



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

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

Agenda

Planning and Regulation Reports

Ordinary Council Meeting

Thursday 18 July 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.

Items for Consideration of Council:

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REPORTS THROUGH THE ACTING GENERAL MANAGER

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.

8 [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 that for June 2013 there are no Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

COUNCIL IMPLICATIONS:

a. Policy:

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.

9 [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:

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:

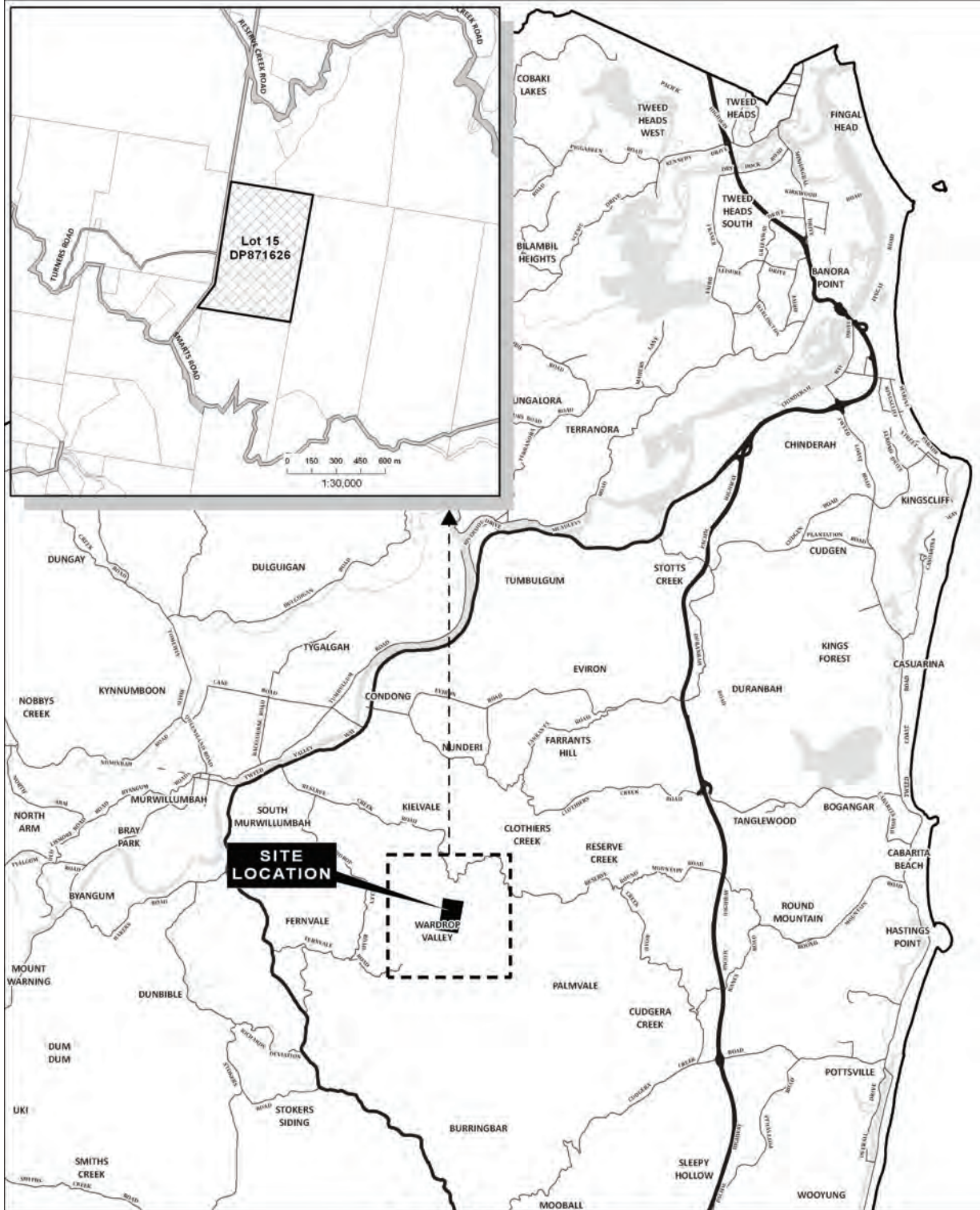
That in terms of the alleged unauthorised road works and land uses being undertaken on the unsealed Council road and Crown Reserve, leading to, and within the property, Lot 15 DP 871626, No. 140 Turners Road, Wardrop Valley, Council endorses the following:

