactive River Bank Protection Works

Various works have been undertaken, or are planned, on Tweed River banks from Murwillumbah to Tumbulgum in response to significant erosion or slips that have placed infrastructure at risk, as such roads, levees, public facilities or utilities. These works have occurred in an ad-hoc manner, based on funding availability and assessment of risk factors.

Funding under Natural Disaster Relief and Recovery Arrangements (NDRRA) has been made available for many bank revetment works projects following flood events in 2008, 2009 and 2010, with applications for further works pending for 2012 and 2013 floods.

NDRRA guidelines state that "reinstatement of natural riverbanks and foreshores is not eligible as this damage is considered an ongoing natural realignment process". Only sections of riverbank supporting infrastructure have been successful in attracting funding.

Recent works are outlined in the following table:

Location	Description	Approximate length	Cost	Funding source
623 Tumbulgum Road, Tyalgah	Restore levee foundation, provide rock protection	90m	\$98,000	NDRAA 2008, Road Restoration
River Street, South Murwillumbah	Restore levee foundation, provide rock protection	2 sites, 25m and 20m	\$80,000	2007-08 Natural Disaster Mitigation Program

Location	Description	Approximate length	Cost	Funding source
River Street, South Murwillumbah	Restore levee foundation, provide rock protection	Additional site 20m	\$70,000	NDRAA 2008 Restoration
Tygalgah Levee	Restore levee foundation, provide rock protection	50m	\$29,480	NDRAA 2009 Restoration
125 River Street, South Murwillumbah	Restore levee foundation, provide rock protection and restore floodgate	30m	\$116,500	NDRAA 2009 Restoration
Tweed Valley Way, South Murwillumbah opposite Boral Timber	Restore eroded bank and provide rock protection	100m	\$174,046	NDRAA 2010 Restoration
Budd Park, South Murwillumbah	Restore eroded bank at floodgate and provide rock protection	Component of larger project	\$45,000	NDRAA 2010 Restoration
Budd Park, South Murwillumbah	Restore eroded bank and provide rock protection	200m	\$150,000	Tweed Estuary Program
Tweed Valley Way, 1km north of Riverside Drive, Tumbulgum	Restore eroded bank, and provide rock protection	50m	\$160,000	NDRAA 2012 Road Restoration
Near 623 Tumbulgum Road, Tygalgah	Extend previous rock revetment to restore levee foundation and provide rock protection	50m	\$110,000	NDRAA 2012 Road Restoration
156 Tumbulgum Road, Tygalgah	Restore levee foundation, provide rock protection	70m	\$80,080	NDRAA 2012 Restoration - <i>Pending</i>
97-99 River Street, South Murwillumbah	Restore eroded floodgate and levee foundation, provide rock protection	30m	\$39,000	NDRAA 2012 Restoration - <i>Pending</i>
Tweed Valley Way, South Murwillumbah, opposite Buchanan Street	Rectify safety issue. Restore eroded bank and provide rock protection	20m	\$15,000	Roads Maintenance Budget
Commercial Road Levee, Murwillumbah	Stabilise levee slip and provide rock protection	50m	\$97,496	NDRAA 2013 Emergency Works

Location	Description	Approximate length	Cost	Funding source
Commercial Road Levee, Murwillumbah	Restore levee and foundation and reinstate	100m	To be determined	NDRAA 2013 Restoration

Revegetation and Restoration Works

The Waterways Program and Tweed River Committee of Council have undertaken riparian revegetation and restoration of riverbanks in a number of locations. This work is only undertaken where there is sufficient room for a reasonable width of vegetation to be established and not in areas of actively eroding riverbank. If the revegetation is to assist with reducing riverbank erosion the work includes battering the bank to a stable angle of no more than 1:1.5 and will usually include rock revetment of varying heights dependant on the site constraints and analysis. In most cases, if there is sufficient room for adequate battering of the eroded bank, a small rock toe is sufficient to maintain bank stability.

Most of the erosion sites between Murwillumbah and Tumbulgum are within road reserve or on private property. The presence of the road adjacent to the river bank precludes the ability to undertake any bank battering to achieve a stable angle to enable successful revegetation for the purposes of erosion protection.

The approximate costs for planting and maintaining vegetation as a method of bank stabilisation is in the order of:

- Initial cost: \$6 per stem planted with an average of 25 plants per 100m²
- Maintenance: \$20 per stem per year for a minimum of three years

Therefore, a 10 metre wide and 10 metre long strip of revegetation would cost in the order of \$1650 to establish (if over three years) and then ongoing reduced yearly maintenance costs to manage weeds.

Cost varies with site conditions and would increase if earthworks are required to batter the bank to a stable angle or if traffic control is required.

OPTIONS:

That this report be received and noted.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Murwillumbah Levee and Riverbank Inspection (ECM 3131569)

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34 [CNR-CM] NSW Environmental Trust Environmental Restoration and Rehabilitation Grant

SUBMITTED BY: Natural Resource Management

Valid



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
 - 4.2 Conserve native flora and fauna and their habitats
 - 4.2.2 Encourage and promote rehabilitation and management of native vegetation and wildlife habitat in Tweed Shire
-

SUMMARY OF REPORT:

Council has been awarded a \$99,881 Environmental Restoration and Rehabilitation Grant from the NSW Environmental Trust for the *Protecting and Linking HCV (High Conservation Value) Habitats from Coast to Burringbar Ridge* project. In accordance with the grant, a further \$15,918 will be contributed to the project from Council's Biodiversity Grant Program. Participating landholders will contribute the equivalent of \$19,200 in labour costs during the project.

RECOMMENDATION:

That Council:

- 1. Accepts the Environmental Restoration and Rehabilitation Grant, Contract Number 2012/SL/0076, for the *Protecting and Linking HCV (High Conservation Value) Habitats from Coast to Burringbar Ridge* project for the amount of \$99,881 from NSW Environmental Trust.**
- 2. Votes the expenditure.**

REPORT:

Council has been awarded a \$99,881 Environmental Restoration and Rehabilitation Grant from the NSW Environmental Trust for the *Protecting and Linking HCV Habitats From Coast to Burringbar Ridge* project. Council will contribute a further \$15,918 from its Biodiversity Grant Program and participating landholders will contribute the equivalent of \$19,200 in labour costs.

The project will plan and implement natural resource management in a new Priority Implementation Area (PIA) within a climate change corridor. Restoration and threat abatement will link the coastal floodplain with Burringbar Range. Eight critical locations will be identified using a NRCMA model that prioritises sites for conservation of priority threatened species. Site Action Plans will be prepared by ecologists/bush regenerators with landowner involvement. Implementation of plans will include restoration and expansion of habitat, control of highly invasive weeds and remediation of other identified threats. Community and landowner awareness of threatened species and habitat restoration will be raised through field days. A PIA poster that identifies community capacity, location of Threatened species, threats and priority sites for actions will be produced.

The project has two objectives:

- Increase community and landholder knowledge, interest and involvement in natural resource management and sub-catchment planning to conserve biodiversity.
- Restore sites to improve and extend habitat of Threatened flora and fauna and EECs and enhance habitat connectivity in the Tweed Coast to Burringbar Range climate change corridor.

The project, which runs for three years, involves a range of activities including stakeholder meetings, media releases, community field days, primary and follow-up restoration work and monitoring and reporting. It will be completed by 31 August 2016.

A copy of the formal notification of the grant is reproduced below:



The Hon. Robyn Parker MP
Minister for the Environment
Minister for Heritage

DOC13/17088 and 2012/SL/0076 Ref no:

Mr Michael Corke
Biodiversity Project Officer
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

BUSHLAND RESTORATION
TWEED SHIRE COUNCIL
FILE No: ENVIRONMENTAL TRUST GRANTS
DOC. No:
RECD: - 1 JUL 2013
DESIGNED TO: KINGSTON, M.
PHOTOCOPY IMAGE

Dear Mr Corke

I am pleased to advise that the NSW Environmental Trust has approved a grant of \$99,881 for your project entitled *Protecting and linking HCV habitats from coast to Burringbar Ridge* under the Restoration and Rehabilitation (State and Local Government) Program, subject to certain conditions.

This program aims to facilitate projects of significant environmental benefit to NSW and build capacity of communities and organisations to protect, restore and enhance the natural environment. Your dedication to this effort is commendable.

As in previous years, there was strong competition for funds, with a diverse range of projects proposed. The Trust approved a total of 23 projects totalling \$2.03 million. Lists of successful grants will be placed on its website at www.environmentaltrust.nsw.gov.au.

A Trust representative will be in contact with you shortly to make arrangements for the uptake of your grant. Alternatively, the Trust can be contacted on 8837 6093.

I congratulate you on your successful application and wish you well with your project.

Yours sincerely

Robyn Parker MP
Minister for the Environment

Related doc: 2893123.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

A total of \$15,918 will be contributed to the project from Council's Biodiversity Grant Program.

c. Legal:

Not Applicable.

d. Communication/Engagement:

We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

35 [CNR-CM] EQ2013-142 Provision of Cleaning and Security Services to the South Tweed and Banora Point Community Centres

SUBMITTED BY: Community and Cultural Services

Valid



Civic Leadership



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.3 Financial requirements and the community's capacity to pay will be taken into account when meeting the community's desired levels of service
 - 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
-

SUMMARY OF REPORT:

This report outlines the tender evaluation for EQ2013-142 Provision of Cleaning and Security Services to the South Tweed and Banora Point Community Centres.

The period will be for a 12 month term from 1 September 2013 to 31 August 2014 with a possible further three by 12 month extension options.

Recommendations have been formulated based on the selection criteria which is contained in the Tender Evaluation, Pricing report included in **CONFIDENTIAL ATTACHMENT 1**

RECOMMENDATION:

That:

- 1. Council awards EQ2013-142 Provision of Cleaning and Security Services of the South Tweed and Banora Point Community Centres to Matthew and Sarah Batchelor, for a 12 month term from 1 September 2013 to 31 August 2014 with a possible further three by 12 month extension options.**
- 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:

Tenders closing 24 July 2013 were called for the Provision of Cleaning and Security Services to the South Tweed and Banora Point Community Centres.

Separable portions for each venue for cleaning and/or security services were sought.

Tenders Received

Following the close of tenders a total of 15 submissions had been received. Submissions received are as follows:

	Organisation	South Tweed Community Centre			Banora Point Community Centre		
		Cleaning & Security	Cleaning	Security	Cleaning & Security	Cleaning	Security
1	Achieve Corporate Services		✓			✓	
2	Advanced National Services	✓	✓	✓	✓	✓	✓
3	AWX Constructions Pty Ltd (Mobilised)		✓			✓	
4	Base Commercial Cleaning Solutions	✓			✓		
5	Border ID Security			✓			✓
6	Forchester Pty Ltd		✓			✓	
7	G & K Richards				✓		
8	Health Club Pty Ltd T/A GC Leisure	✓	✓	✓	✓	✓	✓
9	Matthew & Sarah Batchelor		✓	✓		✓	✓
10	National Management Group T/A Tweed Coast Security		✓	✓		✓	✓
11	Pro-tex Security Services			✓			✓
12	SNP Security			✓			✓
13	Southern Cross Security			✓			✓
14	Statewide Quality Services	✓	✓	✓	✓	✓	✓
15	United Enterprises Australia	✓	✓	✓	✓	✓	✓

Tender Evaluation:

The evaluation was conducted by Coordinator Community Options and Coordinator Community Development.

The following selection criteria was determined and used in assessing the tenders received:

- Comparison of tendered schedule of fees received (**ATTACHMENT A**)
- Contractor's team and experience
- Demonstrated capability to perform the services as specified
- General performance history
- Relevant experience with contracts of a similar nature
- Ability manage all or part of the contract

A copy of the Tender Evaluation report is included in **ATTACHMENT 1** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on the prices received and previous supply history considerations, it is recommended that Mathew and Sarah Batchelor be awarded a contract for the period 1 September 2013 to 31 August 2014 with a possible further three by 12 month extension options.

OPTIONS:

Nil.

CONCLUSION:

That Council accepts the recommendation set out in the table within the recommendation for EQ2013-142 for the Provision of Cleaning and Security Services of the South Tweed and Banora Point Community Centres for the period 1 September 2013 to 31 August 2013 with a possible further three by 12 month extension options.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Version 1.4.

b. Budget/Long Term Financial Plan:

No direct budget implications as within current budget allocations

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Tender Evaluation (ECM 3131487)

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36 [CNR-CM] Biodiversity Grant Program Implementation - Caldera Art 2013 Project

SUBMITTED BY: Natural Resource Management

Valid



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
 - 4.2 Conserve native flora and fauna and their habitats
 - 4.2.2 Encourage and promote rehabilitation and management of native vegetation and wildlife habitat in Tweed Shire
-

SUMMARY OF REPORT:

Each year since 2009 the community group Caldera Art has received \$5000 under this program to assist with the Caldera Art Project. With the assistance of Council, the Caldera Art Project has become a major annual regional event aimed directly at promoting the region's biodiversity values. The purpose of this report is to seek Council's approval to grant Caldera Art Inc. \$5000 to assist with the delivery of the Caldera Art 2013 project.

RECOMMENDATION:

That Council approves the expenditure of \$5000 under its Biodiversity Grant Program to assist Caldera Art Inc. to implement the Caldera Art 2013 project.

REPORT:

On 27 January 2009 Council approved the implementation of a Biodiversity Grant Program to assist private landowners, community groups and researchers to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire. This initiative represents an important component of Council's Biodiversity Program.

The Biodiversity Grant Program supports projects that contribute to the following ecological priorities within Tweed Shire:

- Rehabilitation of degraded habitats
- Restoration of previously cleared areas
- Threatened species recovery
- Management of threatening processes
- Monitoring and research

Applications under the program can be made throughout the year and are assessed using the following criteria:

- Ecological benefits (eg. ecological status, multiple ecological priorities, contribution to State and regional biodiversity targets etc);
- Value for money (including in kind contributions, external funding);
- Technical capability and applicant track record;
- Site security (preference will be given secure sites eg. conservation covenants, Environmental Protection zones etc);
- Ongoing maintenance requirements;
- Spread of projects across ecological priorities and the Shire (including projects funded from other sources).

Each year since 2009 the community group Caldera Art has received \$5000 under this program to assist them with the Caldera Art project. With the assistance of Tweed Shire Council, the Caldera Art project has become a major annual event.

The total budget estimate for Caldera Art 2013 is \$24,000. The purpose of this report is to seek Council's approval to grant Caldera Art \$5000 to fund, in part, the On-line Exhibition, the Finalist's Exhibition and the Schools Engagement Components of the Caldera Art 2013 project together with events promotion.

OPTIONS:

1. That Council approves the expenditure of \$5000 under its Biodiversity Grant Program to assist Caldera Art Inc. to implement the Caldera Art 2013 project.
2. That Council does not approve the expenditure of \$5000 under its Biodiversity Grant Program to assist Caldera Art Inc. to implement the Caldera Art 2013 project.

CONCLUSION:

The proposed grant will contribute to the Biodiversity Grant Program priorities 3 and 4 above and meets selection criteria 1, 2 and 3. Through art, this project will educate the community on biodiversity protection and management. It will contribute significantly to Council's Environment Education and Capacity Building Program.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

To be allocated from existing Biodiversity Program budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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37 [CNR-CM] Biodiversity Grant Program Implementation 2013/2014 Financial Year

SUBMITTED BY: Natural Resource Management

Valid



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
 - 4.2 Conserve native flora and fauna and their habitats
 - 4.2.2 Encourage and promote rehabilitation and management of native vegetation and wildlife habitat in Tweed Shire
-

SUMMARY OF REPORT:

On 27 January 2009 Council unanimously approved the implementation of a Biodiversity Grant Program to assist private landholders, community groups and researcher to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire.

The purpose of this report is to seek Council's approval to fund private landholders, as listed below, in accordance with the provisions of the Biodiversity Grant Program.

RECOMMENDATION:

That Council approves the proposed Biodiversity Grants to assist private landowners to undertake the projects listed in the table contained within the report, to a total value of \$6,704.

REPORT:

On 27 January 2009 Council approved the implementation of a Biodiversity Grant Program to assist private landowners, community groups and researchers to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire. This initiative represents an important component of Council's Biodiversity Program.

The Biodiversity Grant Program supports projects that contribute to the following ecological priorities within Tweed Shire:

- Rehabilitation of degraded habitats
- Restoration of previously cleared areas
- Threatened species recovery
- Management of threatening processes
- Monitoring and research

Applications under the program can be made throughout the year and are assessed using the following criteria:

- Ecological benefits (eg. ecological status, multiple ecological priorities, contribution to State and regional biodiversity targets etc);
- Value for money (including in kind contributions, external funding);
- Technical capability and applicant track record;
- Site security (preference will be given secure sites eg. conservation covenants, Environmental Protection zones etc);
- Ongoing maintenance requirements;
- Spread of projects across ecological priorities and the Shire (including projects funded from other sources).

The purpose of this report is to seek Council's approval to fund the three private landowners visited since the February 2013 Council meeting as listed below, in accordance with the provisions of the Biodiversity Grant Program.

The proposed grants involve the provision of services by professional bushland regenerators to assist landholders to more effectively manage environmental weeds, protect native vegetation and improve wildlife habitat.

Name	Area	Estimate (\$)	Description
Graham	Eungella	3848	Site Action Plan plus 6 person days of SAP implementation
McInnes	Chillingham	1632	Four person days of restoration works
Seckhold	North Arm	1224	Three person days of restoration works.
	Total	\$6704	

OPTIONS:

1. That Council approves the proposed Biodiversity Grants to assist private landholders to undertake the projects listed in the above table.
2. That Council does not approve the proposed Biodiversity Grants to assist private landowners to undertake the projects listed in the above table.

CONCLUSION:

This program is consistent with the adopted Tweed Vegetation Management Strategy 2004 and the Council resolution of 27 January 2009 which established the Biodiversity Grant Program.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

\$6704 from existing Biodiversity Program budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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38 [CNR-CM] Murwillumbah Community Centre Inc. - Homeless Services

SUBMITTED BY: Community and Cultural Services

Valid



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.1 Work closely with government and community organisations to improve services to children and families, youth, elderly, Indigenous people, disadvantaged and minority groups and to build stronger and more cohesive communities
-

SUMMARY OF REPORT:

Murwillumbah Community Centre Inc. has been providing services to the homeless at Knox Park since 1974. These services have been delivered from the old soccer clubhouse ('Nullum House') following the opening of the new community centre. However, Nullum House sustained damage during the January 2013 floods and a significant investment is required to repair the building. As an alternative, the service could be relocated across the park to the Red Cross Hall, utilising Community Building Maintenance funds to re-design the hall that would otherwise be spent repairing Nullum House.

A draft master plan for the upgrade of Knox Park is being prepared to enable construction of a Youth Precinct. Crime Prevention Through Environmental Design (CPTED) principles endorse spatial separation of unique user groups in public open spaces, supporting the relocation of homeless services to Red Cross Hall, away from the space dedicated to young people, families and children.

RECOMMENDATION:

That:

- 1. Council supports Murwillumbah Community Centre Inc. to deliver services to the homeless by authorising the General Manager to enter into negotiations with the Red Cross with a view to securing the use of the Red Cross Hall Murwillumbah for delivery of those services.**
- 2. A further report is prepared for Council to provide an update on negotiations with the Red Cross and associated cost implications.**

REPORT:

The community based not for profit organisation, Murwillumbah Community Centre Inc. (MCC) has been providing information, referral and support services to Murwillumbah and surrounding communities since 1974. MCC is the only organisation in the Murwillumbah area that provides intensive case-managed support to homeless people through their homeless support programs at the old soccer clubhouse (hereinafter referred to in this report as 'Nullum House')

Nullum House, situated in Knox Park Murwillumbah, is a drop-in centre supporting clients and providing case management to ensure people who are homeless or at risk of homelessness are linked to appropriate services to meet their needs. MCC offers food, showers, washing machines and a safe non-discriminatory place to spend the day. MCC works in partnership with other community services to provide information, referral, advocacy and support, welfare and housing support, emergency relief and financial counselling to homeless people. Weekly services are provided from Centrelink Homeless Outreach, Legal Aid Homeless Project, On Track Community Program Aboriginal Drug and Alcohol Outreach Service, You Have a Friend and the Adventist Development and Relief Agency (ADRA). Several local businesses donate food. Last year MCC had over 10,465 occasions of service to homeless people and those at risk of becoming homeless at Nullum House.

The focus for the new Murwillumbah Community Centre building was to accommodate a range of community services other than the homeless services which were to continue being delivered from Nullum House. This has been the case since the completion of the new community centre building up until the January 2013 flood event when water entered the building. Council's insurers have assessed the damage at \$18,761.14 but have advised the claim is not covered under Council's insurance policy. Following the flood event, a demountable was placed on-site and MCC has been delivering services to the homeless since that time from the demountable.