- 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

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Cadastral: 24 June, 2013
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Boundaries shown should be considered approximate only.

0 1 2 3 Km
1:120,000 @ A4 Portrait
DO NOT SCALE
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Map Projection: Universal Transverse Mercator
Geoid: Geoid of Australia 1996
Map Grid of Australia: Zone 56

GDA

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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).

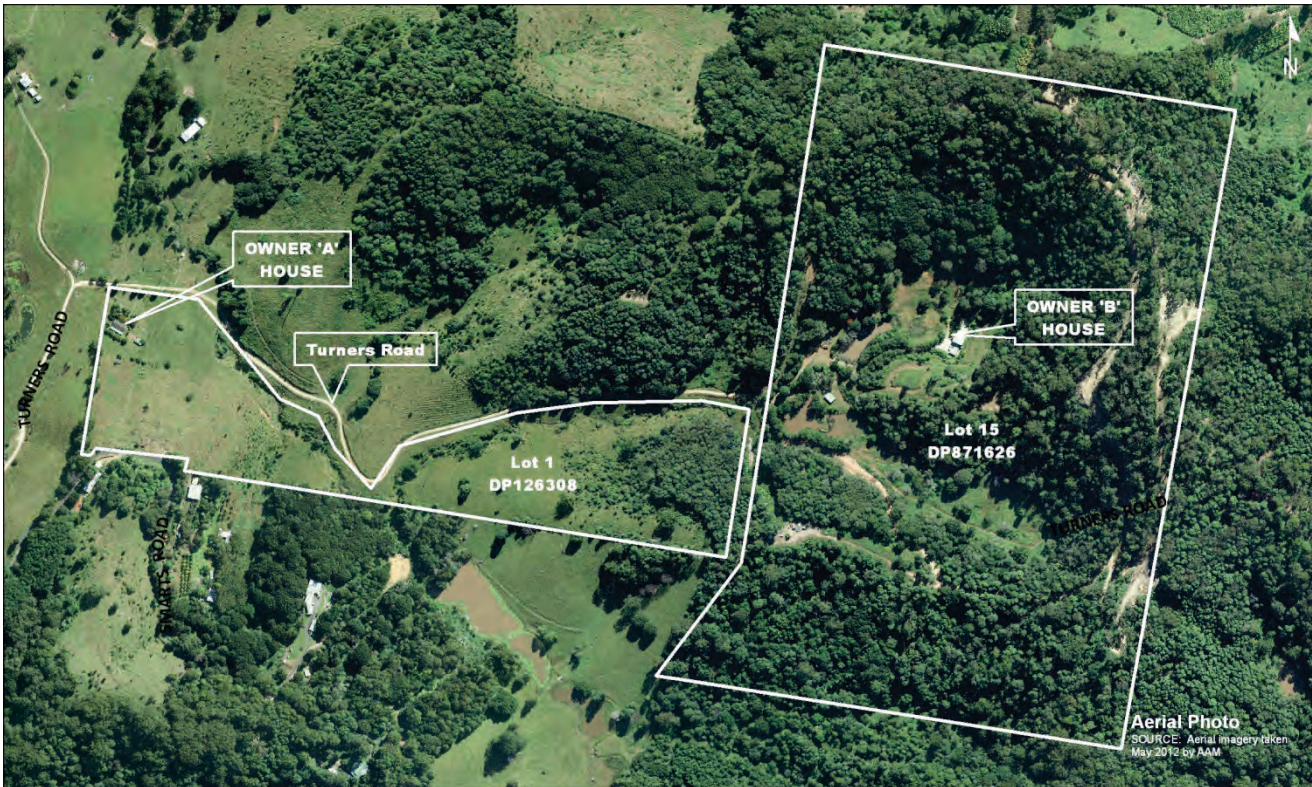


Figure 2 - Aerial photo below showing the locations of the alleged unauthorised road work issues referred to in this report along Turners Road.