The services provided to homeless people from Nullum House have grown over time in response to need. To date, MCC has delivered homeless services as an add-on to generalist community services without access to recurrent funding. Nullum House is old and sub-standard and now that a significant investment is required to repair flood damage to the building it is opportune to consider relocation of homeless services. Relocating MCC homeless services to the Red Cross Hall will provide additional space to enhance service delivery.

Provision of homeless services from Knox Park was raised at a meeting with Murwillumbah Police representatives on 6 June 2013 as part of broader discussions on safety issues associated with the current configuration of Knox Park and in more detail with the Sydney based Crime Prevention team, MCC and community representatives during the Crime Prevention through Environmental Design (CPTED) Safety Audit of Knox Park on 12 June 2013. Police representatives in attendance on the day articulated the need to remove existing dated infrastructure from Knox Park including Nullum House, the rotunda and both toilet blocks. The design of the infrastructure was identified as attracting anti-social elements, illicit activity and impeding lines of sight through the park. Nullum House in particular conceals natural surveillance of the park from Nullum Street and clear lines of sight through the park from Brisbane Street. The Crime Prevention Team has not submitted the CPTED audit at the time of writing this report.

There is a community perception that Knox Park is unsafe. Safety was a key issue in community consultations conducted in 2006/2007 to inform the development of a draft Master Plan for Knox Park and remains an issue today. In 2012, consultations to inform the draft Youth Strategy and Action Plan clearly identified Knox Park as a place where young people, their parents and carers feel unsafe. Stage 1 of the Knox Park Master Plan includes construction of a Youth Precinct that will contain an adventure playground and plaza style skate/bmx/scooter facility. The Youth Precinct is designed to encourage members of the community to rediscover the park, address the needs of the future population and community perceptions about safety. The design caters for co-existence of diverse user groups in the park by creating an aesthetically pleasing collection of spaces that are visually integrated and accessible.

The proposed re-design of the park has also given consideration to potential conflicts between user groups. The provision of homeless services from public open spaces such as Knox Park is not uncommon. The critical element is managing how the various groups use the space. To mitigate potential conflicts between homeless people, young people, families and children accessing the Youth Precinct, it is suggested the homeless services from Nullum House be delivered from Red Cross Hall. This will create a spatial barrier between these diverse user groups.

Historically Council has charged MCC a “peppercorn” fee to lease Nullum House with Council providing maintenance, rates and charges in relation to the building; the service paying for related outgoings. This arrangement continues with the new community centre and as MCC receives no recurrent funding for the provision of homeless services, it is not in a position to lease commercially available properties.

An initial meeting was held on 12 June 2013 with the Australian Red Cross Regional Manager Northern NSW and the local Red Cross Hall caretaker to discuss the possibility of relocating MCC homeless services to the hall. The proposal was supported in principle however further negotiation between Council and the Red Cross is required. There are synergies with the proposal as the Red Cross has prepared a draft *Policy on Homelessness* and makes the following commitments in respect of homelessness:

- *To provide services that prevent homelessness, enhance resilience and support people who are homeless to access and maintain housing;*
- *To advocate to address the underlying causes of homelessness and contribute to ending homelessness;*
- *To address the distinctive aspects of homelessness among Aboriginal and Torres Strait Islander people; and,*
- *To address the needs of people made vulnerable through the process of migration.*

The Red Cross also delivers the MATES program from Banora Point Community Centre, which aims to reconnect homeless people to their community through regular contact with a volunteer.

The NSW 2013 Community Building Partnership program is currently calling for applications due to be lodged by 31 July 2013. Up to \$300,000 is available for electorates identified with high unemployment rates, of which the Lismore electorate (including Murwillumbah) is one. MCC is, at the time of writing this report, preparing a grant application for the funding round

for redesign of the Red Cross Building to deliver homeless services, pending successful negotiations between Council and the Red Cross. The application would be withdrawn should a mutually satisfactory outcome not be agreed between Council, the Australian Red Cross and MCC. Announcement of successful projects and formal advice will be provided to all applicants by December 2013.

OPTIONS:

1. That Council supports Murwillumbah Community Centre Inc. to deliver services to the homeless by authorising the General Manager to enter into negotiations with the Red Cross with a view to securing the use of the Red Cross Hall Murwillumbah for delivery of those services.
2. That Council supports MCC to deliver homeless services by authorising building repairs to Nullum House noting its location is not in keeping with Crime Prevention through Environment Design recommendations for Knox Park Youth Precinct.

CONCLUSION:

To date MCC has delivered services to the homeless from Nullum House as an add-on to generalist community services without access to recurrent funding. Nullum House is old and sub-standard and now that a significant investment is required to repair flood damage to the building it is opportune to consider relocation of homeless services. Relocating the homeless service to the Red Cross Hall may enable an expansion of existing services in a far improved facility. Council could utilise Community Building Maintenance funds to re-design the Red Cross Hall that would otherwise be spent on repairing Nullum House. Delivering homeless services from the Red Cross Hall also provides necessary spatial separation of diverse user groups in the redesign of Knox Park.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

There are no options for homeless services to be delivered in Murwillumbah that are cost neutral to Council.

Flood damage to Nullum House has been assessed by Council's insurers at \$18,761.14; advice has been received that the claim is not covered under Council's insurance policy. Council could utilise Community Building Maintenance funds that would otherwise be spent repairing Nullum House to re-design the Red Cross Hall to deliver significantly improved services to the Shire's homeless people.

Council currently indirectly subsidises MCC by forgoing lease fees, funding building maintenance and absorbing rates and charges. This arrangement could continue by way of an agreement between Council and the Australian Red Cross. However, there may be cost considerations other than building maintenance, including relocation of the Australian Red Cross Telecross service currently operating from the hall.

If Council determines to explore Option 1, in support of the Red Cross proposal, a further report will be prepared when all cost implications of the proposal are understood.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed. The proposal has been developed in partnership with the non-government organisation, Murwillumbah Community Centre Incorporated.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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**39 [CNR-CM] Tweed River Regional Museum and Tweed River Art Gallery
Deductible Gift Recipient (DGR) Fund Policies**

SUBMITTED BY: Community and Cultural Services

Valid



Supporting Community Life

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
-

SUMMARY OF REPORT:

The Tweed River Regional Museum and the Tweed River Regional Art Gallery have each been endorsed by the Australian Taxation Office as Deductible Gift Recipient (DGR) institutions operated by the Tweed Shire Council.

In accordance with Australian Taxation Office requirements, Council has established Gift Funds for both the Tweed River Regional Museum and the Tweed River Regional Art Gallery.

To ensure ongoing compliance with Australian Taxation Office requirements and appropriate governance frameworks, a separate policy for each DGR Fund has been developed.

RECOMMENDATION:

That Council exhibits the following draft Policies for a period of 28 days and accepts public submissions for a period of 42 days as per Section 160 of the Local Government Act 1993:

- 1. Tweed River Regional Museum Deductible Gift Recipient (DGR) Fund Policy.**
- 2. Tweed River Regional Art Gallery Deductible Gift Recipient (DGR) Fund Policy**

REPORT:

The Tweed River Regional Museum is recognised by the Australian Taxation Office (ATO) as a public museum under item 12.1.3 of section 30-100 of the *Income Tax Assessment Act*. The Tweed River Regional Museum is endorsed as deductible gift recipient (DGR) institution operated by Tweed Shire Council. The Tweed River Regional Art Gallery has been similarly recognised and endorsed by the ATO as a public art gallery under item 12.1.4 of section 30-100 of the *Income Tax Assessment Act*.

Deductible Gift Recipient endorsement by the ATO enables the Tweed River Regional Museum and the Tweed River Regional Art Gallery to each receive income tax deductible gifts and contributions, provided that such gifts and donations are made to an appropriately administered Gift Fund.

In accordance with ATO requirements, Council has established separate Gift Funds for the Tweed River Regional Museum and the Tweed River Regional Art Gallery.

To ensure ongoing compliance with Australian Taxation Office requirements, the Tweed River Regional Museum Deductible Gift Recipient (DGR) Fund Policy and the Tweed River Regional Art Gallery Deductible Gift Recipient (DGR) Fund Policy have been developed. The Policies set out the basis for ATO recognition and endorsement of each institution and compliance and governance requirements relevant to Fund administration.

OPTIONS:

1. That Council exhibits the draft Policies with the intention of adopting them at some future date;
2. That Council does not proceed with the exhibition and adoption of the draft Policies.

CONCLUSION:

Adoption of the policies governing administration of the Tweed River Regional Museum Deductible Gift Recipient Fund and the Tweed River Regional Art Gallery Gift Recipient Fund will ensure ongoing compliance with Australian Taxation Office requirements and transparent administration of the Gift Funds.

COUNCIL IMPLICATIONS:

a. Policy:

There is currently no policy for the governance and administration of each of these funds.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. DRAFT Policy - Tweed River Regional Museum Deductible Gift Recipient (DGR) Fund (ECM 3127175)
- Attachment 2. DRAFT Policy - Tweed River Regional Art Gallery Deductible Gift Recipient (DGR) Fund (ECM 3127184)
-

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40 [CNR-CM] Affordable Entry to Tweed Aquatic Centres for Tweed Shire Residents with Permanent or Temporary Disability

SUBMITTED BY: Community and Cultural Services

Valid



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
-

SUMMARY OF REPORT:

This report is a response to a Council resolution of 21 March 2013 regarding "the provision of a subsidy to improve accessibility for Tweed Shire residents with permanent or temporary disability to the Tweed Aquatic Centres". Following consultation between Council officers and the Equal Access Advisory Committee, a trial of several levels of subsidised entry has been recommended.

RECOMMENDATION:

That Council endorses a trial of subsidised entry to Tweed Aquatic Centres for the 2013/2014 summer season to be funded from the Access Reserve, as follows:

- 1. A 50% subsidy on the six month Bronze Family Membership for families where there is a parent/s who has a disability and is in receipt of the Disability Support Pension.**
- 2. A 50% subsidy on the six month Bronze Family Membership for families where there is a child who has a disability, confirmed by a letter from a General Practitioner.**
- 3. A 50% subsidy (including the current 20% concession and an additional 30% subsidy) on the six month Bronze Individual Membership for an adult who has a disability and who receives the Disability Support Pension.**
- 4. A 50% subsidy on the six month Bronze Individual Membership for a person who has temporary disability with a recommendation in writing from a medical or allied health professional involved in their treatment and care.**
- 5. The maximum subsidy shall not exceed 50%.**

REPORT:

At the Equal Access Advisory Committee (EAAC) on 20 February 2013, the Committee discussed affordability of pool entry for people with permanent or temporary disabilities. The matter had been raised with the EAAC following enquiries from members of the community and Department of Family and Community Services (FACS) staff supporting people with disabilities, particularly families of children with disabilities. The EAAC minutes of 20 February 2013 recommended further consideration of the proposal and Council resolved on 21 March 2013 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."

This report has been compiled by Council officers from Community and Cultural Services Unit and Recreation Services Unit (including Aquatic Centres) in consultation with the EAAC. Staff from Ageing Disability and Home Care, Department of Family and Community Services and parents of children with disabilities have also been consulted on pool use and appropriate fee structures.

In the 2011 Census for Tweed Shire, the number of people requiring assistance with core daily activities (indicating severe or profound disabilities) included 465 children under the age of nineteen, 1772 adults between the ages of twenty and sixty-four and 3640 adults aged sixty-five or more. Many people with disabilities receive the Disability Support Pension (DSP) as their only income. Some people with disabilities and other painful conditions that benefit from aqua therapy do not receive the DSP and are also on limited means because of their health issues. Many families with children with disabilities are on lower incomes than the general population due to the demands of caring.

Children with Autism Spectrum Disorder particularly benefit from being in safe water environments. There are no safe netted pools in the inland waters of Tweed Shire. Coastal surf swimming is not appropriate or safe for many people with disabilities particularly children. In terms of access and inclusion, as well as beneficial therapy, the ability to be in the water is extremely important and in many cases essential for health and wellbeing.

Allied health professionals supporting adults and families with children with disabilities report that the cost of going to a pool on a regular basis is prohibitive. Health and wellbeing outcomes for individuals and family functioning for people with disabilities can be improved and supported by making entry to Tweed Aquatic Centres more affordable.

One sole parent of five children reported that the Murwillumbah pool is the only place where the whole family can relax together. This is due to the beneficial influence of swimming on the behaviour of her teenage son who has severe Autism Spectrum Disorder and is unable to communicate verbally. This family used the pool five or six times a week in a summer season when one-off funding provided a six month family membership. This parent said the most appropriate and relevant access to the pool was via a six month Bronze Membership. The membership fee would need to be significantly subsidised for this parent to benefit.

Current Subsidies Offered at Tweed Aquatic Centres

There are current concessions available for individuals who hold aged or disability pensions, unemployment benefits or a health care card on twelve and six month individual Gold and Bronze memberships. Current concessions include:

- Gold Membership individual concession for twelve months costs \$720 (which provides entry and full use of all programs such as aqua aerobics, deepwater running and yoga)
- Gold Membership family concession for twelve months costs \$1400 (which is a 40% concession on the full fee of \$3500 and includes entry and full access to all programs)
- Bronze Membership individual concession for twelve months costs \$295 (Entry only)
- Bronze Membership individual concession for six months costs \$195 (Entry only)

The Gold family concession membership fee is the only one that can be paid in instalments. While these concessions reduce the cost of these specific memberships, it is still a significant amount of money. There are no concessions on a casual visit, multi-visit passes or Bronze family memberships. There are no concessions for six or twelve month Bronze family membership. There are no concessions available for children.

Companion Card

Companion Cards are accepted for carers. The holder of the Companion Card enters free when accompanying the person with a disability for whom they provide care.

Current data on concession entry

Tweed Aquatic Centres collect overall data on concession memberships but do not record the category of card holder. Therefore there is no current data on the number of individuals or families with disabilities that qualify for concessions. Currently at Murwillumbah Pool there are 64 Bronze Individual twelve month memberships and 23 Bronze Individual six month memberships. Due to lack of specific data it is difficult to estimate the amount of access funds required to provide additional subsidies.

Proposal

This report recommends a trial process to investigate likely demand for pool subsidies from people with permanent and temporary disabilities to access the Tweed pools. It is proposed that the concessions detailed below will permit entry into all three Tweed Aquatic Centres at Murwillumbah, Kingscliff and Tweed Heads South from the first day of the summer season 2013/2014 until the last day of the summer season 2013/2014.

The trial will offer:

1. A 50% subsidy on the 6 month Bronze Family Membership for families where there is a **parent who has a disability** and who receives the DSP. This would reduce the cost from \$430 to \$215.
2. A 50% subsidy on the 6 month Bronze Family Membership for families where there is a **child who has a disability**. The parent will provide a letter from a General Practitioner confirming the child's disability. This would reduce the cost from \$430 to \$215.
3. A 50% subsidy (including the current 20% concession and an additional 30% subsidy) on the 6 month Bronze Individual Membership for an **adult who has a disability and who receives the DSP**. This would reduce the total cost to \$136.50.

4. A 50% subsidy on the 6 month Bronze Individual Membership for a **person who has a temporary disability with a recommendation in writing from a medical or allied health professional** involved in their treatment and care. This would reduce the total cost to \$136.50.

An information session will be conducted for pool staff on how to administer the trial. Pool staff will be asked to record data on the number of people accessing the trial concessions.

Monitoring and Review of the trial

The trial will be monitored in partnership with the Community and Cultural Services Unit (in particular Community Development Officer - Ageing and Disability) and Recreation Services Unit (in particular Tweed Aquatic Centres staff) to address and solve any issues arising in the administration of the trial and to monitor demand. At the conclusion of the trial a report will be prepared that includes data on participation rates and feedback from participants and pool staff. A recommendation will be made through the EAAC on the viability of continuing the subsidy scheme.

OPTIONS:

1. To proceed with a Tweed Aquatic Centres trial of subsidised entry for residents with permanent or temporary disability.
2. Not proceed with a Tweed Aquatic Centres trial of subsidised entry for residents with permanent or temporary disability.

CONCLUSION:

Not all people with disabilities are interested in using pool facilities. There are many more people with a range of disabilities in Tweed Shire who rely on support of differing kinds and/or who lead independent lives. For those that do enjoy or rely on access to safe aquatic environments it is important to offer affordable access. This report recommends a trial subsidy for the 2013/2014 Summer Season to investigate likely future demand for pool subsidies from people with permanent and temporary disabilities to access the Tweed Aquatic Centres.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The Tweed Aquatic Centres trial of subsidised entry for residents with permanent or temporary disability will be funded from the Access Reserve. Estimates are unable to be provided at this time due to lack of base data.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

41 [EO-CM] Local Preference Procurement Policy

SUBMITTED BY: Director

Valid



Civic Leadership



Strengthening the Economy

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
3	Strengthening the Economy
3.4	Provide land and infrastructure to underpin economic development and employment
3.4.3	Manage Council business enterprises to provide economic stimulus and maximise returns to the community

SUMMARY OF REPORT:

Council procured goods and services to the value of \$99.13M in the 2011/2012 financial year. \$23.35M or 25.6% was sourced from local suppliers in Tweed Shire. It is recognised that there is a positive economic impact on the local economy through increased use of local suppliers. A local preference policy is a means of increasing the amount of local procurement and in turn a means of stimulating the Tweed Shire economy.

The economic modelling suggests there could be substantial positive local economic and employment impacts through Council increasing the proportion of procurement from local businesses. The local preference policy is supported by the Tweed Chamber of Commerce and Industry and subject to certain safeguards, no game breaking objections are provided by the Auditor or Audit Committee.

Both the Chamber and Audit Committee recommend safeguards to minimise the risk of the policy to Council's finances and these safeguards are recommended for incorporation into the adopted policy.

RECOMMENDATION:

That:

1. Council adopts Version 1.5 of the Procurement Policy, as amended post exhibition and as per the version attached to this report.
 2. The implementation of Version 1.5 of the Procurement Policy commence from the date a notice to this effect is published in the Tweed Link.
-

- 3. The Local Preference Section 4 of the Procurement Policy is to be reviewed at 3 months and 12 months post implementation. If the outcomes are unacceptable to Council as determined by the General Manager, then that section of the policy may be suspended by the General Manager.**
- 4. Any suspension of the Local Preference Section of the Procurement Policy by the General Manager (as per 3 above) must be reported to the next available Council meeting with recommendations for formal amendment of the policy in accordance with Section 160 of the Local Government Act 1993.**
- 5. The reviews referred to in 3 above are to be informed by in depth reviews by Council's internal auditor.**

REPORT:

1. Background

At Council's meeting on 16 May 2013, after considering a report proposing insertion of a local preference section into the existing *Procurement Policy*, it was 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."**

The proposed changes were to be implemented by deleting from the existing Procurement Policy the following:

"6. PROCUREMENT PREFERENCE

Council through the provisions of this Policy aims to encourage the development, promotion and growth of business and industry within the Shire boundaries.

In the event of a valuation being equal, Council prefers to purchase Australian made products and services and to purchase them locally."

And Inserting:

"6. LOCAL PREFERENCE POLICY

6.1 Policy Objectives

Whilst Council is committed to obtaining the best value for money, Council also recognises the positive impact on the local economy through considering the local content contained in offers for supply of goods and services.

6.2 Definitions

For the operation of Section 6 of this policy:

"Business located in the Tweed Shire" means the person, business or enterprise making the offer must employ at least one person working in a full-time position in a workplace within the Tweed Shire Local Government Area and has done so for a period of no less than six (6) months prior to the date of first advertising or calling for Offers.

"Neighbouring Local Government Area" - means Gold Coast, Byron, Kyogle, Lismore, Ballina, Richmond Valley or Clarence Valley Local Government Areas.

"Nominated Local Value" means the predicted cost related to a tender/quotation of:

- *Wages and subcontractors normally located in Tweed Shire*
- *Plant normally located in Tweed Shire*
- *Goods produced in Tweed Shire*
- *Manufacturing, production, processing, servicing and value adding conducted in Tweed Shire*

- *Services by providers located in Tweed Shire*
- *Agriculture products grown in Tweed Shire*
- *Value adding conducted in Tweed Shire to goods or equipment sourced outside Tweed Shire*
- *Overheads, profit margin on the above*

But Excludes:

- *Imported cost of goods and equipment sourced from outside Tweed Shire*
- *Any other goods, labour, plant or services sourced from outside Tweed Shire*

“Offers” – means quotations, tenders, expressions of interest and submissions made under a competitive basis for the provision of goods and services to Council.

“Policy” – means this Local Preference Policy

6.3 Operation

6.3.1 The Policy will apply to all procurement with a definable cumulative value greater than \$10,000.00 (Incl GST) that is to be sourced from a single supplier.

6.3.2 Offers must be sufficiently detailed to enable Council to assess the level of Local Content included. To support assessment of the level of Local Content contained in Offers, Council may provide pro-forma templates to bidders for completion and/or require bidders to provide necessary detail in another form(s).

6.3.3 In assessing Offers, Council and its officers must be reasonably satisfied as to the level of Local Content stated. It is the responsibility of bidders to provide relevant documentary evidence to establish the veracity of the claimed level of Local Content. Council retains the right within its sole discretion to accept the veracity of stated Local Content.

6.3.4 Multi Criteria Evaluation: Local Content will have a mandatory weighting of 10% of the total evaluation criteria. Weights applied to price and non-price criteria will have a maximum cumulative weighting of 90%. A "Local Preference Score" (out of 10) will be applied to the 10% Local Content evaluation criteria based on details submitted in the Local Preference Information Form.

6.35 Price Criteria Only Evaluation: For price comparative purposes, a % discount will be applied in accordance with the "Local Preference Score" (out of 10) based on details submitted in the Local Preference Information Form.

6.36 The Local Preference Score shall be based on information submitted with offers on a "Local Preference Information Form".

6.37 The Local preference Score shall allocate:

- *3 points for "Businesses Located in the Tweed Shire"*
- *1 point for businesses located in a "Neighbouring Local Government Area"*
- *1 point for businesses that employ at least 5 persons who reside in Tweed Shire*
- *between 1 and 6 points for "Nominated Local Value".*

6.3.8 The Local Preference Selection Criteria shall not apply if the cost above the most competitive complying offer exceeds the following

Price of most competitive conforming offer	Financial Cost Cap	
>\$10,000 to <\$50,000 general items	10%	up to \$5,000
\$10,000 to <\$50,000 motor vehicles only	3%	
\$50,000 to <\$150,000	7.5%	\$3,750 to \$11,250
\$150,000 to <\$500,000	5%	\$7,500 to \$25,000
\$500,000 to <\$1M	3.5%	\$17,500 to \$35,000
>\$1M	2.5%	\$25,000 to max \$50,000

The amended draft policy was advertised and publicly exhibited from 21 May until 21 June 2013.

2. Public Submissions Received

At this time only one public submission has been received through the public exhibition process, being the following submission from the Tweed Chamber of Commerce and Industry Incorporated:

"CHAMBER SUBMISSION FOR TSC LOCAL PREFERENCE PROCUREMENT POLICY

The Tweed Heads Chamber of Commerce and Industry (THCCI) welcome the opportunity to comment on the Tweed Shire Council Local Preference Procurement Policy. The policy presents a unique opportunity to contribute the experience of our members in this field and Council should be congratulated in making positive steps towards potentially contributing more expenditure into the local economy.

As highlighted in the summary of report, a balance need to be met to ensure council responsibly gets the best value for their invested dollar from local suppliers without increasing the financial cost to the rate payer by spending more than was necessary but given the indicators and benchmarks in the report we are confident this can be achieved without adding unnecessary cost to the bureaucracy managing the process.

The THCCI supports the Local Preference selection criteria and the sliding scale expenditure but feel the financial cost caps are too generous in some categories. Listed below are our suggestions.

Price of most competitive conforming offer	Financial Cost Cap	THCCI Suggestion
>\$10,000 to <\$50,000 general items	10% up to \$5,000	Reduce to 5%
\$10,000 to <\$50,000 motor vehicles	only 3%	Leave as is
\$50,000 to <\$150,000	7.5% \$3,750 to \$11,250	Reduce to 4%
\$150,000 to <\$500,000	5% \$7,500 to \$25,000	Reduce to 3.5%
\$500,000 to <\$1M	3.5% \$17,500 to \$35,000	Reduce to 3%
>\$1M	2.5% \$25,000 to max \$50,000	Reduce to 2%

The THCCI looks forward to seeing the current \$23.35m or 25.6% of total procured goods increased to \$27 million or 50% of the expenditure in the not too distant future which will strength our local economy and deliver a positive message to every business in the shire."

3. Response from Council's Auditor

The following comments were made by Adam Bradfield (Partner) on behalf of Council's Auditor - Thomas, Noble & Russell Chartered Accountants.

- *"In relation to financial implications arising from local contractor's, the Cost vs Benefit (between incurring potential additional costs arising from local contractors as a means of generating business within the Tweed economy) is a decision solely for Council and not for comment by us as auditors. In any case, Council should consider the impacts of all procurement decisions in accordance with the budgetary constraints within Council's Long Term Financial Plan.*
- *In relation to operational implications arising from the use of local contractor's, any impacts would need to be assessed on a case by case basis at the time of each procurement decision.*
- *We recommend that Council benchmark this proposal with other Local Government entities. We are aware of some of our other Council clients having a Local Preference % applied to procurement contracts (particularly tender assessments) and the draft policy for Tweed Shire highlights some key definitions from other local government policies. If Council hasn't already done so, Council may consider engaging with other Council's to learn from any practical experiences with the process before finalising the proposal.*
- *A further in-depth review of this issue could be performed by the Council's internal auditor, by way of a 'Performance Audit'. We would be happy to work with Council's internal auditor, without cost to Council, to assist with the audit planning considerations if such a review were to occur."*

4. Response from Council's Audit Committee

Audit Committee response:

"While the Audit Committee can make observations on some implications, it does not have sufficient information on which to make reasoned judgements on quantifying the possible financial outcomes of the Local Preference Procurement Policy.

Following are observations:

1. There will be two different financial implications for Council, that being the difference between additional cash expended compared to the effect on the reported Net Operating Result [ie. the surplus or deficit] in each financial year. This occurs because:

- *some items of local purchase will be for annual or consumable type items such as office supplies, vehicle fleet running costs, infrastructure maintenance etc where the additional cash expended will be the same as the expense charged in the year in determining the Net Operating Result.*

- *In contrast, items of local purchase for capital items such as new infrastructure will be capitalised so that while 100% of the additional purchase cost is paid in cash [and must be funded by loans or reserves], only a small portion will be charged against the Net Operating Result in each year by way of annual depreciation charges – and the depreciation charge does not commence until the asset is complete which may be in a later financial year than the cash is expended. Over a reasonably long time, the impact of this difference will diminish each year as annual depreciation charges from each of the past years cash expenditure accumulate and continue to impact Net Operating Result but without a corresponding cash impact.*

Accordingly, Council needs to consider the different financial impact on two different measures [cash and Net Operating Result]. In the short term it is likely therefore that additional costs from this policy will require a higher level of cash payments than the amount of the effect on the reported result. In the very long term [up to 100 years in the case of some roads] the cash outlay will equate the charge against Operating Results

2. The Committee notes the objective of the policy appears to be focussed on strengthening the economy in the Tweed region. From the material provided to the Audit Committee, we are unable to determine the value [if any] of the contribution to the Tweed economy. While the costs of the policy may be projected – albeit using many untestable assumptions, measured and controlled, the value derived is currently indeterminable. The Audit Committee is therefore unable to assess whether:

- *The additional costs to TSC will produce additional economic activity to justify the cost*
- *There is a more effective way of generating additional economic activity with the same or lesser cost to Council*

The Committee is aware however of the impact of public perception which may warrant this policy, financial implications aside. However, as any additional cost is an additional impost on TSC ratepayers, proper definition of benefits from the policy is necessary

3. The Committee queries whether a more simplistic policy would provide similar benefits with less risk and cost – such as a flat say 2% allowance on tender price where the contract acceptance officer makes a subjective judgement that the vendor offers at least 50% local content based on a set of criteria with an overall upper limit on the amount of the allowance

4. The Council will need to incur additional costs in monitoring the performance of vendors claiming under the policy:

- *in checking the accuracy of local content claims,*
- *in checking the actual performance after the event and in dealing with the need for redress should local content estimates not be provided so discounts or allowances were given which are demonstrated to be unjustified*
- *In monitoring contract acceptance processes where a higher level of subjective judgements will be required and increased opportunity for purchasing officers to take judgements which may not be in the Council's best interests*

5. Additional interest costs will be incurred to fund the additional cash required

6. *The Committee sees a need for better definition of:*

- *criteria for local content . Making projections based on postcodes of the Tweed region is very imprecise*
- *the benefits to be delivered to the region which warrant offering a benefit to the vendor*

The Committee also is uncertain whether vendors claiming local content would be willing to supply accurate data for commercially sensitive matters such as profit content

Overall, the Audit Committee sees no fundamental flaw in this policy providing the benefits are measured and the costs controlled, however strongly supports the approach that the policy, if implemented be subject to review after three months and again after twelve months with the ability to modify or revoke the policy at any time should outcomes occur which are unacceptable to Council. This will permit a proper assessment of the short term and long term additional costs and cash needs compared to the short and long term benefits generated by the policy".

5. Economic Modelling of Likely Impact of Local Preference Policy

Urban Enterprises Pty Ltd were engaged to model the economic impacts of a range of local procurement values for the purchase of goods and services above \$10,000 (the value of procurement items to which the exhibited local preference policy applies). On page 3 and 4 of their report they advise:

"11. The following table provides the estimated Total Economic impact of Tweed's Shire's Gross Regional Output and estimated FTE jobs supported, for a range of local procurement values.

12. The assessment has found that an increase in the level of local expenditure will support a growth in employment and gross regional output of Tweed Shire. For example, an increase in the share of local procurement to \$35.7 million, or nearly half of procurements in 2011/12, is estimated Support:

- (a) A Total Economic Impact of \$41.4 million to Tweed Shire's Gross Regional Output; and*
- (b) 300 FTE jobs in Tweed Shire."*

VALUE OF COUNCIL PROCURED GOODS AND SERVICES – SCENARIO ANALYSIS

Annual local value of procurement	Share of total procurement	Estimated Total Economic Impact	Estimated FTE Jobs Impact
\$17,236,685	23%	\$19,992,967	145
\$20,798,599	28%	\$24,124,459	175
\$24,512,634	33%	\$28,432,397	206
\$28,226,670	38%	\$32,740,337	238
\$31,940,705	43%	\$37,048,275	269
<i>\$35,654,741</i>	<i>48%</i>	<i>\$41,356,215</i>	<i>300</i>
\$39,368,776	53%	\$45,664,153	331
\$43,082,812	58%	\$49,972,093	363
\$46,796,847	63%	\$54,280,031	394
\$50,510,883	68%	\$58,587,971	425
\$54,224,918	73%	\$62,895,909	456
\$57,938,954	78%	\$67,203,849	488
\$61,652,989	83%	\$71,511,787	519

Source: Tweed Shire Council, 2011/12 Financial Year and Urban Enterprise Economic Impact Model.

6. Assessment of Public and Expert Submissions

Submission and Issue	Comments	Proposed action
Tweed Chamber of Commerce and Industry Incorporated		
1. General support for policy	Noted	
2. Suggest lower financial cost cap	This is a precautionary approach, that would lessen the financial risk to Council. This would be a prudent step, particularly until the policy has been in place for a sufficient period to enable actual costs to Council to be assessed.	Modify Financial Cost Table, generally in accordance with the Chambers suggestions. Revise table also to eliminate overlap between expenditure classes (see below).
Council's Auditor - Thomas, Noble & Russell Chartered Accountants		
1. Council should consider cost/benefit	See financial modelling	Noted
2. Operational implications need to be assessed on case by case basis	This is part of the procurement process	Ongoing as part of procurement processes
3. Need to benchmark with other councils	Other council systems were considered in May report to Council.	Other councils will be consulted for advice on implementation
4. Need for in depth review by Council's internal auditor		Perform audit 3 and 12 months post implementation of policy
Audit Committee		
1. Need to consider impact on cash and net operating result	Agreed	To be considered in review of annual budgets and long term financial plan
2. Committee not able to assess economic benefits	See economic modelling report.	
3. Is a more simplistic policy beneficial?	This was assessed in May 2013 Council report and the exhibited policy was preferred as being better targeted to secure the maximum economic benefit whilst minimising costs to Council's operations.	No action.
4. There will be additional operational and interest costs	Agreed	Costs will be monitored and considered in review processes

Submission and Issue	Comments	Proposed action
5. Need for better definition of local content and verification of claims	The proposed application form provided as a confidential attachment to the May Council report addresses this issue	Noted
6. Audit Committee sees no fundamental flaws provided benefits are monitored and costs controlled. Policy should be subject to review after 3 month and 12 months with ability to modify or revoke policy should outcomes occur that are unacceptable to Council	Agreed.	Recommend policy be reviewed after 3 months and 12 months, post implementation and that the policy be modified or revoked should outcomes occur that are unacceptable to Council

The proposed revision to the Financial Cost Table recommended by this report is shown in the right column of the following table:

Price of most competitive conforming offer	Exhibited Financial Cost Cap	THCCI Suggestion	Recommended
>\$10,000 to <\$50,000 <i>general items</i>	10% up to \$5,000	Reduce to 5%	5% up to max \$5,000
\$10,000 to <\$50,000 <i>motor vehicles</i>	only 3%	Leave as is	3%
\$50,000 to <\$150,000	7.5% \$3,750 to \$11,250	Reduce to 4%	4% up to max 15,000
\$150,000 to <\$500,000	5% \$7,500 to \$25,000	Reduce to 3.5%	3.5% up to max \$30,000
\$500,000 to <\$1M	3.5% \$17,500 to \$35,000	Reduce to 3%	3% up to max \$30,000
>\$1M	2.5% \$25,000 to max \$50,000	Reduce to 2%	2% up to max \$50,000

In accordance with the recommendations of the Audit Committee, it is also proposed to insert the following in the "Review Period" section of the policy

"Review Period

Section 4 "Local Preference Policy" of the Procurement Policy will be reviewed three months and 12 months post implementation. If the outcomes are deemed unacceptable to Council as determined by the General Manager, then this section of the policy may be suspended. Any such suspension of the Local Preference Section of the Procurement Policy by the General Manager as outlined above will be reported to the next Council meeting with recommendations for formal amendment of the policy in accordance with Section 160 of the Local Government Act 1993."

7. Revised Format of Council Policies

At the meeting 20 June 2013, Council resolved to reformat all of Councils policies. This action took place whilst the draft Procurement Policy was on exhibition in the old format. Accordingly the further amended draft procurement policy, the subject of this report has been changed to conform with the newly adopted format. In the revised format the Section on Local Preference is now in Section 4 (previously Section 6 in the exhibited draft policy).

8. OPTIONS:

1. Do not adopt the local preference section of the Procurement Policy.
2. Adopt the Procurement Policy with amended local preference section as exhibited.
3. Adopt the Procurement Policy, generally as exhibited, but with further amendments to:
 - Incorporate the lower financial cost caps as suggested by the Tweed Chamber of Commerce and Industry Inc. and also revise to eliminate overlap between expenditure classes.
 - Incorporate suggestions of the Audit Committee regarding 3 and 12 month reviews and ability to modify or revoke the local preference policy should outcomes be unacceptable to Council.
 - Incorporate the new policy template provisions adopted by Council at the 20 June 2013 meeting.

9. CONCLUSION:

The economic modelling suggests there could be substantial positive local economic and employment impacts through Council increasing the proportion of procurement from local businesses. The local preference policy is supported by the Tweed Chamber of Commerce and Industry and subject to certain safeguards, no game breaking objections are provided by the Auditor or Audit Committee.

Both the Chamber and Audit Committee recommend safeguards to minimise the risk of the policy to Council's finances and these safeguards are recommended for incorporation into the adopted policy.

It is recommended that the revised draft as amended after consideration of submissions and as attached to this report be adopted.

COUNCIL IMPLICATIONS:

a. Policy:

Possible amendment to Procurement Policy Version 1.4. If the policy was amended, then management would also amend the internal Procurement Protocol to implement the detail of the amended policy.

b. Budget/Long Term Financial Plan:

Possible substantial negative impacts and further expert advice is needed as per Conclusion of this report.

c. Legal:

Any amendment to the Procurement Policy must be in accordance with relevant legislation.

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Council Report 16 May 2013 (ECM) 3048896)
Attachment 2.	Council Procurement Policy - Economic Impact Statement, Urban Enterprise August 2013 (ECM 3132874)
Attachment 3.	Draft Procurement Policy - Version 1.5 (ECM 3099820)

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42 [EO-CM] EC2013-106 Supply Contract for Road Stabilisation Tweed Shire 2013/2014

SUBMITTED BY: Works

Valid



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Supporting Community Life
2.4	An integrated transport system that services local and regional needs
2.4.3	Ensure local streets, footpaths and cycleways are provided, interconnected and maintained

SUMMARY OF REPORT:

This report outlines the tender for EC2013-106 Supply Contract for Road Stabilisation Tweed Shire 2013/2014 to Council for the period of one (1) year. Council is seeking to engage the services of one or more qualified and certified Road Stabilisation Contractors under a Preferred Supplier Arrangement to provide and conduct a variety of road stabilisation services based on a suitability, availability and economical advantage to Council over the nominated period. Tendered Schedules of Rates for the road stabilisation services are listed in **CONFIDENTIAL ATTACHMENT 1**.

It is recommended that Council accepts the list of providers for tender EC2013-106 Supply Contract for Road Stabilisation Tweed Shire 2013/2014 as included as a confidential attachment to this report.

Attachment 1 is **CONFIDENTIAL** in accordance with Section 10A (2) (d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers' commercial rates. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:

1. Council accepts the list of providers for tender EC2013-106 Supply Contract for Road Stabilisation 2013/2014 for a one (1) year period as included as a confidential attachment to this report.

2. **ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) 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:

Council tender EC2013-106 closed on 26 June 2013 for the procurement of a Panel of Providers for the Provision of Road Stabilisation services for Tweed Shire Council during the financial year 2013/2014.

Council is seeking to engage the services of one or more qualified and certified Road Stabilisation Contractors under a Preferred Supplier Arrangement to provide and conduct a variety of road stabilisation services based on a suitability, availability and economical advantage to Council needs for a period of one (1) year.

Tenderers were advised that submissions would be assessed by the Tender Schedules submitted by the Tenderer which would provide Council with a preferred suppliers list offering the best competency and economical advantage, for various aspects of works as required.

Council officers will, as the need arise, request various aspects of work from the most suitable Contractor assessed from the submitted priced schedule for that aspect of work in the first instance based on availability, capability and economical advantage to Council. If by reason of unavailability or inability to meet Council's time frame, Council will then approach the next suitably assessed Contractor and so on until all requirements are achieved.

Site Specific road stabilisation services not covered in the submitted priced schedule may be requested from time to time under this contract. In these instances, Council officers will use Council's adopted procurement procedure and approach three most suitable Contractors on the preferred supplier list to provide a quotation of cost and availability for the work.

If individual project works are estimated to exceed \$150,000 in value then tenders for these works will be called as per Council's adopted procurement procedure in accordance with Section 55 of the Local Government Act 1993 and Part 7 (Tendering) of the Local Government (General) Regulation 2005.

Council gives no Guarantee to any amount of works under this Contract engagement.

Work will be requested on a needs basis by the Works Unit of the Engineering and Operations Division.

Rates submitted are not subject to escalation and will remain fixed for the one (1) year term of the agreement.

Tenders Received

Tender Submissions closed at 4:00pm on 26 June 2013 in the Tender Box located in the foyer at the Tweed Shire Council Civic and Cultural Centre, Murwillumbah NSW 2484. A total of six (6) responses were recorded for EC2013-106 at the Tender Box opening on 26 June 2013 from the following contractors:

- Stabilised Pavements of Australia
- Downer EDI Works Pty Ltd
- Accurate Asphalt & Road Repairs Pty Ltd
- Mid Coast Road Services
- Kerway Asphalt & Sealing
- Ellis Profiling (Qld) Pty Ltd

Tender Evaluation

The Tender Evaluation was conducted by Council's Engineering and Operations Division's Works Unit staff to examine the submissions as to meeting the requirements for the performance and capabilities required under this contract. Tender Evaluation is included in **ATTACHMENT 1** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers' rates to provide specific services. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

OPTIONS:

Not Applicable.