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.

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10 [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 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.

Previous Report

Council has received a development application for the construction of an awning over an existing and previously approved outdoor dining area at the Murwillumbah Hotel, a prominent historic building within the Murwillumbah town centre. The frame would be constructed of galvanised steel with waterproof fabric stretched over the rafters. The sides would remain open.

The applicant has advised that the relatively thin frame, whilst thick walled for strength, has been chosen to reduce the visual impact and to have proportional compatibility with the lightweight roofing fabric. The applicant has advised that the outdoor dining area is being used less frequently in the summer due to lack of shade and that the shade that the roof will provide will encourage the space to be used. The applicant advises that there will be no impact to traffic with the setback providing a suitable clearance from passing traffic.

Council's Traffic Engineer has not raised any concerns with the proposal from a traffic safety perspective. However, from a design perspective, shade structures attached to existing awnings have the capability to intrude on the fabric of the host building as well as impact on streetscape character. It is understood that this matter has been brought to Council previously as other businesses in the Murwillumbah Shopping Centre Precinct have sought to construct similar weather protection structures in association with their footpath dining areas (such as at the Court House Hotel).

When considered in isolation, the proposed structure is considered to be relatively light weight and unobtrusive and, in the absence of Council adopted design guidelines for such structures,

as well as the presence of similar structures within the vicinity of the subject site, it would be difficult to refuse the proposal on the basis of design. However should the application be approved there are concerns about the cumulative impact of similar development within the locality, particularly given the Murwillumbah Main Street Conservation Area (MMSCA) status as defined within the Draft Local Environmental Plan (LEP) 2012.

Council's Environmental Health Unit has advised that the proposed shade structure has the capability to restrict Closed Circuit Television (CCTV) coverage from the camera located on the opposite side of Wharf Street to the licensed premises, therefore causing a security and public safety risk. Further, the Environmental Health Unit has advised that the proposed awning may have the potential to create a heavily shaded area which may reduce pedestrian safety through reduced light levels along the pedestrian footpath adjacent to the outdoor dining area. The applicant has provided further information in relation to CCTV camera restriction and light levels, however, Council's Environmental Health Unit considers that this additional information does not alleviate their concerns with this regard. The proposed awning structure is therefore recommended for refusal on this basis.

In the absence of a more comprehensive policy framework and design guidelines for such development, it is considered necessary to report the application to Council for consideration of the broader community benefit of such structures against any potential detrimental impacts to the heritage value of the host building and streetscape character as well as to public amenity and safety.

RECOMMENDATION:

That Development Application DA12/0620 for construction of an awning over an existing outdoor dining area at Lot 2 DP 521302 No. 13 Wharf Street, Murwillumbah; Road 5900 Wharf Street, Murwillumbah be refused for the following reasons:

- 1. The development would result in a security and public safety risk and would therefore be contrary to Clause 4, Clause 8 and Clause 11 of the Tweed Local Environmental Plan 2000.**
- 2. The development would detract from the heritage significance of the host building and the character and amenity of the Murwillumbah Town Centre and would therefore be contrary to Clause 4, Clause 8, and Clause 11 of the Tweed Local Environmental Plan 2000.**
- 3. The development would not protect or enhance the public domain and would therefore be contrary to the Murwillumbah Town Centre Development Control Plan - B22.**
- 4. The development would detract from the heritage significance of the Murwillumbah Main Street Conservation Area and would therefore be contrary to Clause 5.10 of the Tweed Draft Local Environmental Plan 2012.**