CONCLUSION:

In accordance with the rates submitted for each required service, it is recommended that Council accepts the Providers' schedule of rates for provided services for EC2013-106 Supply Contract for Road Stabilisation Tweed Shire 2013/2014 for a period of one year as included as a confidential attachment to this report.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Version 1.4.

b. Budget/Long Term Financial Plan:

EO10 - Roads.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(*Confidential*) Attachment 1. Confidential Attachment EC2013-106 Road Stabilisation 2013-2014 - Tender Evaluation - Evaluation Sheet (ECM 3116710)

43 [EO-CM] EC2013-129 Faulks Park Kingscliff - Proposed Park Upgrade

SUBMITTED BY: Contracts

Valid



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Supporting Community Life
2.3	Provide well serviced neighbourhoods
2.3.6	Provide conveniently placed and well equipped parks, sporting, recreational, cultural and community facilities

SUMMARY OF REPORT:

As part of Council's 'Vision' to reinvigorate some of its older infrastructure, Tweed Shire Council is upgrading the park adjacent to Cudgen Creek at Kingscliff (Contract EC2013-129 Faulks Park Kingscliff - Proposed Park Upgrade). This action is in accordance with the Faulks Park Concept Plan that was adopted by Council at the meeting held 16 May 2013. The works will include new picnic shelters and BBQ, new concrete pathways with seating, additional tree planting, garden beds, lighting and a new irrigation system.

Tenders were officially invited in accordance with the provisions of the Local Government Act 1993 and the NSW Local Government (General) Regulation 2005. Tender submissions closed at 4.00pm (local time) on 24 July 2013 in the Tender Box located in the foyer at the Tweed Shire Council Civic and Cultural Centre, Murwillumbah NSW 2484.

RECOMMENDATION:

That:

- 1. Council awards the contract EC2013-129 Faulks Park Kingscliff - Proposed Park Upgrade to Greenwood Landscape Management for the amount of \$206,725.00 (exclusive of GST).**
- 2. The General Manager is given delegated authority to approve variations up to 10% of the initial contract sum to a maximum of \$150,000 and those variations be reported to Council following completion of the tendered works/services.**
- 3. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) 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:

Tender Background

As part of Council's 'Vision' to reinvigorate some of its older infrastructure, Tweed Shire Council is upgrading the park adjacent to Cudgen Creek at Kingscliff (Contract EC2013-129 Faulks Park Kingscliff - Proposed Park Upgrade). This action is in accordance with the Faulks Park Concept Plan that was adopted by Council at the meeting held 16 May 2013. The works will include new picnic shelters and BBQ, new concrete pathways with seating, additional tree planting, garden beds, lighting and a new irrigation system.

The project will also involve the coordination between the contractor and Sureplay, the approved play equipment supply and install company. It is anticipated that the play equipment company will have to excavate only the holes for the posts footing, they will also remove the excavated material from these holes.

The contractor will also have to coordinate and liaise with Tweed Shire Council with the supply and installation of the toilet block. Council will supply and install all the infrastructure, power, water and sewer to the toilet block, however the contractor will be responsible for all forming up and associated concrete works. Council will be responsible for excavation of the post holes and setting the pad heights to follow the design levels.

The Scope of Works under this contract shall include, but not be limited to, the following:

- Coordination of work on elements of the entire project.
- Ensure the safety of the general public during the works.
- Traffic management of roads and property access as required.
- Confirm locations of all existing services utilising Dial Before You Dig information.
- Removal and disposal of existing structures which interfere with the work under the contract.
- Construction and installation of all new works as per the Tender Schedule and Specification.
- Prepare 'Works as Executed' plans of all new works and services installed.

Tender Evaluation Panel

Council's Tender Evaluation Panel was made up as follows:

Name	Position
Ashley Tewes	Contracts Engineer
Ian Bentley	Landscape Architect

Tender Advertising

As per the requirements of the Local Government Regulation 2005, tenders were officially advertised for EC2013-129 Faulks Park Kingscliff - Proposed Park Upgrade on Tuesday 2 July 2013 in The Sydney Morning Herald. The tender was also advertised in The Tweed Link on Monday 1 July 2013.

Notices to Tenderers

Tender Addendum No.01 provided individual PDF files of each of the plans/drawings/spec in the Play Equipment Appendix section of the Request for Tender. The documents included in the original Request for Tender were not readable due to poor file quality.

Tender Submissions

As per the requirements of the Local Government Regulation 2005, tender submissions closed at 4:00PM (local time) on 24 July 2013 in the Tender Box located in the foyer of the Tweed Shire Council Civic and Cultural Centre, Murwillumbah NSW 2484. Three tender submissions were recorded at the Tender Box opening and their details are as follows:

Tenderer	ABN	Tendered Amount (incl GST)
Greenwood Landscape Management	61 850 361 870	Confidential Info
Scapeshapes Landscaping Pty Ltd	32 073 042 458	
GC Group Company Pty Ltd	23 163 273 130	

Evaluation Criteria

The tender evaluation was conducted as per the Tender Evaluation Plan dated 1 July 2013. Tenders were evaluated based on the criteria noted in the table below which were also listed in the Conditions of Tendering. The details of the price and non price evaluation are shown on the attached Tender Evaluation Spreadsheet.

Criterion	Document Reference	Weighting (%)
Value for Money (Normalised Tender Price)	Schedule 2 & 3	45
Offer Price Compared with TSC Estimated cost	Schedule 2 & 3	Yes/No Item
Financial Details and Capacity	Schedule 4	Yes/No Item
Previous and Current Works (Experience)	Schedule 4	5
Project Management (Key Personnel)	Schedule 5	5
Methodology and Work Program (Time)	Schedule 6	10
WHS and Risk Management	Schedule 7	10
Industrial Relations and Safety Record	Schedule 7	Yes/No Item
Environmental Management	Schedule 7	10
Quality Management	Schedule 7	10
Proposed Subcontractors (Experience)	Schedule 8	Yes/No Item
Company Insurances	Schedule 9	Yes/No Item
Sustainable Procurement	Schedule 10	Yes/No Item
Innovation	All Schedules	5
Maintenance and Running costs	All Schedules	Yes/No Item
Life of Proposed materials and equipment	All Schedules	Yes/No Item
Warranty Periods Offered	All Schedules	Yes/No Item
Development of Competitive Local Business/Industry	All Schedules	Yes/No Item
Council's Contract Administration Costs	Schedule 6	Yes/No Item
	Total	100

Refer to Confidential ATTACHMENT 1 for the detailed Tender Evaluation Report.

A copy of the Tender Evaluation Report is included in ATTACHMENT 1 which is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderer in relation to the tender price and the evaluation of the products offered by the tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

CONCLUSION:

It is recommended that the tender from Greenwood Landscape Management be accepted to the value of \$206,725.00 excluding GST (or \$227,396.50 including GST). Greenwood Landscape Management achieved the highest overall assessment score (7.95 as detailed in Confidential Attachment 1) and is deemed as the most advantageous option for Council.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Version 1.4.

b. Budget/Long Term Financial Plan:

The budget for the proposed park upgrade is \$380,000 (including GST) which includes Council supplying and installing a new toilet block and supplying new playground equipment for the contractor to install. Greenwood Landscape Management's quotation in the amount of \$227,396.50 (including GST) falls within this budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Confidential Attachment Tender Evaluation Record and Tender Assessment (ECM 3130872)

44 [EO-CM] Naming of Uki Sportsfields

SUBMITTED BY: Recreation Services

Valid



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.3 Provide well serviced neighbourhoods
 - 2.3.6 Provide conveniently placed and well equipped parks, sporting, recreational, cultural and community facilities
-

SUMMARY OF REPORT:

At its meeting held on 18 April 2013, Council resolved to call for comment regarding the naming of the Uki Sportsfields the "Vic Bianchetti Sports Ground". At the close of comment, no submissions were received.

RECOMMENDATION:

That Council defers the naming of the Uki Sportsfields until Council considers the adoption of the amended Park Naming Policy at the close of the submission period.

REPORT:

At its meeting held on 18 April 2013, Council resolved to call for comment regarding the naming of the Uki Sportsfields the "Vic Bianchetti Sports Ground". At the close of comment, no submissions were received.

This proposal was considered and processed in accordance with the adopted policy at the time of submission. Subsequent to Council considering this request, Council has resolved to place an amended "Naming of Council Public Parks and Sportsfields Policy" on exhibition which will limit the naming of sportsfields to a geographical reference. Under the amended policy, the proposed naming would not be considered and the sportsfields' name would be confirmed as "Uki Sportsfields".

Council may wish to consider deferring a decision on this proposal until Council considers the adoption of the amended park naming policy at the close of the submission period.

OPTIONS:

1. That Council names the Uki Sportsfields the "Vic Bianchetti Sports Ground" and erects signage.
2. That Council defers the naming of the Uki Sportsfields until Council considers the adoption of the amended "Naming of Council Public Parks and Sportsfields Policy" at the close of the submission period.

CONCLUSION:

Whilst the resolution to call for comment was consistent with Council's policy for naming parks at the time the proposal was considered, Council has subsequently resolved to place an amended "Naming of Council Public Parks and Sportsfields Policy" on exhibition which will limit the naming of sportsfields to a geographical reference. It may be prudent to defer the naming of the Uki Sportsfields until the adoption of the amended policy is considered by Council.

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

45 [EO-CM] Environment Assessment of an unnamed Creek adjacent Harrys Road, Crystal Creek

SUBMITTED BY: Design

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.3	Delivering the objectives of this plan
1.3.1	Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan

SUMMARY OF REPORT:

This report has been prepared in response to a notice of motion of council at its meeting of 18 April 2013, to bring forward a report on the state of the unnamed creek at Harrys Road, Crystal Creek including recommendations for remediation as soon as possible.

The current assessment aimed to collect a snapshot of data on sediments, water quality and aquatic biota in relation to the subject creek supplemented by any existing background information. Although there is substantial background water quality monitoring data associated with an adjacent Council Quarry (Kinnears Quarry), there is however no information on sediments and aquatic biodiversity related to the subject creek. Consequently, sampling was required to inform the current assessment.

The assessment found that the water quality within the subject creek has greatly improved since late 2011 although ongoing management is warranted to limit the source of iron to the subject creek. Similarly, sediment quality levels were generally within guidelines although elevated levels of some metals are present. The improved quality of the creek is supported by the presence of fish and macroinvertebrates (including crustaceans) detected during the assessment - the composition of which was found to be not too dissimilar to an adjacent reference creek unaffected by past quarry operations.

An assessment of the creek geomorphic features and processes, and analysis of sediments at various locations in the subject creek, did not support a sediment slug event resulting in infilling of the pond area downstream of the quarries. Rather, deposition of organic matter and sediments is likely to have occurred over a long period (at least 10 to 20 years). Recommendations are provided to manage a small bank scour on adjacent private land.

Although acid soils are present in the pond area above Harrys Road culvert, leaving the pond area undisturbed should not lead to any further issues. As a precaution, in the event that water levels recede and soils in the pond are exposed, then recommendations to remove and treat soils should be enacted

RECOMMENDATION:

That Council adopts the recommendations within the attached Report titled Environmental Assessment of an unnamed Creek adjacent Harrys Road, Crystal Creek.

REPORT:

Following a notice of motion of council at its meeting of 18 April 2013, an assessment of the state of an unnamed creek at Harrys Road, Crystal Creek (the subject creek) was undertaken including recommendations for remediation as soon as possible. The 350m section creek, located adjacent two hard rock quarries at Harrys Road, Crystal Creek, was assessed in terms of past and current water quality, geomorphic features and processes, sediment composition and toxicity, and aquatic biota. The adjacent quarries are known to have naturally occurring beds or lenses of pyrite-rich, graphitic shale that have been exposed from quarry operations. During and after rainfall events, low pH and iron concentrated water, when left untreated or managed, eventually flow into the adjacent subject creek. As a consequence, the subject creek has been known to have very low pH water and has visible iron floc covering most aquatic substrates from the quarries to at least the dams at Harrys Road culverts.

Since late 2011, water captured within the Kinnears Quarry site is treated and discharged under licence conditions. Consequently, the average pH, dissolved oxygen, and to a lesser extent turbidity, of the subject creek downstream of the Quarry is comparable to upstream background levels.

A snapshot assessment of the water quality within the stream as part of this assessment found that all parameters tested during low flow conditions (i.e. no quarry discharge to the subject creek) were below water quality indicator values / trigger values for aquatic ecosystem protection with the exception of dissolved oxygen which was listed as 67% (indicator value/trigger value 80-100%). Dissolved oxygen is expected to increase associated with flow events.

In stream sediment sampling results were below the Interim Sediment Quality Guidelines (ISQG) low trigger values except for copper and mercury which were slightly above the ISQG-low trigger values. Clearly evident from the in stream sediment data are the elevated values of both iron and aluminium. However, when comparing background levels since 2011, downstream aluminium and iron concentrations are not considered to be significantly greater than background. This was not the case prior to 2011. Nonetheless, iron floc remains clearly visible within the stream despite the greatly improved water quality reporting from Kinnears Quarry. Consequently, although Council's Quarry has undergone significant remediation works to limit discharge of acid rock drainage water, it is likely that other point and non-point sources are still contributing low pH water and an iron source to the subject creek; some of which can be managed and some of which is due to the prevailing geology. Ecorock (2009) noted that disseminated pyrites can and often does occur throughout the general rock masses of the Neranleigh Fernvale Beds particularly the quartzites and cherts and generally not as visibly obvious as the distinct black carbonaceous shale occurrences. Weathering processes of the rock mass as a whole can also therefore lead to lower than normal pH water. This could explain the higher acid environment (lower pH) present just as background ambient conditions (Ecorock, 2009)

A rapid assessment of the aquatic biota within a 350m section of the subject creek found the presence of at least one species of native freshwater fish and a community of macroinvertebrates including crustaceans. When compared to an adjacent reference stream unaffected by acid rock drainage, the aquatic biota was not too dissimilar in terms of species diversity and richness, and their tolerance to pollution (based on SIGNAL scores).

Due to the potential for the sediments within the culvert pond resembling acid sulphate soils (and specifically, MBOs or mono sulphidic black oozes), a sample was analysed for acid volatile sulphur. According to the Acid Sulphate Soils Management Committee (ASSMAC) guidelines, the action criteria level was exceeded and treatment of material would be required if removed from the pond and exposed to oxygen.

Given the similarities in site issues in regards to acid sulphate soils, and subsequent cost benefits for managing these soils, an expert from the University of New South Wales (UNSW) was asked to undertake a preliminary site inspection of the subject creek adjacent Harrys Road to:

- provide comment on the status of the creek in terms of degradation from acidity and metals as a result of acid rock drainage; and
- compare this to creeks and drains effected by acid sulphate soils that the UNSW team are currently remediating within the Tweed Shire.

Following an on-site meeting and preliminary review of soil and water results, the UNSW team discussed that the site doesn't seem as degraded compared to some of the acid sulphate soil drains that they deal with and the metal concentrations aren't that high in the water sample and imagined these to be below water quality guidelines (for environmental purposes). After reviewing results for metals and ASS results from the sediment sample taken at the Harrys Road pond, the UNSW team noted that the pond has accumulated with MBO's and any excavation of this is likely to lead to acidification/deoxygenation during the excavation process. Consequently, it was suggested that leaving the pond area undisturbed shouldn't lead to any issues (unless it dried out and oxidised).

Australian Wetlands were engaged to provide an independent assessment of the geomorphic features of the subject creek in relation to sediment transportation and deposition as a result of quarry activities and the subsequent impacts on the pond adjacent the culverts at Harrys Road. Their assessment found that the presence of in stream geomorphic features such as pools, riffles, vegetated bars and very high water clarity, demonstrates that there are not large volumes of sediment moving through this section of the creek. This is supported by the fish and macroinvertebrate results. In regards to the culvert pond, the presence of up to 1m of organic matter within the dam upstream of the causeway on Harry's Road suggest that this has been the case for at least 10 to 20 years (assuming that organic matter accretes in the dam at a rate of 5cm to 10cm per year). The Australian Wetlands assessment noted that within the dam there is some evidence of minor and very localised bank scour (<5m²) beneath the driveway of the adjoining property (refer Figure 9) and this could possibly be the result of lost storage capacity through build-up of organic matter (and sediment) over time.

Based on the assessment by Australian Wetlands, and the result of sediment sampling and in stream aquatic assessment, the likelihood of the scouring being associated with a large sediment slug type event is not supported. This small scour area could be addressed using standard bank revetment measures rather than excavation of potential large volumes of organic matter and fine sediments in the dam which has the potential to lead to acidification/deoxygenation during the excavation process as noted above. The attached report titled *Environmental Assessment of an unnamed Creek adjacent Harrys Road, Crystal Creek* provides more detailed information and discussion.

OPTIONS:

Recommendations are as follows:

Controlling the source of iron in the creek

A review of the water quality results for water released under licence from Kinnears Quarry found that the site complies with EPA licence criteria. Similarly, groundwater monitoring down gradient of the treatment dams at Kinnears Quarry reflects the quality of the discharge water.

A review of upstream and downstream water quality results in relation to previous week's total rainfall levels recorded elevated pH and iron levels following large rainfall events (possibly over 100mm events) at a monitoring point within the subject creek adjacent to Sandercocks Quarry. These types of rainfall events are difficult to manage and accordingly, are not licensed or conditioned to this level of control. Nonetheless, an audit of existing measures for the diversion of clean water away from the Quarry sites is warranted in order to assess the efficiency of such controls.

Limited information was obtained regarding the water quality management of Sandercocks Quarry. Sandercocks Quarry is known to experience acid rock drainage similar to Kinnears Quarry. Consequently, ongoing assessment of the management of acid rock drainage from Sandercocks Quarry by Council's Environmental Health Unit (who regulate the environmental management of the site) is supported to limit any future source of iron to the creek.

Fine sediment transportation from quarry operations

Although Kinnears Quarry and Sandercocks Quarry are non-operational, it is feasible that there is continued mobilisation of fine sediments to the creek following rainfall events. It is also feasible that these sediments may contain elevated concentrations of metals given the prevailing geology and acid rock drainage conditions.

An audit of on-site erosion and sediment controls for both quarry sites is recommended including maintenance of controls where relevant.

Management actions associated with the culvert ponds

Council is involved in the remediation of acid sulphate soil hotspots at a number of locations within the Tweed. To provide context to the current situation at Harrys Road, at Reserve Creek and associated Cudgen Lake, downstream impacts from acid sulphate soils have included repeated black water events and subsequent fish kills, and the exporting of some 36 tonnes of Aluminium and over 100 tonnes of total iron associated with one rainfall event in January/February 2013.

In its present state (under water), the potential acid sulphate soils contained within the pond do not pose a pollution risk. It is if these soils are exposed to air and oxidise, that the pH decreases rapidly resulting in acidification and mobilisation of metals. Removal of sediments from the waterway (whilst under flow conditions) would require significant environmental controls to mitigate any downstream impacts as well as controls associated with the transportation and treatment of wet soils.

As a precautionary measure only, in the event that there is a decline in water levels during an extended period of dry weather resulting in exposure of sediments within the pond, then removal and management of the acidic soils (MBOs) is recommended to prevent a flush of

low pH water following a rain event. The material in the pond would need to be treated in accordance with a site specific acid sulphate soil management plan.

As discussed in the Australian Wetlands report, the localised scour within the pond could be addressed through reinforcement of the batter locally, possibly with timber, coir logs or (less desirably) boulders 450mm to 650mm in diameter. Placement of rock would need to ensure that the scour is not inadvertently caused in another location.

To facilitate efficient creek flows through the pond area, regular maintenance of culverts to remove obstructions and allow full discharge capacity of pipes is required. At the time of this assessment, the pipes were partially blocked with flood debris.

It is noted that the removal of the weir located midway between the ponds at Harrys Road and the quarries is not supported given the significant disturbance required to facilitate the removal including clearing potential lowland rainforest Endangered Ecological Community for access, and mobilisation of in stream sediments.

Aquatic biodiversity monitoring

Macroinvertebrate monitoring provides readily obtainable, repeatable and quantitative data that allows for on-going condition assessment of waterways. It is suggested that repeat surveys over time would provide cost-effective on-going assessment of the health of the subject creek and is recommended to be conducted on an annual basis to track the health of the subject creek.

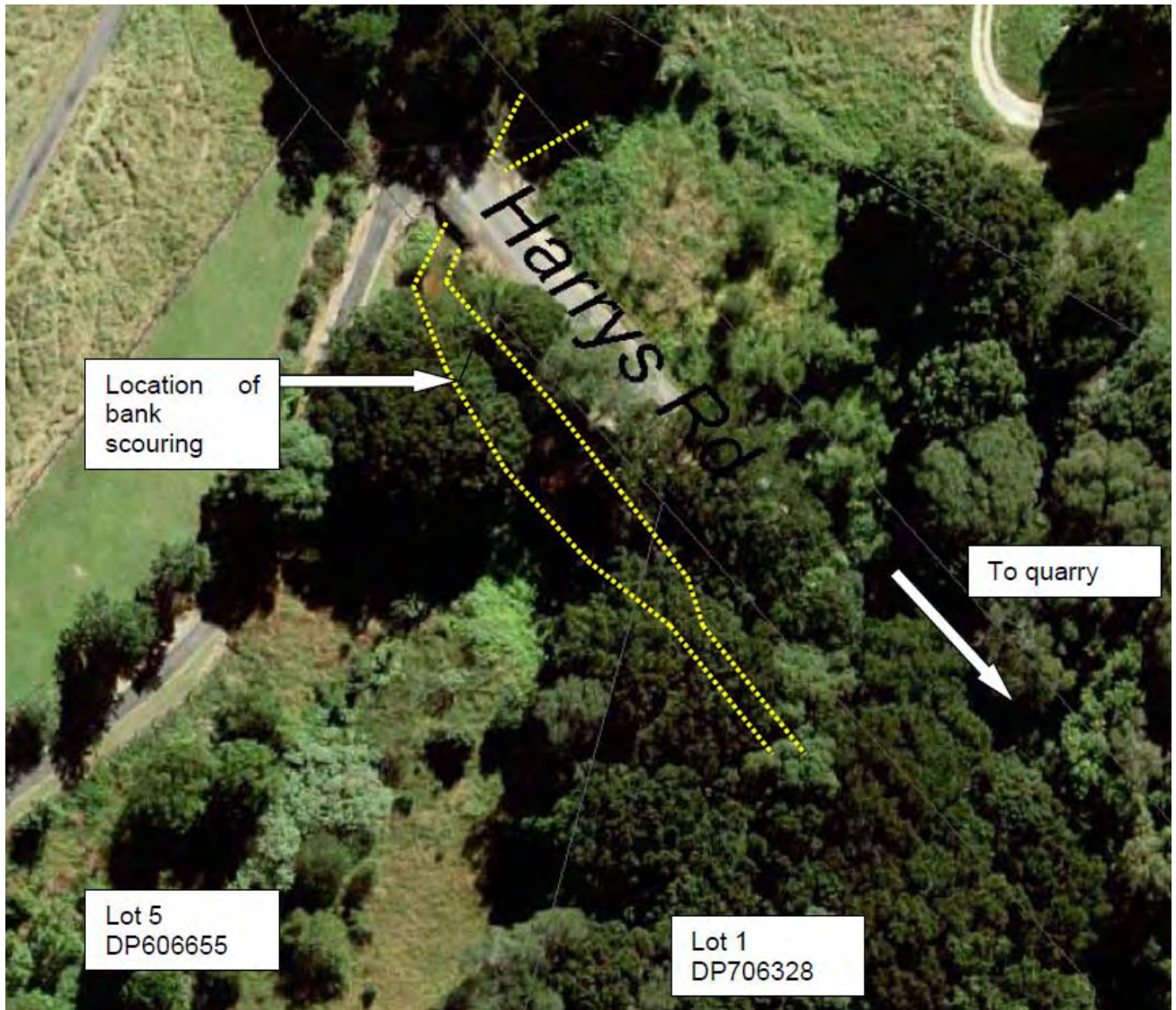


Figure 1: Aerial view of culvert pond location. Scouring of pond fringe has taken place on the north western bank immediately below the driveway of Lot 5 DP606655. (dashed yellow line indicates approximate culvert pond).Source: TSC Enlighten 2012 aerial photo.

Summary of recommendations and responsibilities

Recommendation type	Trigger for action	Responsibility	Comments
Quarry environmental management			
1. Audit of clean water diversion controls	25mm in 24 hours	Kinnears Quarry – Technical Officer Quarry Management Sandercocks Quarry – Quarry manager/TSC Environmental Health Officer	
2. Audit of Erosion and sediment controls	In accordance with Environmental Management Plan	Kinnears Quarry – Technical Officer Quarry Management Sandercocks Quarry – Quarry manager/TSC Environmental Health Officer	
Pond management actions			
3. Removal of sediments within pond in the event of drying out due to low water levels	Water levels decline following extended dry weather and sediments are exposed.	Kinnears Quarry – Technical Officer Quarry Management to: 1. Visibly monitor water levels at the pond; 2. Review monthly monitoring data for KIN3 (EPA3) for low pH levels.	Works would require: 1. Confirmation of planning approval requirements 2. Preparation of an ASSMP 3. Development of work method – likely to involve vegetation clearing to access the pond with a long reach excavator, establishment of downstream environmental controls, removal of material into a truck and transport to sludge drying area of Kinnears Quarry, treatment in accordance with ASSMP and removal to landfill. Costs are estimated at approx. \$15,000 to \$20,000
4. Localised bank scour remediation and protection on Lot 5 DP606655. Options could include: reinforcement of the batter with timber, coir logs or (less desirably) boulders 450mm to 650mm in diameter	To be determined by land owner	Land owner	
5. Culvert maintenance	Regular inspections by TSC Technical Officer Quarry Management	TSC maintenance staff	In the event of that debris is blocking culvert, TSC Quarry staff to notify Maintenance Engineers to action removal
Macroinvertebrate monitoring			
6. Annual macroinvertebrate monitoring within subject creek and reference creek	Annual summer monitoring with adaptive management to refine or cease monitoring	TSC Engineering and Operations Division	Annual monitoring including reporting is estimated at approx. \$5,000/annum.

CONCLUSION:

The assessment found that despite visible iron floc in the section of creek between the quarries and the culverts at Harrys Road, the state of the creek when compared to other acid sulphate soil impacted drains within the shire, was not high on the scale of degradation – as suggested by University of NSW acid sulphate soil experts who visited the site as part of this assessment. Recommendations are proposed to mitigate ongoing sources of iron and fine sediments to the creek, in addition to removal of accumulated sediments from the culvert pond in the event of an extended period of dry conditions resulting in drying out of the pond. Options for management of a small scour area on the bank of the pond are also provided.

COUNCIL IMPLICATIONS:

a. Policy:

"Acid Rock Drainage Management Plan - Kinnears Quarry" and "Workplace Environmental Safety Protocol".

b. Budget/Long Term Financial Plan:

Costs to respond to the notice of motion of council at its meeting of 18 April 2013 are summarised as follows:

Item	Cost
Laboratory testing	\$2,100
Consultant fees	\$1,000
Field investigation including aquatic biota sampling, water and sediment sampling, and reporting	\$18,542
Total	\$21,642

Estimated costs to implement recommendation 3	\$15,000 to \$20,000
Estimated costs to implement recommendation 6	\$5,000

c. Legal:

The legal implications have not been determined in this report, however as there are several sources contributing to the issues it is considered not possible to apportion responsibility in this respect.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Environmental Assessment of an unnamed Creek adjacent Harrys Road, Crystal Creek - July 2013 (ECM 3132086).

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46 [EO-CM] Classification of Land as Operational - Casuarina

SUBMITTED BY: Design

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.3 Delivering the objectives of this plan
 - 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
-

SUMMARY OF REPORT:

A plan of subdivision is being prepared over Lot 224 in DP 1075237 and Lot 2 in DP 1042119 which will create proposed Lot 16. Proposed Lot 16 is to be transferred to Council for the purposes of sewer pump station.

It will be necessary to classify proposed Lot 16 as Operational, pursuant to the provisions of the Local Government Act, 1993.

A notice was published in the Tweed Link on 2 July 2013 allowing a period of 28 days for any member of the public to provide a written submission to the proposed classification of this land as Operational. No submissions were received.

RECOMMENDATION:

That:

1. Council approves the transfer of proposed Lot 16 in the plan of subdivision of Lots 224 in DP1075237 and Lot 2 in DP1042119 at Casuarina to Council; and
2. Council classifies proposed Lot 16 in the plan of subdivision of Lots 224 in DP1075237 and Lot 2 in DP1042119 at Casuarina as Operational Land pursuant to Section 34 of the Local Government Act, 1993; and
3. All necessary documentation be executed under the Common Seal of Council.

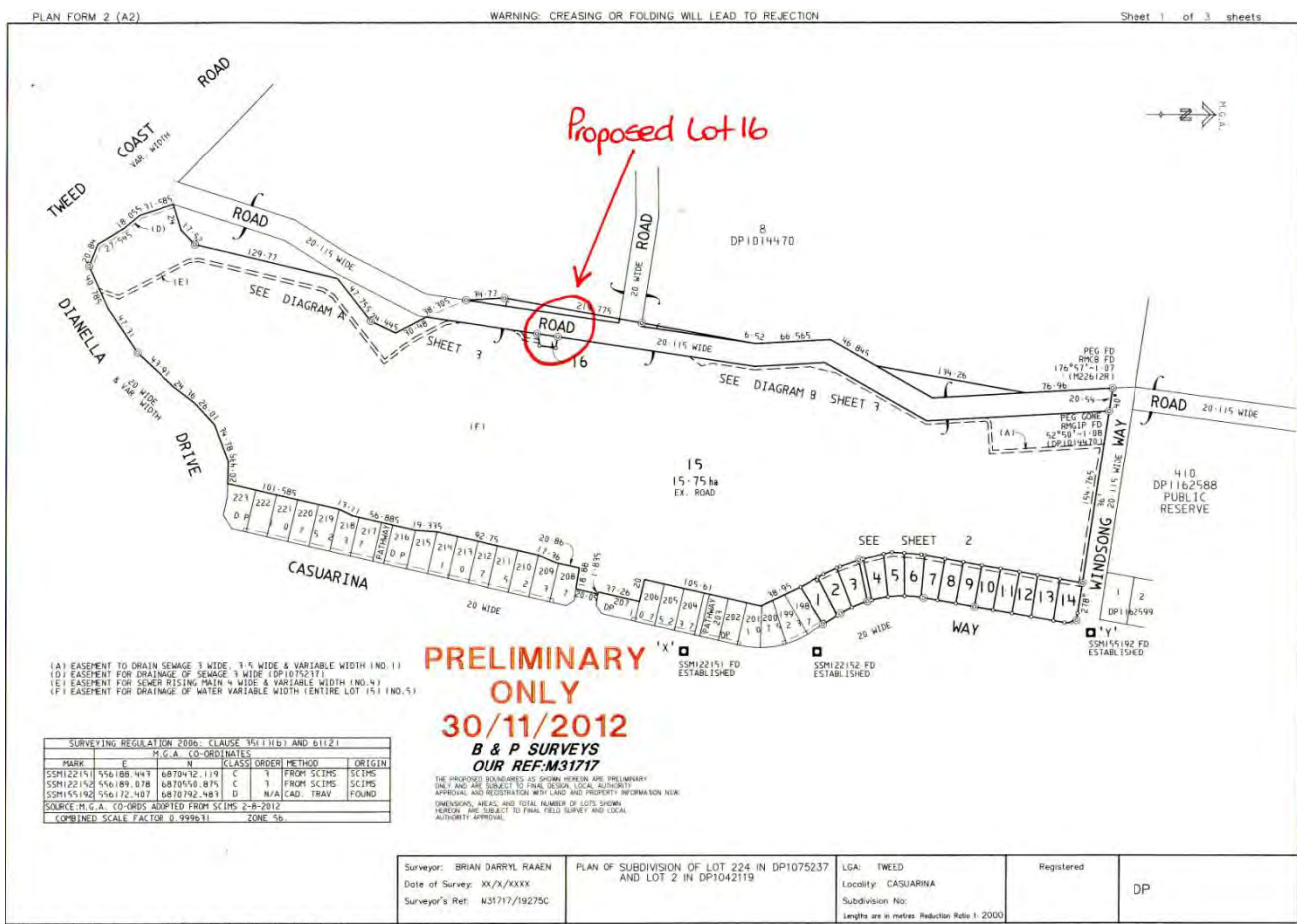
REPORT:

A plan of subdivision is being prepared over Lot 224 in DP 1075237 and Lot 2 in DP 1042119 which will create proposed Lot 16. Proposed lots 16 is to be transferred to Council for the purposes of sewer pump station.

It will be necessary to classify proposed Lot 16 as operational, pursuant to the provisions of the Local Government Act, 1993.

A notice was published in the Tweed Link on 3 July 2013 allowing a period of 28 days for any member of the public to provide a written submission to the proposed classification of this land as operational. No submissions were received.

Below is a plan showing proposed Lot 16 in the plan of subdivision.



OPTIONS:

1. Council approves the transfer and classification as Operational Land of proposed Lot 16 in the plan of subdivision of Lots 224 in DP1075237 and Lot 2 in DP1042119 at Casuarina.
2. Council does not approve the transfer and classification as Operational Land of proposed Lot 16 in the plan of subdivision of Lots 224 in DP1075237 and Lot 2 in DP1042119 at Casuarina.

CONCLUSION:

In accordance with the provisions of the Local Government Act 1993, it is necessary to classify proposed Lot 16 in the plan of subdivision of Lot 224 in DP1075237 and Lot 2 in DP1042119 at Casuarina as Operational Land.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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REPORTS FROM THE ACTING DIRECTOR TECHNOLOGY AND CORPORATE SERVICES

47 [TCS-CM] Corporate Quarterly Report - 1 April to 30 June 2013

SUBMITTED BY: Corporate Governance

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.2 Council will seek the best value in delivering services

SUMMARY OF REPORT:

The Corporate Quarterly Report for the period 1 April to 30 June 2013 is presented to Council for consideration.

This report and accompanying attachments detail the progress of the 2012/2013 Operational Plan activities up to 30 June 2013.

RECOMMENDATION:

That Council endorses the Corporate Quarterly Report as at 30 June 2013.

REPORT:

At the Council meeting held Tuesday 26 June 2012 the Operational Plan 2012/2013 was adopted by Council and a reporting structure has been developed which is based upon four themes identified below:



Civic Leadership - Aim: To set the overall direction and long-term goals for the Tweed in accordance with community aspirations.



Supporting Community Life - Aim: To create a place where people are healthy, safe, connected and in harmony with the natural environment, to retain and improve the quality of community life.



Strengthening the Economy- Aim: To strengthen and diversify the region's economic base in a way that complements the environmental and social values of the Tweed.



Caring for the Environment - Aim: For Council and the community to value, respect and actively participate in the care and management of our natural environment for current and future generations.

Some highlights for the quarter 1 April to 30 June 2013 are as follows:

1.1.2.1.1 Environmental education programs delivered which foster greater understanding and behavioural change in the community

- Council presented nine media and advertising initiatives in the last quarter exceeding its target of five. Council presented sixteen media and advertising promotional activities excluding facility tours and educational initiatives over a twelve month period.

1.1.2.2.3 Regular media releases about new programs, services or workshops to local media

- A total of 61 medial releases were issued in the quarter exceeding the target of 39. The current media subscription service totals 476.

1.2.1.5.1 Council policies reviewed, reported to Council and placed on public exhibition as required

- 100% of Council Policies have been reviewed to conform to legislation and Council requirements.

1.2.5.3.1 Engage the community in interactive infrastructure tours of Council facilities (i.e. Sustainable Living Centre, Wastewater Treatment Plants, Resource Recovery Centre, Water Treatment Plants and Pottsville Environmental Centre)

- Eighteen infrastructure tours to recycling facility, coastal and creek tours and Sustainable Living Centre were carried out during the quarter.

1.3.1.10.1 Implement Internal Audit Program

- 100% of internal audit activities (including audits, administration, training, enterprise risk management, monthly and ad hoc reviews) have been undertaken in accordance with the approved Audit Committee Plan.
-

2.1.3.4.2 Develop, manage, research, preserve, display and promote the Tweed River Art Gallery's collection as significant collections of artwork to professional art museum standards

- Seventeen acquisitions were ratified by the Tweed River Art Gallery Advisory Committee at its June meeting. All of the artworks were gifts to the collection, with one work being gifted by the artist Nicholas Harding through the Commonwealth Government's Cultural Gifts Program. One work, a watercolour by Margaret Olley, was a gift from the Friends of the Gallery.

2.1.3.4.6 Delivery and enhancement of the positive profile of the Tweed River Art Gallery and its programs

- Seventeen media releases were generated by Gallery staff and distributed, along with images by Council's Communications Unit. A number of media releases were distributed to promote events at the Gallery which complemented the exhibition and public programs, including a release for the Artisan Market hosted by the Friends of the Gallery and showcasing 24 regional artisans.

2.3.3.2.1 Investigate new recycled water opportunities and monitor relevant national and international trends

- In the 12 months to 30 June 2013 the percentage of wastewater treatment plant (WWTP) effluent that was recycled was 5.44% compared with the 2013 target of 15%. A number of factors are influencing this lower than expected result.

2.3.6.4.4 Replace upstairs component of Jim Devine Club House

- The project was completed.

2.4.3.1.1 Deliver cycleway infrastructure under approved 2011/12 capital works and s94 developer contribution plan budgets and works program

- Boardwalk section has been completed in the Kennedy Drive cycleway with concrete sections through the park in progress.

3.1.3.1.1 Presentation by the Tweed River Art Gallery of exhibitions of regional, national and international art and culture material, with emphasis on Gallery initiated projects

- 17,888 persons visited the Tweed River Art Gallery over the quarter greatly exceeding the target of 12,555. Attendances increased due to the popularity of the recent exhibitions including the CPM National Print Awards and a solo exhibition Nicholas Harding: Drawing Margaret. The Gallery has experienced a recent rise in visitor numbers due to the opening of the highly publicised exhibition Ben Quilty: After Afghanistan launched on 21 June.

3.1.5.1.1 Assist innovative employment generating projects

- Council assisted in eight projects over the quarter. Five organisations were assisted with information and background to establishing or expanding their businesses in the Tweed. Both the Murwillumbah District Chamber of Commerce and Tweed Chamber of Commerce and Industry were assisted with information. Council assisted Stone and Wood Brewing through Business Investment Policy

3.2.1.1.1 Promote and assist the Tweed agricultural industry

- Council undertook three promotional activities in the quarter. Council maintained the Tweed Agricultural statistics page though its economic profile pages (id demographics). Council resolved to sell the Murwillumbah Cattle Sale Yards to a private operator, currently working with preferred party to complete sale. Council invited the Tweed Combined Rural Industries, Sunshine Sugar, and other key primary industry reps to be part

of Reference Group of Sustain Tweed - Economic Development Strategy

4.1.2.3.1 Prepare and implement Road Vegetation Management Plan

- Council has approved the preparation of the Roadside Vegetation Management Plan (RVMP) for the Shire. The project is jointly funded through the Works Unit and the Natural Resource Management Unit Biodiversity Program. The final RVMP and field guidelines have been completed and approved.

4.1.2.5.2 Riparian project team on council land

- 3,000 metres of riverbank management has been carried out by Council.

4.1.2.6.1 Entomology program undertaken

- Council has carried out 100% of the program. The ongoing wet weather has required additional resources for higher than usual nuisance mosquito and biting midge season.

4.2.1.3.1 Implementation of priority actions in Vegetation Management Plans and Bushfire Risk Management Plans

- Council has carried out numerous actions under Biodiversity Grants, Review of LEP Zoning and NRM provisions and Koala Plan of Management, Community education - presentations, workshops by the Natural Resource Management Unit at community events. Sponsorship of Caldera Arts, management of Bushfire Risk, and active support of Landcare/Dunecare network.

OPTIONS:

Not Applicable.

CONCLUSION:

An undertaking given through the overarching Community Strategic Plan was that the General Manager will report quarterly to Council on the progress in meeting activities and targets of the Operational Plan. This is the first quarterly report on the progress of the 2012/2013 plan.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

Being reported in accordance with requirements associated with Integrated Planning and Reporting Framework.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

In line with the impacts of the adopted Operational Plan.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Quarterly Report - Civic Leadership (ECM 3132685)
 - Attachment 2. Quarterly Report - Supporting Community Life (ECM 3132674)
 - Attachment 3. Quarterly Report - Strengthening the Economy (ECM 3132673)
 - Attachment 4. Quarterly Report - Caring for the Environment (ECM 3132672)
-

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48 [TCS-CM] Delivery Program Six Monthly Progress Report 1 January to 30 June 2013

SUBMITTED BY: Corporate Governance

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.3 Delivering the objectives of this plan
 - 1.3.2 Council will seek the best value in delivering services
-

SUMMARY OF REPORT:

As a requirement of section 404(5) of the Local Government Act 1993 (NSW) and the Integrated Planning and Reporting Framework, council must highlight in a six monthly progress report all principle activities identified in the Delivery Program that are not meeting expected performance targets. The Quarterly Corporate Report, which is reported separately, highlights progress across all activities.

The delivery of key actions in the 2011/2015 Delivery Program are monitored by performance indicators that ensure principle activities are completed within the planned timeframe and allocated budgets. Performance outcomes are reported to Council on a six monthly basis in the form of an exception report.

RECOMMENDATION:

That Council notes the Six Monthly Progress Report detailing principle activities from the 2011/2015 Delivery Program that have not met expected performance targets for the period 1 January to 30 June 2013.