REPORT:

Applicant: Penplay Pty Ltd
Owner: Tweed Shire Council
Location: Lot 2 DP 521302 No. 13 Wharf Street, Murwillumbah; Road 5900 Wharf Street, Murwillumbah
Zoning: 3(b) General Business
Cost: \$7,000

Background:

On 28 December 2012 Council received a development application for the construction of an awning over an existing and previously approved outdoor dining area located within the road reserve adjacent to the Murwillumbah Hotel. The Murwillumbah Hotel is a prominent building within the Murwillumbah town centre and contributes toward the historic character of the locality. The existing dining area comprises a timber floor raised above the street surface to the level of the footpath, with a solid steel balustrade around three sides extending from the kerb line.

The Murwillumbah Hotel currently comprises Murrays public house, 'Next to Murrays' refreshment room, a barber and 'Jujus' cafe which are both accessed independently from the hotel itself. The outdoor dining area is located adjacent to the refreshment room, 'Next to Murrays'.



Outdoor dining area located within the road reserve adjacent to the Murwillumbah Hotel and location of proposed awning structure.

The awning would be constructed of galvanised steel posts and rafters and would be setback from the white line marking on the road surface by 450mm. Waterproof fabric would then be stretched over the rafters however it is advised that the sides of the structure would remain open. The applicant has advised that the relatively thin frame, whilst thick for

strength, has been chosen to reduce the visual impact and to have proportional compatibility with the lightweight roofing fabric. The intention of the proposal is to provide shade over the existing outdoor dining area to encourage customers to utilise the space.

The development application has been referred to Council's Traffic Engineer who has raised no significant concerns from a traffic safety perspective, providing that the structure is set back a minimum of 450mm.