REPORT:

At the Council meeting held Tuesday 26 June 2012 the Operational Plan 2012/2013 was adopted and a reporting structure developed which is based upon four themes identified below:



Civic Leadership - Aim: To set the overall direction and long-term goals for the Tweed in accordance with community aspirations.



Supporting Community Life - Aim: To create a place where people are healthy, safe, connected and in harmony with the natural environment, to retain and improve the quality of community life.



Strengthening the Economy- Aim: To strengthen and diversify the region's economic base in a way that complements the environmental and social values of the Tweed.



Caring for the Environment - Aim: For Council and the community to value, respect and actively participate in the care and management of our natural environment for current and future generations.

In establishing the Community Strategic Plan, Council gave an undertaking to provide six-monthly progress reports (July-December and January-June) detailing achievements and progress in meeting stated targets and objectives in the Delivery Program.

The Delivery Program Six Monthly Progress attachments are presented as an exception report which outlines only those key actions and activities that are not meeting the key performance indicators (KPI) and targets as at 30 June 2013 and are represented as follows:

- No activity
- Partial target achieved
- Target not achieved

OPTIONS:

Not Applicable.

CONCLUSION:

Council will provide an Annual Report (July-June) including audited financial reports to the community. In addition Council will provide six-monthly progress reports (July-December and January-June) detailing achievements and progress in meeting stated targets and objectives in the Delivery Program.

COUNCIL IMPLICATIONS:

a. Policy:

In accordance with requirements of the Integrated Planning and Reporting Framework.

b. Budget/Long Term Financial Plan:

As per the impacts of the Delivery Program.

c. Legal:

Section 404(5) of the Local Government Act 1993 requires council to highlight in a six monthly progress report all principle activities identified in the Delivery Program that are not meeting expected performance targets.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Delivery Program Six Monthly Progress Report - 1 January to 30 June 2013
(ECM 3132551)

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49 [TCS-CM] Code of Conduct - Panel of Conduct Reviewers

SUBMITTED BY: Corporate Governance

Valid



Civic Leadership

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
-

SUMMARY OF REPORT:

A panel of conduct reviewers to determine complaints under the Code of Conduct is required to be in place by September 2013.

This report seeks the endorsement of members of the panel of conduct reviewers that can be utilised.

RECOMMENDATION:

That the following members of the conduct review panel be appointed until 31 August 2017:

<u>Nominee</u>	<u>Organisation</u>	<u>Locality</u>
Michael L Enders	Michael L Enders	Woolgoolga
Peter Brown	Peter Brown	Baulkham Hills
Bruce Clarke	Allygroup Consulting	Sydney
Emma Broomfield	Locale Consulting	Woolgoolga
Sharon Lee	Complete Community Consulting P/I	Toombul QLD
Mitchell Morley	In Consult	Sydney
Shane White	Pinnacle Integrity	Copacabana
Belinda Nolan	Pinnacle Integrity	Copacabana
Alison Cripps	Cripps Consulting	Lane Cove
Brent Stephens	Consult HR	Mooloolaba QLD
Kathy Thane	Train Reaction P/L	Balmain
Peter Mulhall	Investigation Assoc Aust	Liverpool
Gary Faulks	Gary Faulks	Ballina
Lloyd Graham	Lloyd Graham	Frenchs Forest
Peta Tumpey	Tress Cox Lawyers	
Kath Roach	SINC Solutions	Glebe
Joanne Browne	Joanne Browne	Wavell Heights
Greg Wright	Wright Associates	Picton

REPORT:

A panel of conduct reviewers to determine complaints under the Code of Conduct is required to be in place by September 2013.

At the Council meeting of 21 March 2013 in adopting the Code of Conduct Version 1.9 and the associated Procedure it was resolved to pursue the appointment of a panel of conduct reviewers as follows:

"Calling of Expressions of Interest for appointment of a Panel of Conduct Reviewers in conjunction with other interested NOROC councils utilising the selection process as outlined in the Procedure Administration of the Model Code of conduct Version 1.0, with the panel to be in place by 30 September 2013."

The Administration of the Model Code of Conduct March 2013 Version 1.0 Procedure sets out the following process for the appointment of a panel of conduct reviewers:

The establishment of a panel of conduct reviewers

- 3.1 The council must by resolution establish a panel of conduct reviewers.
- 3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.
- 3.3. The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council's panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:
 - a) an understanding of local government, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
 - c) knowledge and experience of one or more of the following:
 - i) investigations, or
 - ii) law, or
 - iii) public administration, or
 - iv) public sector ethics, or
 - v) alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not eligible to be a member of the panel of conduct reviewers if they are:
 - a) a councillor, or
 - b) a nominee for election as a councillor, or
 - c) an administrator, or
 - d) an employee of a council, or

- e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.9 The council may terminate the panel of conduct reviewers at any time by resolution.
- 3.10 When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

The Expression of Interest process was coordinated through NOROC and followed the requirements established within the Procedure with Byron, Richmond Valley, Rous and Tweed participating. As a result of the Expression of Interest, 48 submissions were received and these submissions were evaluated by the Complaints Coordinators from the participating councils with a preferred membership of the panel of conduct reviewers being determined. While investigations can be undertaken as a single conduct reviewer or a panel of three members, a view was taken through the evaluation process that all submitters who met the eligibility criteria would be put forward as members of the panel, which gives the ability for council to choose members from a cross section of the preferred submitters. The following listing in no apparent order is the preferred composition of the panel of conduct reviewers:

<u>Nominee</u>	<u>Organisation</u>	<u>Locality</u>
Michael L Enders	Michael L Enders	Woolgoolga
Peter Brown	Peter Brown	Baulkham Hills
Bruce Clarke	Allygroup Consulting	Sydney
Emma Broomfield	Locale Consulting	Woolgoolga
Sharon Lee	Complete Community Consulting P/I	Toombul QLD
Mitchell Morley	In Consult	Sydney
Shane White	Pinnacle Integrity	Copacabana
Belinda Nolan	Pinnacle Integrity	Copacabana
Alison Cripps	Cripps Consulting	Lane Cove
Brent James Stephens	Consult HR	Mooloolaba QLD
Kathy Thane	Train Reaction P/L	Balmain
Peter Mulhall	Investigation Associations Aust	Liverpool
Gary Faulks	Gary Faulks	Ballina
Lloyd Graham	Lloyd Graham	Frenchs Forest
Peta Tumpey	Tress Cox Lawyers	
Kath Roach	SINC Solutions	Glebe

Joanne Browne
Greg Wright

Joanne Browne
Wright Associates

Wavell Heights
Picton

In accordance with the Procedure it is worth noting that the role of the appointed complaints coordinator is to:

- a) coordinate the management of complaints made under the council's code of conduct,
- b) liaise with and provide administrative support to a conduct reviewer or conduct review committee,
- c) liaise with the Division of Local Government, and
- d) arrange the annual reporting of code of conduct complaints statistics.

No members of the current panel of conduct reviewers submitted an Expression of Interest in this round.

Council is now required to determine the panel of conduct reviewers.

OPTIONS:

1. Appoint the panel of conduct reviewers as proposed.
2. Alter the composition of the panel of conduct reviewers.

CONCLUSION:

Adopt the proposed panel of conduct reviewers for a four year term ending 31 August 2017.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Conduct Version 1.9.

Administration of the Model Code of Conduct March 2013 Version 1.0 Procedure.

b. Budget/Long Term Financial Plan:

Allowance for any inquiries undertaken by conduct reviewers is allowed within the current budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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50 [TCS-CM] Divestment of Fossil Fuels

SUBMITTED BY: Acting Director

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.3 Delivering the objectives of this plan
 - 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
-

SUMMARY OF REPORT:

At Council's meeting of 20 June 2013 it was resolved that *"Council brings forward a report on what legislative or other changes would be required to enable investment in renewable energy institutions."*

This report outlines the framework in which Council investments are made and the changes necessary to invest in renewable energy industries.

RECOMMENDATION:

That the report on Divestment of Fossil Fuels be received and noted.

REPORT:

Council investments are regulated by the following framework:

- a) Local Government Act 1993, Section 625.
- b) Local Government (General) Regulation 2005 – Clause 212.
- c) The Trustee Amendment (Discretionary Investments) Act 1997 - Sections 14A (2), 14C (1) and (2).
- d) Local Government Investment Order (of the Minister) pursuant to section 625 of the Local Government Act 1993.
- e) Council Investment Policy
- f) Additional reporting requirements including the Local Government Code of Accounting Practice and Financial Reporting and the Australian Accounting Standards.

a) Local Government Act 1993 - S625 How may councils invest?

- (1) A council may invest money that is not, for the time being, required by the council for any other purpose.
- (2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette.
- (3) An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.
- (4) The acquisition, in accordance with section 358, of a controlling interest in a corporation or an entity within the meaning of that section is not an investment for the purposes of this section.

b) Local Government (General) Regulations 2005 - Cl 212 Reports on council investments

- (1) The responsible accounting officer of a council:
 - (a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:
 - (i) if only one ordinary meeting of the council is held in a month, at that meeting, or
 - (ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and
 - (b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.
- (2) The report must be made up to the last day of the month immediately preceding the meeting.

c) **The Trustee Amendment (Discretionary Investments) Act 1997 - Sections 14A (2), 14C (1) and (2)**

In summary:

A council or entity acting on its behalf should exercise the care, diligence and skill that a prudent person would exercise in investing council funds. A prudent person is expected to act with considerable duty of care, not as an average person would act, but as a wise, cautious and judicious person would.

d) **Local Government Investment Order (of the Minister) pursuant to section 625 of the Local Government Act 1993**

LOCAL GOVERNMENT ACT 1993 – INVESTMENT ORDER

(Relating to investments by councils)

I, the Hon. Barbara Perry MP, Minister for Local Government, in pursuance of section 625(2) of the *Local Government Act 1993* and with the approval of the Treasurer, do, by this my Order, notify for the purposes of section 625 of that Act that a council or county council may only invest money (on the basis that all investments must be denominated in Australian Dollars) in the following forms of investment:

- (a) any public funds or securities issued by or guaranteed by, the Commonwealth, any State of the Commonwealth or a Territory;
- (b) any debentures or securities issued by a council (within the meaning of the *Local Government Act 1993* (NSW));
- (c) interest bearing deposits with, or any debentures or bonds issued by, an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cwth)), but excluding subordinated debt obligations;
- (d) any bill of exchange which has a maturity date of not more than 200 days; and if purchased for value confers on the holder in due course a right of recourse against a bank which has been designated as an authorised deposit-taking institution by the Australian Prudential Regulation Authority;
- (e) a deposit with the New South Wales Treasury Corporation or investments in an Hour-Glass investment facility of the New South Wales Treasury Corporation;

All investment instruments (excluding short term discount instruments) referred to above include both principal and investment income.

Transitional Arrangements

- (i) Subject to paragraph (ii) nothing in this Order affects any investment made before the date of this Order which was made in compliance with the previous Ministerial Orders, and such investments are taken to be in compliance with this Order.
- (ii) Paragraph (i) only applies to those investments made before the date of this Order and does not apply to any restructuring or switching of investments or any re-investment of proceeds received on disposal or maturity of such investments, which for the avoidance of doubt must comply with this Order.

Key Considerations

An investment is not in a form of investment notified by this order unless it also complies with an investment policy of council adopted by a resolution of council.

All councils should by resolution adopt an investment policy that is consistent with this Order and any guidelines issued by the Chief Executive (Local Government), Department of Premier and Cabinet, from time to time.

The General Manager, or any other staff member, with delegated authority by a council to invest funds on behalf of a council must do so in accordance with the council's adopted investment policy.

Councils have a fiduciary responsibility when investing. Councils should exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

When exercising the power of investment councils should consider, but not be limited by, the risk of capital or income loss or depreciation, the likely income return and the timing of income return, the length of the term of the proposed investment, the liquidity and marketability of the proposed investment, the likelihood of inflation affecting the value of the proposed investment and the costs (including commissions, fees, charges and duties payable) of making the proposed investment.

Dated this 12th day of January 2011


Hon BARBARA PERRY MP
Minister for Local Government

e) Council Investment Policy

Council's Investment Policy is an attachment to this report.

In summary, councils may only invest surplus funds in:

1. The senior debt obligations of authorised deposit-taking institutions (as defined by the (Commonwealth) Banking Act 1959). This encompasses term deposits and bonds.
2. A deposit with the New South Wales Treasury Corporation.

Currently, Council primarily invests surplus funds with the four major banks and some lesser rated banking institutions.

Unfortunately, it is not possible to determine what indirect investments are made, and in what industry, by any of the banking institutions Council places funds with.

The few defined "green" investments that were available to councils prior to the Global Financial Crisis (GFC) took the form of managed funds and structured products. The post GFC Minister's Investment Order above, dated 12 January 2011, prohibits new investments in these managed funds or structured investment products, and thereby restricts Council's ability to make "green" investment choices, such as renewable energy institutions.

As a result, a change in the Minister's Investment Order would be required to specifically allow investment in "green" investment products. In view of investment losses NSW councils incurred during the GFC, it is considered unlikely that managed funds or structured products will be reinstated as a suitable investment class for councils.

OPTIONS:

Not Applicable.

CONCLUSION:

Council's investment must comply with various Acts, Regulations, Codes and policies. The type of investments allowed are governed by the Ministerial Investment Order which is both prescriptive and restrictive in nature. A change in the Minister's Investment Order would be required before Council could invest in 'green' investment products such as renewable energy institutions.

COUNCIL IMPLICATIONS:

a. Policy:

Investment Policy, Version 1.7.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1 Investment Policy, Version 1.7 (ECM 3132978)

51 [TCS-CM] Amended 2013/2014 Fees and Charges

SUBMITTED BY: Financial Services

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.3 Delivering the objectives of this plan
 - 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
-

SUMMARY OF REPORT:

This report contains 2013/2014 Fees and Charges amendments that were publicly exhibited due to omissions and amendments to the original 2013/2014 Operational Plan and Budget documents. As no submissions were received during the exhibition period, these fees and charges can be adopted.

Australian Taxation Office Class Ruling 2013/25 was received during the exhibition period and accordingly GST exemption has been applied to Outdoor Dining fees.

RECOMMENDATION:

That the Fees and Charges 2013/2014 as exhibited be adopted in accordance with Sections 404 and 405 of the Local Government Act 1993.

REPORT:

The Draft Fees and Charges document placed on exhibition as part of the 2013/2014 Operational Plan and Budget required a number of amendments, resulting in the need to re-exhibit the following fees:

Title of fee	Explanation
Outdoor Dining Fees	Omitted from original Fees and Charges document due to a database error. ATO Class Ruling 2013/25 received during the exhibition period and accordingly GST exemption has been applied to Outdoor Dining fees
Section 149 Fax Transmission Fee	Amended to be consistent with other fax transmission fees applied by Council.
Conveyancing Drainage Diagram Fax Transmission Fee	Amended to be consistent with other fax transmission fees applied by Council.
Animal impounding Daily Maintenance Charge	Adjusted for 'rounding' to provide more efficient monetary transactions.

Activity/Function	Title of Fee/Charge	Fee or Charge Levied 2012/2013 \$	Fee or Charge Levied 2013/2014 \$	Est. Yield \$	Pricing Category	GST included
Outdoor Dining - Fees for Use of Footpath	base fee per m2 per year GST ATO Class Ruling 2013/25					
	Application for approval to use part of footpath for the purpose of conducting a restaurant	252.00	265.00	75960	A	N
	Tweed Heads - CBD Street Upgrade Area	117.00	123.00		A	N
	Tweed Heads - No Street Upgrade	75.00	79.00		A	N
	Kingscliff - CBD Street Upgrade Area	117.00	123.00		A	N
	Kingscliff - No Street Upgrade Area	75.00	79.00		A	N
	Murwillumbah - CBD Upgrade Area	117.00	123.00		A	N
	Murwillumbah - No Street Upgrade Area	75.00	79.00		A	N
	Bogangar/Cabarita - CBD Street Upgrade Area	117.00	123.00		A	N
	Bogangar/Cabarita - No Street Upgrade Area	75.00	79.00		A	N
	Other Villages - Street Upgrade Area	117.00	123.00		A	N

Activity/Function	Title of Fee/Charge	Fee or Charge Levied 2012/2013 \$	Fee or Charge Levied 2013/2014 \$	Est. Yield \$	Pricing Category	GST included
	Other Villages - No Street Upgrade	75.00	79.00		A	N
Section 149 and Coastal Protection Act Certificates	Fax Transmission Fee	24.00	25.00		A	Y
Conveyancing Drainage Diagram	Fax Transmission Fee	N/A	25.00		A	Y
Impounding Fees - dogs, cats	Daily maintenance charge for each animal detained	17.80	19.00		A	N

OPTIONS:

Not Applicable.

CONCLUSION:

As no submissions were received during the exhibition period, these fees and charges can be adopted.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The above amended fees and charges to be included in the 2013/2014 Fees and Charges.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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52 [TCS-CM] Monthly Investment and Section 94 Developer Contributions Report for the Period Ending 31 July 2013

SUBMITTED BY: Financial Services

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.3 Delivering the objectives of this plan
 - 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
-

SUMMARY OF REPORT:

This report is provided to Council to advise details of monies Council has invested in accordance with Section 625 of the Local Government Act 1993.

There is a requirement by Council's investment consultant to allow at least five (5) working days following the end of the month to provide the statistics for this report. Due to this time constraint and the Council requirement to receive reports ten (10) days prior to the Council meeting, there will be an addendum report provided to Council for consideration at its meeting on 15 August 2013.

RECOMMENDATION:

Refer to addendum report.

REPORT:

As per summary.

OPTIONS:

Not Applicable.

CONCLUSION:

Not Applicable.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Local Government (General) Regulations 2005 - Section 212 - Reports on council investments

"(1) The responsible accounting officer of a council:

(a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:

(i) if only one ordinary meeting of the council is held in a month, at that meeting, or

(ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and

(b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.

(2) The report must be made up to the last day of the month immediately preceding the meeting."

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

53 [SUB-EAC] Minutes of the Equal Access Advisory Committee Meeting held Wednesday 19 June 2013

SUBMITTED BY: Community and Cultural Services



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.1 Work closely with government and community organisations to improve services to children and families, youth, elderly, Indigenous people, disadvantaged and minority groups and to build stronger and more cohesive communities
-

SUMMARY OF REPORT:

The Minutes of the Equal Access Advisory Committee Meeting held Wednesday 19 June 2013 are reproduced in the body of this report for the information of Councillors.

RECOMMENDATION:

That:

- 1. The Minutes of the Equal Access Advisory Committee Meeting held Wednesday 19 June 2013 be received and noted; and**
- 2. The Executive Management Team's recommendations be adopted as follows:**

General Business Item 1 - *Pedestrian Access Mobility Plan (PAMP)*

- 1. That \$20,000 from Council's Access budget is made available as Council's contribution to the development of the Pedestrian Access Mobility Plan (PAMP).**
- 2. If additional funds are required a further report will be presented to Council.**

REPORT:

The Minutes of the Equal Access Advisory Committee Meeting held Wednesday 19 June 2013 are reproduced as follows for the information of Councillors.

Venue:

Banora Point Community Centre

Time:

10.00am

Present:

Trevor Harris, Karen Collins, Ron Douglas, Suzanne Hudson, Una Cowdroy, Milena Morrow, Lee Clark.

Apologies:

Chris Vannucci, Bev Kelso.

Minutes of Previous Meeting:

Moved: Trevor Harris

Seconded: Una Cowdroy

RESOLVED that the Minutes of the Equal Access Advisory Committee meeting held Wednesday 17 April 2013 be accepted as a true and accurate record of the proceedings of that meeting.

Outstanding Matters Report:

1. Main doors to Murwillumbah Hospital Difficult to Access

Lee Clark investigated the main doors to the hospital and found them acceptable in terms of force needed to open. At this meeting it was clarified that the main doors were not the problem but the doors to the day surgery.

Action: Lee Clark will investigate the day surgery doors and report back to the committee.

2. Affordable entry to Murwillumbah, Kingscliff and South Tweed Aquatic Centres for People with Permanent or Temporary Disabilities

Held over for discussion under General Business.

3. Road Crossing on Chinderah Bay Drive from Homestead Holiday Park to Bus Stop

Trevor Harris has contacted Guide Dogs NSW/ACT and met with the resident with vision impairment to advise on safe crossing option from the Homestead Holiday Park to the bus stop. This was achieved and two signs advising motorists of aged pedestrians have been erected either side of the bus stop. This item is now closed.

The resident will be contacted again in three months to review the changes. It was also noted that the return bus stopped some distance from the Homestead Holiday Park with inadequate pedestrian pathway connection. Council's Road Safety Officer was present at the meeting and will write to Surfside Bus Company requesting residents be dropped closer to the Holiday Park entrance if on board. Following a positive response from the bus company Karen Collins will make this information available to residents at the Holiday Park.

4. Kerb Ramp Removed at Sunnyside Mall in Murwillumbah

Council is discussing on position of DAPBs and curb ramps with Sunnyside Mall. Trevor Harris will report back to Committee at next meeting. This item is closed.

5. Footpath Access Following Emergencies
Action not completed. Held over until next meeting.

6. Develop Strategy for Access Funding
Held over for discussion under General Business.

General Business Item 1 brought forward:

Pedestrian Access Mobility Plan (PAMP) Presentation

Presentation provided by Council's Road Safety Officer, Michael Kenny included an overview of the PAMP process. Committee members agreed to constitute the community representation for the PAMP Steering Committee and include the PAMP as a standard agenda item for future meetings. Michael will attend to provide updates.

Michael advised the committee that the NSW Department of Roads and Maritime Safety match Council funds up to \$20,000 to complete the PAMP which will involve engaging an external consultant by tender. Michael advised that the scope of the PAMP may require more than \$40,000 with the option either to reduce the scope of the PAMP or request additional funds from Council. It was proposed that it would be appropriate for Council funds to be sourced from the Access budget for this purpose.

RECOMMENDATION:

Moved: Suzi Hudson

Seconded: Milena Morrow

That \$20,000 from Council's Access budget is made available as Council's contribution to the development of the Pedestrian Access Mobility Plan (PAMP).

RECOMMENDATION:

Moved: Lee Clark

Seconded: Una Cowdroy

That if additional funds are required a further report will be presented to Council.

Agenda Items:

1. Access and Inclusion Policy and Action Plan

The Draft Access and Inclusion Action Plan is being finalised for forwarding to Council's Communications Unit for formatting. The Draft Plan will then be submitted for approval for public exhibition.

2. All Access Playground

Update on All Access Playground project provided by Karen Collins.

3. Tweed Link Monthly Access All Areas Column

Theme for July/August/September is changes to disability funding and raising awareness in the broader community about the universal access and social inclusion. Karen Collins will draft the issues for comment from committee members before submitting for publication.

4. Access funds

No change.

General Business:

2. Regional Access Committees Forums for 2013

Members who attended the forum provided an overview of the forum and the forum outcomes. The regional group is in the process of developing a structure towards a strategic plan in order to strengthen regional approaches to improve access and inclusion.

3. International Day of People with Disability 2013

There will be one main event incorporating access and inclusion awards and short film and photography competitions. To celebrate International Day of People with Disability 3 December 2013 nominations will recognise achievement and innovation in building and promoting an accessible and inclusive community in the Tweed. These awards, launched in 2013, will be an annual event seeking to raise awareness, action and commitment to an accessible and inclusive community for all. Awards will be presented for achievement in arts and culture, sport and leisure, business, education, employment and individual. An overall winner will be chosen from the finalists and announced on the night.

The Equal Access Advisory Committee has been asked to judge the awards at the October meeting. This was agreed by all members present.

4. Develop Strategy for Access Funding

Members agreed that a process similar to Council's Donations Policy would be appropriate to guide decisions on the allocation of small grants to improve access for individuals and community groups. A draft document is being prepared for Council resulting from committee workshop following April meeting. Access requests will be assessed twice a year guided by criteria outlined in policy document and available budget allocation.

5. Bus Stop on Duffy Street at the end of Cooloon Crescent, Tweed Heads South

This matter was raised by Suzi Hudson. The ground in front of the bus stop needs better drainage as water accumulates when it rains. This is an access issue for the general community but particularly for people who use guide dogs and assistance animals that are trained not to enter water.

Action: Trevor Harris to follow up.

Next Meeting:

The next meeting of the Equal Access Advisory Committee will be held Wednesday 21 August 2013.

The meeting closed at 12noon.

EXECUTIVE MANAGEMENT TEAM COMMENTS:

General Business Item 1

Pedestrian Access Mobility Plan (PAMP)

1. Nil.
2. Nil.

EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:

General Business Item 1

Pedestrian Access Mobility Plan (PAMP)

1. That \$20,000 from Council's Access budget is made available as Council's contribution to the development of the Pedestrian Access Mobility Plan (PAMP).
2. If additional funds are required a further report will be presented to Council.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice.

Terms of Reference - Reviewed 21 August 2012.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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54 [SUB-KAG] Minutes of the Tweed Coast Koala Advisory Group Committee Meeting held Tuesday 2 July 2013

SUBMITTED BY: Community and Natural Resources



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
 - 4.2 Conserve native flora and fauna and their habitats
 - 4.2.1 Promote the protection of native vegetation and wildlife habitat of high conservation value, social or cultural significance in Tweed Shire
-

SUMMARY OF REPORT:

The Minutes of the Tweed Coast Koala Advisory Group Committee Meeting held Tuesday 2 July 2013 are reproduced in the body of this report for the information of Councillors.

RECOMMENDATION:

That the Minutes of the Tweed Coast Koala Advisory Group Committee Meeting held Tuesday 2 July 2013 be received and noted.

REPORT:

The Minutes of the Tweed Coast Koala Advisory Group Committee Meeting held Tuesday 2 July 2013 are reproduced as follows for the information of Councillors.

Venue:

Mount Warning Room - Murwillumbah Civic Centre

Time:

1.30pm

Present:

Cr Katie Milne (TSC), Mark Kingston (TSC), Iain Lonsdale (TSC), Anita Mudge (community rep), Jennifer Hayes (Team Koala Inc), Rhonda James (community rep), Ralph Kraemer (community rep), Lorraine Vass (Friends of Koala Inc.)

Apologies:

Steve Jensen (DP&I), John Turbill (OEH), Marama Hopkins (TSC).

1. Minutes of Previous Meeting:

Moved: Cr Katie Milne

Seconded: Ralph Kraemer

RESOLVED that the Minutes of the Tweed Coast Koala Advisory Group Committee meeting held Tuesday 4 April 2013 be accepted as a true and accurate record of the proceedings of that meeting (subject to adoption at next Council meeting).

AGENDA ITEMS:

1. Letter from Tweed Heads Environment Group

The Tweed Heads Environment Group is concerned about koalas in the Tweed Heads and Cobaki area and request that Council should:

1. Protect Koala habitat in the Cobaki area
2. Finalise the Tweed Coast Koala Plan of Management
3. Consider a Tweed Koala Relocation Policy

1. Protection of koala habitat in the Cobaki area. Under the new LEP almost all of the bushland surrounding Cobaki lakes will be protected under environmental protection zoning. A large proportion of this is in public ownership including within the National Park estate

2. Finalisation of the Tweed Coast Koala Plan of Management. Council staff have been working on refining the current draft but have also had to devote significant time toward ensuring acceptable ecological outcomes through the LEP and numerous major development applications.

3. Koala relocation policy. In relation to koala "relocation", as per the NPWS Licensing Agreement with Friends of the Koala, rescued and rehabilitated koalas are returned to the area where they were originally found while orphaned Koalas are 'soft released' after spending some time in a purpose built enclosure at experienced carer's properties, which back onto sufficient koala habitat. There are no such sites in the Cobaki area.

In relation to actively relocating koalas from one area to another (ie. translocation) there are major barriers to this with respect to the Tweed Coast population. A translocation program would require a very complex approval process (<http://www.environment.nsw.gov.au/resources/nature/policyFaunaTranslocation.pdf>) and previous discussion on this issue with relevant authorities indicate that it is extremely unlikely that approval would be granted. This is because of the complex social structure of koala populations, genetic differences and uncertainties among local and regional sub-populations, the lack of an “overabundant” source population from which animals could be sourced and, issues around any receiving habitat which would need to be able to support a viable local koala population in the long term. Given the limited amount of habitat in the Cobaki area and ongoing pressures from adjacent urban areas, the Cobaki area would not be considered a viable receiving habitat even if a source population was available. For many of the same reasons, translocation is not likely to be proposed in other areas of the Tweed Coast under the draft Tweed Coast Koala Plan of Management.

Notwithstanding this, the draft Tweed Coast Koala Plan of Management is likely to recommend actions to: 1) encourage the natural repopulation of suitable existing habitat in the Tweed Heads/Cobaki area and 2) apply rigorous development controls to any development sites where there is evidence of koala activity.

Moved: Mark Kingston

Seconded: Rhonda James

RESOLVED that Mark respond, with the support of the KAG, outlining the reasons for not proceeding with relocation or translocation of koalas to the Cobaki area.

2. Letter from Dave Norris re Black Rocks Sports Field

Mr Norris is concerned about future intensification of development at Black Rocks Sports Field specifically:

1. A range of potential impacts on koalas and other species arising from the proposed construction of tennis courts and associated development at Black Rocks sports fields (PTV12/0022).
2. Non-compliance with the Black Rocks Koala Plan of Management
3. Potential inconsistencies between SEPP 44 (Koala Habitat Protection) and Council's Development Control Plan (B21) which recommends the preparation of a masterplan for the Black Rocks sports fields in order to accommodate Pottsville's growing population. He proposes that because of its location in an environmentally sensitive area, known to be used by koalas that Black Rocks sports fields is unsuitable for further intensification and that such facilities should be provided as part of the future urban developments at Dunloe Park or West Pottsville.

1. Proposed tennis court at Black Rocks Sports Fields Mark advised that the NRM unit had provided detailed comment to Council's Development Assessment Unit which were generally consistent with concerns raised in Mr Norris's submission. At this point the development is yet to be determined.

2. Black Rocks Koala Plan of Management Mark advised that in the comments provided to Council's Development Assessment, the NRM unit acknowledge a number of deficiencies in the implementation of the Black Rocks Koala Plan of Management and are seeking to address these issues through the approval process and at an operational level. It is further advised that outside of the approvals process, Council has prohibited all dogs from the sports fields, provided appropriate signage and initiated ranger patrols, installed lockable gates to prevent out of hours access. Also, monitoring and bushfire obligations identified in the Black Rocks Koala Plan of Management will be included in Council's monitoring and bushfire management actions detailed in the forthcoming Tweed Coast Koala Plan of Management.

3. Council's Development Control Plan Mark pointed out that while there are significant environmental constraints at Black Rocks sports fields, there are also significant issues for koalas at both Dunloe Park and West Pottsville, particularly with respect to improving connectivity. As a consequence it is likely that strategic planning in these areas will need to accommodate Koala management issues under the forthcoming Tweed Coast Koala Plan of Management.

Mark to forward email to all KAG members.

Moved: Mark Kingston

Seconded: Lorraine Vass

RESOLVED that Mark respond to letter, based on the points above with the support of KAG.

3. Endangered Population Nomination

The NSW Scientific Committee have responded to Council's nomination apologising for the delay in replying and requesting some further information with respect to potential connectivity into Queensland and to the west, the size of the extant sub-populations and the health of the nominated population.

Council staff are preparing a response.

4. LEP Update

An extensive report on the draft Local Environmental Plan (LEP) was considered by Council at its meeting of 16 May 2013. The report acknowledged extensive community concern regarding koalas and other environmental matters with the consequence that a number of options were presented to progress the LEP. In relation to koala management, Council resolved to submit for approval a revised LEP which would: 1) reinstate E zones were included in the exhibited draft LEP 2010 but not 2012 version; 2) rationalise environmental zoning on Council owned or controlled lands and; 3) incorporate additional aims that seek to improve environmental outcomes specifically including for koalas. Council also resolved to continue with further refinements of the environmental provisions of the LEP consistent with current policy, SEPP 44 and the outcomes of the current review of environmental zones undertaken by the Department of Planning and Infrastructure.

Mark and Iain advised however that, it is likely that the Department of Planning and Infrastructure are likely to excise any E zones and environmental overlays as they have done with other Far North Coast Councils. Nonetheless, it was acknowledged by submitting it with the changes proposed, Council is sending a clear message to the Department (and the Minister) of its concerns for koalas on the Tweed Coast. It also places us in a better position to respond to the planning review.

5. Kings Forest

The Planning Assessment Commission (PAC) is presently considering modifications to the Concept Plan and the Stage 1 Project Application for Kings Forest. Council, State agencies and the community more generally has previously made extensive comment on the development including potential impacts on the nearby koala population. The Department of Planning and Infrastructure has considered all submissions and have now compiled a report and recommending approval subject to a large number of conditions.

Mark explained that the Department of Planning and Infrastructure has supported Council's stand on all of the major environmental considerations. Significantly for koala management: 1) the developer will be responsible for funding the implementation of all environmental management plans (including the KPOM) in perpetuity; 2) there will be no clearing in ecological buffers; 3) a new east-west wildlife corridor is to be established; 4) the areas for koala food tree planting have been rationalised to exclude overlaps with other objectives with major planting areas within the new east west corridor and on ex banana land within Cudgen Nature Reserve; 5) the bushfire management plan must specifically address ecological issues including fire management for Koalas and; 6) exclusion fencing and underpasses are to be constructed prior to bulk earthworks.

In its submission to the PAC, Council have recommended a number of refinements to the proposed conditions of consent.

6. Draft KPOM

After the last meeting, Biolink submitted a final invoice. Council officers are currently building on the information provided and are revising various aspects in light of comments received from the State Agencies, Council planning staff and the KAG.

7. Koala Connections update

Council has written to 625 land holders seeking their interest in having trees planted/and or weed control. Included with the invitation was a survey form aimed at finding out from those not interested, why not.

Approximately 50% of the forms were returned and 50% of these are interested. As a consequence Council staff are busy working through a more than 170) of Expressions of Interest.

Of those not interested, the following reasons were given:

Change zoning	Prevent future subdivision	Restrict land use	Don't want wildlife	Other
29	31	37	14	33

These statistics generated considerable discussion, particularly with respect to the perception that participation may adversely affect development opportunities. Mark pointed out that there are very limited development opportunities on rural-zoned land and that the urban development footprint is already well established with ample land supply for the foreseeable future. It was also noted that participation in voluntary incentive programs such as Koala Connections is not a factor influencing any zoning considerations.

Tanya has written to the Land and Property Management Authority (LPMA) to find out if we can plant on a Crown site on the southern side of Cudgen Lake and will also issue a similar request in relation to crown land behind the Pottsville shops. These are both important sites for improving koala movement. Progress is very slow and she has had no conclusive response to her requests. She is hopeful that they will respond more favourably if the request comes from KAG.

Moved: Mark Kingston

Seconded: Lorraine Vass

RESOLVED that Council officers advise the LPMA that the KAG supports the proposal to plant koala food trees and/or otherwise improve koala habitat on crown lands on the southern side of Cudgen Lake and behind the existing shopping centre at Pottsville.

8. CKPOM Development Control Working Provisions

Mark tabled a map and document outlining a draft set of working development control provisions.

The draft provisions effectively only apply to formal development proposals that involve significant intensification of development outside existing development envelopes. This will mean that minor developments such as new dwellings, additions to houses, garages, carports, swimming pools, commercial change of use etc on small urban lots or within the curtilage of an existing development envelope will not generally be affected by the Plan. Also, the Plan will not apply where there is a pre-existing Koala Plan of Management (eg. Koala Beach, Kings Forest).

The proposed provisions that may apply to a relevant development will depend on the type of development and where it is in the landscape. A simple three step process is proposed:

- Step 1. Determine koala management area in which the development is proposed.
- Step 2. Determine the type of development.
- Step 3. Ensure that the relevant development control provisions are addressed in the development proposal.

A Koala Management Area map is used to define the following areas: 1) Koala Management Precincts (KMPs); 2) Koala Linkage Areas (KLAs); 3) Existing KPOM areas; and 4) other areas within the Tweed Coast Koala Plan of Management Study Area. Six different types of development scenarios include: 1) Minor Development; 2) Local Planning Amendments (rezoning proposals etc); 3) Subdivision in the Future Urban Footprint; 4) Development in a KMP; 5) Development in a KLA and; 6) Other Development in the Koala Study Area. Koala Management Precincts (KMPs) focus on areas associated with known significant koala activity, while Koala Linkage Areas (KLAs) are areas adjacent to KMPs that provide optimal opportunities for improved koala habitat connectivity (linear corridors, stepping stone habitat, scattered koala food trees, road underpasses and overpasses etc.).

For any combination of Koala Management Area and development type the draft KPOM will identify a specific set of provisions. These provisions will cover assessment requirements, guidance on habitat that must be retained, requirements for protection and restoration of koala habitat, offsetting requirements (where appropriate), specific provisions and criteria for "Koala Friendly Development", and "Enclaved Development". Provisions are also included to allow for "Non-conforming Development" where a better outcome for koalas was assured.

The various draft provisions were discussed and Mark encouraged members to review the information and provide any feedback as soon as possible.

Next Meeting
Tuesday 3 September 2013.

The meeting closed at 4:35pm.

DIRECTOR'S COMMENTS:

Nil.

DIRECTOR'S RECOMMENDATIONS:

Nil.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice.

Terms of Reference - Adopted 20 April 2010.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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55 [SUB-LTC] Minutes of the Local Traffic Committee Meeting held Thursday 11 July 2013

SUBMITTED BY: Planning and Infrastructure



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.4 An integrated transport system that services local and regional needs
 - 2.4.1 Provide a safe and efficient network of arterial roads connecting neighbourhoods to town centres, employment, shopping, health, commercial and education facilities
-

SUMMARY OF REPORT:

The Minutes of the Local Traffic Committee Meeting held Thursday 11 July 2013 are reproduced in the body of this report for the information of Councillors.

RECOMMENDATION:

That:

- 1. The Minutes of the Local Traffic Committee Meeting held Thursday 11 July 2013 be received and noted; and**
- 2. The Executive Management Team's recommendations be adopted as follows:**

A1 [LTC] Prospero Street and Tweed Valley Way South Murwillumbah

That a yellow edgeline be installed at the intersection of Tweed Valley Way and Prospero Street, from the first driveway south of Prospero Street on Tweed Valley Way to 18m east of Cliffords Lane on Prospero Street.

A2 [LTC] Lochlomond Drive and Kintyre Crescent, Banora Point

That a 'Give Way' sign and associated linemarking be installed on Lochlomond Drive at the intersection of Kintyre Crescent.

A3 [LTC] Riverside Drive, Tumbulgum

That:

- 1. Vehicle parking on Riverside Drive be limited for a further 2m distance from the southeast from Fawcett Street and for a further 3m distance on the northeast side of Riverside Drive.**
- 2. A yellow edge line be installed to reinforce (1) above.**
- 3. A 'Stop' sign and associated linemarking be installed on Fawcett Street at the intersection with Riverside Drive, Tumbulgum.**
- 4. A manoeuvring space be installed on Riverside Drive north of the boat ramp designated by 'No Parking' signs with additional pavement marking to assist the reversing process.**
- 5. A continuity line be installed on Riverside Drive (boat ramp side) through the intersection.**

REPORT:

The Minutes of the Local Traffic Committee Meeting held Thursday 11 July 2013 are reproduced as follows for the information of Councillors.

VENUE:

Mt Warning Meeting Room

TIME:

Commencing at 10.00am

PRESENT:

Committee Members: Cr Barry Longland, Snr Constable Ray Wilson, NSW Police, Mr Col Brooks on behalf of Mr Thomas George MP, Member for Lismore, Mr Rod Bates on behalf of Mr Geoff Provest MP, Member for Tweed.

Informal: Mr Ray Clark (Chairman), Mr Michael Kenny, Mr Wayne Haayer, Linda Cooper and Judith Finch (Minutes Secretaries).

APOLOGIES:

Ms Liz Smith, Roads and Maritime Services of NSW, Mr Thomas George MP, Member for Lismore, Mr Geoff Provest MP, Member for Tweed.

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

RESOLVED that the Minutes of the Local Traffic Committee meeting held 13 June 2013 be adopted as a true and accurate record of proceedings of that meeting.

FOR VOTE - Unanimous

SCHEDULE OF OUTSTANDING RESOLUTIONS

Nil.

BUSINESS ARISING

Nil.

A. FORMAL ITEMS SECTION

DELEGATIONS FOR REGULATORY DEVICES

A1 [LTC] Prospero Street and Tweed Valley Way South Murwillumbah

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 3101537; Traffic - Committee; Traffic - Parking Zones; Traffic - Linemarking; Prospero Street; Tweed Valley Way, Murwillumbah; Cliffords Lane

SUMMARY OF REPORT:

Drivers have brought to Council's attention that sight distance to the right when entering Tweed Valley Way from Prospero Street is limited by vehicles parking on Tweed Valley Way.

The issue is considered valid and sight distance would be improved if parking was prohibited.

COMMITTEE ADVICE:

That a yellow edgeline be installed at the intersection of Tweed Valley Way and Prospero Street, from the first driveway south of Prospero Street on Tweed Valley Way to 18m east of Cliffords Lane on Prospero Street.

RECOMMENDATION TO COUNCIL:

That a yellow edgeline be installed at the intersection of Tweed Valley Way and Prospero Street, from the first driveway south of Prospero Street on Tweed Valley Way to 18m east of Cliffords Lane on Prospero Street.

FOR VOTE - Cr Barry Longland, Mr Col Brooks

AGAINST VOTE - Nil

ABSENT. DID NOT VOTE - Snr Constable Ray Wilson

PRESENT. DID NOT VOTE - Mr Rod Bates

A2 [LTC] Lochlomond Drive and Kintyre Crescent, Banora Point

ORIGIN:

Planning & Infrastructure

FILE NO: SGN13/0095; Traffic - Committee; Traffic - Signs; Lochlomond Drive; Kintyre Crescent

SUMMARY OF REPORT:

Request received for the installation of a "Give Way" sign and associated Linemarking on Lochlomond Drive at the intersection of Kintyre Crescent.

"The dotted lines are missing which is causing a traffic hazard as people are just driving straight out of Lochlomond Drive, without being aware to look and give way. I myself and people in Kintyre have had some near misses where we have been nearly T-Boned by turning traffic.

I think placing a give way sign would make people more aware to slow down, look and give way. Thirdly the no through road sign at the bottom of our street is unnoticeable when driving, as there has been Council buses stuck trying to navigate their way out of the cul-de-sac and unnecessary traffic."

COMMITTEE ADVICE:

That a 'Give Way' sign and associated linemarking be installed on Lochlomond Drive at the intersection of Kintyre Crescent.

RECOMMENDATION TO COUNCIL:

That a 'Give Way' sign and associated linemarking be installed on Lochlomond Drive at the intersection of Kintyre Crescent.

FOR VOTE - Mr Rod Bates, Cr Barry Longland

AGAINST VOTE - Nil

ABSENT. DID NOT VOTE - Snr Constable Ray Wilson

PRESENT. DID NOT VOTE - Mr Col Brooks

A3 [LTC] Riverside Drive, Tumbulgum

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 3106801; Traffic - Committee; Traffic - Parking Zones; Traffic - Safety; Traffic - Local Area Traffic Management; Waterways - Boat Ramps; Riverside Drive; Fawcett Street

SUMMARY OF REPORT:

It has been brought to officers' attention that potential vehicle conflict exists at the intersection of Riverside Drive and Fawcett Street, Tumbulgum and the public boat ramp. The Committee's advice on potential improvements to the intersection is sought.

To improve safety at the intersection of Riverside Drive and Fawcett Street, Tumbulgum Council officers inspected the site and noted the following:

Riverside Drive was recently upgraded and additional parking installed adjacent to the boat ramp. A 40km/h high pedestrian activity speed zone was also installed. Conflict may arise as vehicles with trailers are manoeuvring to access the boat ramp opposite Fawcett Street.

Sight distance when exiting Fawcett Street onto Riverside Drive is limited by both parked vehicles and building alignments. Sight distance would be improved by limiting parking on Riverside Drive adjacent to the businesses fronting Riverside Drive. The warrants for a 'Stop' sign are also met at this intersection.

Allocating a manoeuvring space adjacent to the boat ramp would improve access.

COMMITTEE ADVICE:

That:

1. Vehicle parking on Riverside Drive be limited for a further 2m distance from the southeast from Fawcett Street and for a further 3m distance on the northeast side of Riverside Drive.

2. A yellow edge line be installed to reinforce (1) above.
3. A 'Stop' sign and associated linemarking be installed on Fawcett Street at the intersection with Riverside Drive, Tumbulgum.
4. A manoeuvring space be installed on Riverside Drive north of the boat ramp designated by 'No Parking' signs with additional pavement marking to assist the reversing process.
5. A continuity line be installed on Riverside Drive (boat ramp side) through the intersection.

RECOMMENDATION TO COUNCIL:

That:

1. Vehicle parking on Riverside Drive be limited for a further 2m distance from the southeast from Fawcett Street and for a further 3m distance on the northeast side of Riverside Drive.
2. A yellow edge line be installed to reinforce (1) above.
3. A 'Stop' sign and associated linemarking be installed on Fawcett Street at the intersection with Riverside Drive, Tumbulgum.
4. A manoeuvring space be installed on Riverside Drive north of the boat ramp designated by 'No Parking' signs with additional pavement marking to assist the reversing process.
5. A continuity line be installed on Riverside Drive (boat ramp side) through the intersection.

FOR VOTE - Mr Rod Bates, Cr Barry Longland

AGAINST VOTE - Nil

ABSENT. DID NOT VOTE - Snr Constable Ray Wilson

PRESENT. DID NOT VOTE - Mr Col Brooks

B. INFORMAL ITEMS SECTION

GENERAL TRAFFIC ADVICE

B1 [LTC] Kennedy Drive and Gollan Drive, Tweed Heads

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 3096455; Traffic - Committee; Traffic - Safety; Traffic - Speed Zones; Kennedy Drive, Tweed Heads

SUMMARY OF REPORT:

A review of Kennedy Drive / Gollan Drive, Tweed Heads has revealed a significant crash history for a 4km length of road, approximately between Terranora Terrace and Scenic Drive. Kennedy Drive has a sign posted speed of 60km/h.

During the period 1 January 2008 to 31 December 2012 (5 years) there were 90 reported crashes within the subject distance on Kennedy Drive.

Information was tabled at the meeting with a view to RMS reducing the speed limit to 50km/h.

COMMITTEE ADVICE:

That:

1. The RMS be requested to review the speed limit on Kennedy Drive and Gollan Drive in accordance with the speed zoning guidelines.
2. This item be placed on the Schedule of Outstanding Resolutions.

B2 [LTC] Bilambil Public School Flashing Lights

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 3101864; Traffic - Committee; Traffic - School Zones; Bilambil Road; Schools - Bilambil Public

SUMMARY OF REPORT:

Information has been received from the Deputy Leader of Government in the Legislative Council and Minister for Roads and Ports, The Hon. Duncan Gay MLC advising that:

"All schools in NSW are assessed using a risk model that considers traffic and pedestrian volumes, approach speed limits, number of travel lanes, existing crossing facilities, sight distance requirements, road environment and geometry. This model is based on the potential risk of a crash, not crash history."

Unfortunately, Bilambil Public School has not been included in the program to date because many other schools had a higher risk assessment score. However, Bilambil Public School will be considered in future rollouts.

.....

In regard to signage and extending the traffic island, Roads and Maritime Services (RMS) advises at the last local traffic committee meeting, a recommendation for a children's crossing was passed.

As part of the proposed new children's crossing, the council will be assessing all signage, central medians and kerb ramps. RMS is happy to assist the council with an application for funding under the Facilities Around Schools program in the 2013-14 financial year."

There is limited proposed works to be undertaken on Bilambil Road in the vicinity of the school by Council and Council officers will submit an application to RMS under the Facilities Around School Program.

COMMITTEE ADVICE:

That funding from the RMS under the Facilities Around School Program be sourced for Bilambil Public School when required.

NEXT MEETING:

The next meeting of the Local Traffic Committee will be held 8 August 2013 in the Mt Warning Meeting Room commencing at 10.00am.

There being no further business the Meeting terminated at 10.55am.

Senior Constable Ray Wilson arrived at 10.55am.

SECTION A - FORMAL ITEMS SECTION - DELEGATIONS FOR REGULATORY DEVICES FOR ENDORSEMENT BY COUNCIL:

A1 [LTC] Prospero Street and Tweed Valley Way South Murwillumbah

That a yellow edgeline be installed at the intersection of Tweed Valley Way and Prospero Street, from the first driveway south of Prospero Street on Tweed Valley Way to 18m east of Cliffords Lane on Prospero Street.

A2 [LTC] Lochlomond Drive and Kintyre Crescent, Banora Point

That a 'Give Way' sign and associated linemarking be installed on Lochlomond Drive at the intersection of Kintyre Crescent.

A3 [LTC] Riverside Drive, Tumbulgum

That:

- 1. Vehicle parking on Riverside Drive be limited for a further 2m distance from the southeast from Fawcett Street and for a further 3m distance on the northeast side of Riverside Drive.**
- 2. A yellow edge line be installed to reinforce (1) above.**
- 3. A 'Stop' sign and associated linemarking be installed on Fawcett Street at the intersection with Riverside Drive, Tumbulgum.**
- 4. A manoeuvring space be installed on Riverside Drive north of the boat ramp designated by 'No Parking' signs with additional pavement marking to assist the reversing process.**
- 5. A continuity line be installed on Riverside Drive (boat ramp side) through the intersection.**

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice.

Terms of Reference - reviewed 21 August 2012.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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56 [SUB-TRRMAC] Minutes of the Tweed River Regional Museum Advisory Committee Meeting held 18 July 2013

SUBMITTED BY: Community and Cultural Services



Supporting Community Life

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
-

SUMMARY OF REPORT:

The Minutes of the Tweed River Regional Museum Advisory Committee Meeting held Thursday 18 July 2013 are reproduced in the body of this report for the information of Councillors.

RECOMMENDATION:

That the Minutes of the Tweed River Regional Museum Advisory Committee Meeting held Thursday 18 July 2013 be received and noted.

REPORT:

The Minutes of the Tweed River Regional Museum Advisory Committee Meeting held Thursday 18 July 2013 are reproduced as follows for the information of Councillors.

Venue:

Coolamon Cultural Centre

Time:

2:00pm

Present:

David Oxenham (Director Community & Natural Resources); Judy Kean (Museum Director); Gary Fidler (Community); Sandra Flannery (Community); Fay O'Keeffe (Community); Janet Swift (Community); Joan Smith (Tweed Heads Historical Society); Denise Garrick (Tweed Heads Historical Society); Helena Duckworth (Uki & South Arm Historical Society); Mary Lee Connery (Uki & South Arm Historical Society); Max Boyd (Murwillumbah Historical Society); Tony Clark (Murwillumbah Historical Society).

Apologies:

Cr Michael Armstrong; Peter Budd (Community); Beverley Lee (Murwillumbah Historical Society).

Minutes of Previous Meeting:

Moved: Gary Fidler

Seconded: Janet Swift

RESOLVED that the Minutes of the Tweed River Regional Museum Advisory Committee meeting held Thursday 16 May 2013 be accepted as a true and accurate record of the proceedings of that meeting.

Business Arising:

Item 3 from Meeting held 21 March 2013

3. Discussion of TRRM Strategic Plan

Council's Communications and Marketing Unit have advised that the Museum will be given its own branding.

Discussion at this meeting:

Presentation of rebranding proposal for Tweed River Regional Museum:

A slideshow created by Council's Communications and Customer Services Unit was presented by Judy Kean, Museum Director. The slideshow outlined the benefits of the rebranding, the suggested logo, and the renaming of the Museum so that Council's two primary cultural facilities, the Museum and the Art Gallery are similarly named and branded.

The suggested new name is Tweed Regional Museum.

Discussion followed on whether this renaming is acceptable to Committee members.

Moved: Gary Fidler

Seconded: Janet Swift

RESOLVED that the Tweed River Regional Museum Advisory Committee supports Council Management in rebranding of the Museum.

Agenda Items:

Agenda Item 1 was suspended for tabling of the document *Tweed River Regional Museum Deductible Gift Recipient (DGR) Fund Policy*.

This draft policy document was tabled and all Committee members were asked to review the document and provide comments to the Museum Director.

Resumption of Agenda Items

1. Museum Director's Report and Historical Society Reports

Museum Director's Report

Museum building and development

TRRM Murwillumbah

Steel framing for the building was erected during June. Scope of works for refurbishment of existing 1915 building is currently being completed. Approval is currently being sought for alterations to the front door to ensure effective climate control, appropriate visibility into the building and compliance with access requirements. Input from a heritage consultant is being sought. Museum Director is working with architects to develop a brief for exhibition designers.

Collections Store

Three large crates stored offsite have been delivered to the store and unpacked. This leaves only two shipping containers at the Buchanan St depot to be consolidated into the store, together with some items stored offsite in private premises.

TRRM Tweed Heads (Kennedy Drive and Flagstaff)

A number of building maintenance issues have been finalised. Museum Director is working with Society members on changes to the store area in RSL Hall.

Museum Director has been liaising with Council staff regarding car parking issues raised at the May Museum Advisory Committee meeting. To date:

Tour operators have been requested to use the car park as a drop off zone only and not to park buses in the area adjacent to the Museum. Historical Society members have reported that this request is being observed.

Council staff are in discussion with tour operations about long term use of the park, and about options for regulating parking on the site, together with the impact of tour operations on the condition of the car park and public toilets.

MD has requested that Council staff look at design options for providing an addition to the public toilet block for use by Museum volunteers.

A further update on progress to date to be provided at the meeting [See page 5].

Uki

The Uki and South Arm Historical Society is in discussions with the Uki Hall Trust regarding proposed alterations to the Society/Museum premises at Uki.

Collections

Assessment and Relocation project, Murwillumbah

The process of consolidating collections previously stored and displayed at Murwillumbah is largely complete. The focus is now on dealing with items still held off site; on disposing of de accessioned items; and on undertaking further research into objects about which little is known.

Some items currently cared for by Historical Society members and at MHS office at Bray Park will also be assessed over the coming months in preparation for relocation to the Museum store.



Assessment and Relocation project, Tweed Heads and Uki



All items in storage at Tweed Heads have been relocated to the store. This process identified the need to undertake some preventive conservation work on Simpson water colour paintings. This work has been completed. Focus is now on consolidating photographic collections held off site.

Items stored at Uki are in the process of being transferred to the store.

Acquisitions

A report outlining proposed acquisitions was tabled:

Object Description	Donor	Image
Bank record books from Coolangatta. One is a register of new accounts, entries commence in 1916. The other book is a record of War Savings Certificates dating from 1940.	Ross Meade	
Black and white postcard with scene of 'Cane Cutting, Tweed River District, Tweed Heads NSW'. A Rose Series Postcard P.7651. Reverse of postcard has handwritten note "with love from Dawn".	Tony Clark	

<p>Envelope addressed to Joshua Bray Esq. Has 2 violet coloured postage stamps affixed to front of envelope. The envelope is date stamped from Sydney 1892. The stamps are NSW 100 year commemorative one penny stamps - these stamps were first issued in 1888.</p>	<p>Tony Clark</p>	
<p>Record, 45 rpm 7-inch single in cream paper sleeve featuring The Bullamakankas song 'Murwillumbah Bank Job', 1979.</p>	<p>Tony Clark</p>	

Collections Management System (CMS)

Work is continuing on consolidating information into the CMS. Erika Taylor is working an additional day per week with the Gallery to refine their data and systems using Vernon.

Vernon staff will be undertaking further training with Gallery and Museum staff in September. There will also be the opportunity for volunteer training at this time.

Staff update

Kirsty Andrew has been appointed to the new position of Collection and Program Support Officer and commenced in the role on 1 July.

Volunteer policy, procedures and recruitment

Council's new policies, procedures and associated documentation have been provided to all volunteers currently working at Tweed Heads, Uki, Murwillumbah and the Museum store. Final sign off by all volunteers is still being completed.

Following a number of talks given by the Museum Director over the past couple of months a number of new volunteers have commenced work with the Museum.

A dedicated page has now been added to Council's website directing potential volunteers to a range of volunteering opportunities with Council, including the Museum.

Research Report

An inaugural report summarising the range of research currently being undertaken by members of the Historical Societies, and by the Museum Research Group and Museum staff has been prepared. It does not include research undertaken in response to public enquiries.

The Museum Research Group continues to meet on a monthly basis and is proving an invaluable forum for sharing knowledge and expertise and assisting with collection-related research.

Recommendation: That the Museum Director's report be received and noted by the Committee and the proposed acquisitions be accepted.

Discussion on the Museum Director's Report:

David Oxenham advised that Council is taking the issue of the toilet at TRRM Tweed Heads very seriously. Council is considering options for a solution to the problem. David Oxenham also advised that the situation with the car park at TRRM Tweed Heads is improving but is not totally solved yet. He advised that signage will be erected to ensure the problem areas are designated as drop-off areas only. Judy Kean is to contact Steve Paff, Maintenance Engineer, regarding the hole at the entrance to the car park.

Joan Smith requested more information on the donor, Ross Meade, who has donated the bank records from Coolangatta. Judy Kean advised that she thought the donation had come through TRRM Tweed Heads, but would get back to Joan with further details.

Moved: Judy Kean

Seconded: Denise Garrick

RESOLVED that the Museum Director's Report be received and noted by the Committee and the proposed acquisitions be accepted.

Agenda Item 1 was suspended for discussion of the Research Report

Judy Kean asked for feedback on the Research Report, previously sent to members with the Agenda.

The Committee felt it was a useful document, so Judy Kean will contact all Historical Societies and collate research details before compiling a Research Report for each Advisory Committee meeting.

Discussion followed on the subject of research:

Gary Fidler recommended that in-depth research be focused on, rather than a large number of topics. Gary suggested the use of a standard methodology.

Judy Kean advised that a methodology had already been created for the Research Group and the Historical Societies had also been encouraged to follow it.

Joan Smith enquired as to how the Societies were meant to carry out research if they had been requested to cease collecting.

Judy Kean advised that the methodology does not require the cessation of collecting, but creates criteria to follow in the collecting of research material.

Mary Lee advised that the Societies were at no time told to stop collecting research material.

Murwillumbah Historical Society Report:

Max Boyd outlined his project of having photographs of local State and Federal government members framed. Max congratulated Tweed Heads Historical Society on the latest Log Book, featuring the history of South Sea Islanders in the Tweed.

Uki & South Arm Historical Society Report:

The conservation of the butter churn at Uki is a priority. Judy Kean is to action this as soon as possible. A grant may need to be sourced for this work.

David Oxenham left the meeting at 3:25pm

Tweed Heads Historical Society Report:

Joan Smith advised the Committee that there would be a talk by Nasuven Enares, Chairperson Australian South Sea Islanders Secretariat Inc, about South Sea Islanders in the Tweed area at the Tweed Heads Library on 3 August 2013.

2. TRRM Strategic Plan

The latest draft of the Strategic Plan was circulated to members. Judy Kean requested feedback by 28 August 2013. A colour, bound copy will be sent to each Society for their members to peruse, however the document is not for general circulation.

General Business:

General Business Item 1 was suspended for discussion by Max Boyd

TRRM Tweed Heads:

Max Boyd advised that he had been asked by Councillor Armstrong to raise the issue of the site for a new museum at Tweed Heads. Max Boyd advised that Councillor Armstrong wishes to work closely with Council and Tweed Heads Historical Society to see what Councillors can do to progress the project.

Joan Smith enquired as to what the delays actually consisted of, as she was advised [some time ago] by a visiting member of the Lands Department at Grafton that neither the zoning nor the Native Title issues were a problem and that the Department could sign off on the Museum project immediately.

Naida Tattersall advised that Councillor Armstrong has requested a Report on a cultural precinct potentially including the museum at Tweed Heads be presented to Council by the December 2013 meeting.

Resumption of General Business Item 1

1. September 2013 Advisory Committee meeting:

Museum Director, Judy Kean, will be absent for the September meeting of the Advisory Committee. After discussion, it was decided that the September meeting be cancelled. A meeting will be held in early October to cover two specific items: the Strategic Plan and Acquisitions/De-Accessions.

A date will be finalised for this meeting and members will be advised.

2. Historical Society Meeting:

Janet Swift suggested that the Historical Societies meet to discuss research issues rather than discussing them at the Advisory Committee meetings. Members agreed to this suggestion; Judy Kean will put forward some suggestions for times/dates and circulate to members.

Next Meeting:

The date for the next meeting of the Tweed River Regional Museum Advisory Committee will be advised.

The meeting closed at 3:45pm.

DIRECTOR'S COMMENTS:

Nil.

DIRECTOR'S RECOMMENDATIONS:

Nil.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice.

Terms of Reference - as per Tweed River Regional Museum Strategic Plan 2004 adopted on 2 June 2004

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE ACTING GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES IN COMMITTEE

C1 [CNR-CM] Tweed Regional Art Gallery - Cafe Pavilion, EC2012-251 Margaret Olley Tweed River Art Gallery Extension

REASON FOR CONFIDENTIALITY:

Report details contract negotiations

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.



Supporting Community Life

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
-
-

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS IN COMMITTEE

C2 [EO-CM] Dining Facilities in Road Reserves

REASON FOR CONFIDENTIALITY:

Commercial arrangements.

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: -

- (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.

Valid



Strengthening the Economy

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 Strengthening the Economy
 - 3.3 Maintain and enhance the Tweed lifestyle and environmental qualities as an attraction to business and tourism
-
-