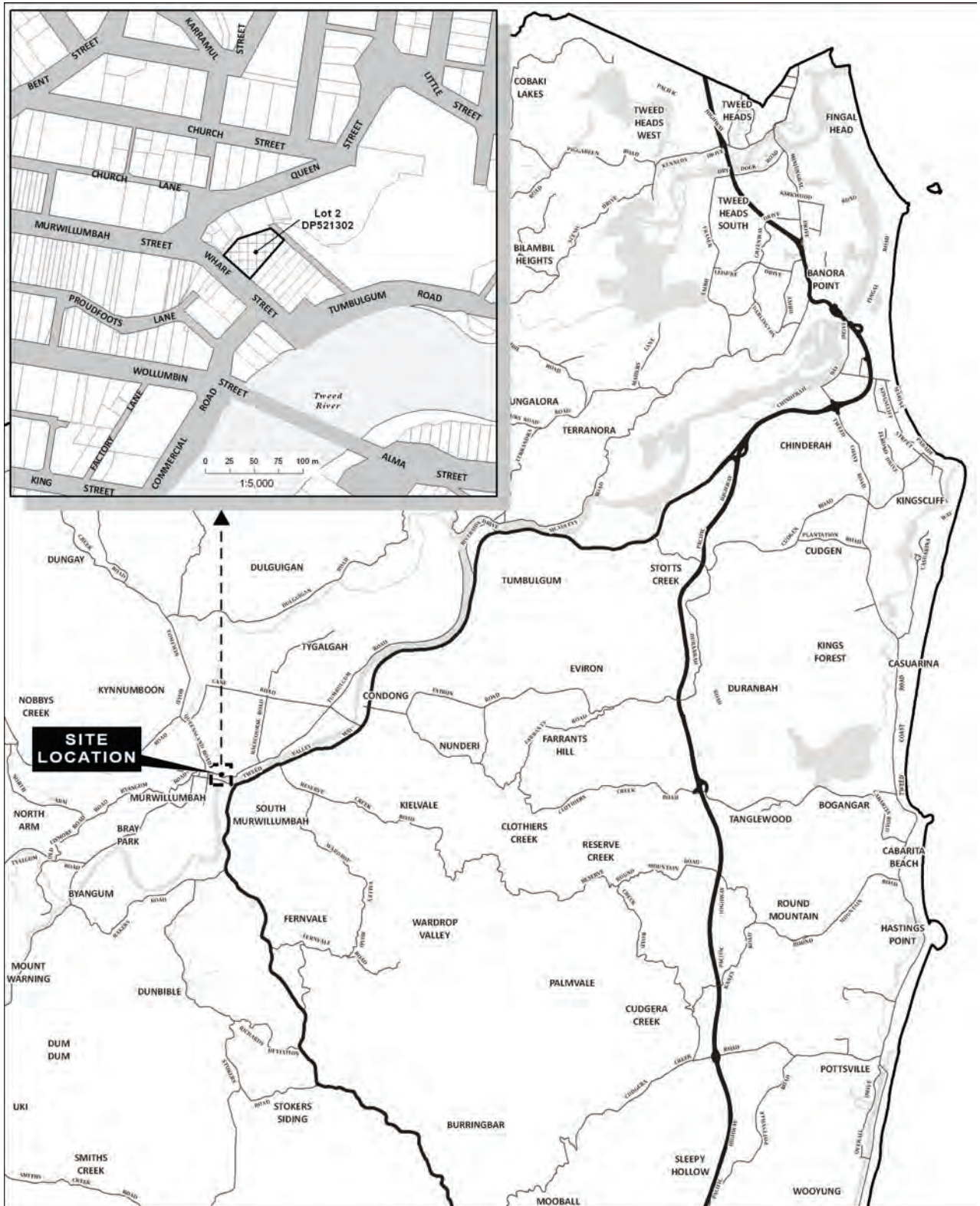
From a design perspective, shade structures attached to existing awnings have the capability to intrude on the fabric of the host building as well as impact on the amenity and appearance of streetscapes and the pedestrian environment. The proposed structure is considered to be relatively light weight and unobtrusive. At present, Council does not have any design guidelines or policy criteria in relation to such structures (such as awnings and additions to existing buildings). Therefore, Council Officers consider that the refusal of the proposal on the basis of design and visual impact would be difficult to substantiate.

However, there are concerns about the cumulative impact of such development within the locality, should the application be approved. Collectively such structures attached to existing awnings have the capacity to impact on the character of an area and erode the historic qualities of the building to which they are attached. This is particularly prevalent given the site is located within the Murwillumbah Main Street Conservation Area (MMSCA), within the Draft LEP 2012. As the Draft LEP 2012 is close to gazettal, greater weight can now be afforded to the protection of the historic character of buildings within the MMSCA, as well as to the protection of the character and appearance of the streetscape, which is dominated by buildings with distinctive parapets and cantilever style awnings and verandahs.

In addition, Council's Environmental Health Unit advises that the proposed shade structure potentially has the capability to restrict CCTV coverage from the camera located on the opposite side of Wharf Street to the licensed premises and would therefore pose a security and public safety risk. Further, the Environmental Health Unit advises that the proposed awning may have the potential to create a heavily shaded area which may reduce pedestrian safety through reduced light levels along the pedestrian footpath adjacent to the dining blister. Refusal of the development application is recommended on this basis.

In the absence of a more comprehensive policy framework for such development, it is considered necessary to report the application to Council for determination and to highlight the requirement and importance of establishing a heritage based DCP, particularly given the additional weight now afforded to the heritage and conservation value of the MMSCA.

SITE DIAGRAM:

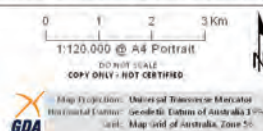


Locality Plan

Lot 2 DP 521302
 No.13 Wharf Street, Murwillumbah; ROAD 5900 Wharf Street, Murwillumbah

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Cadastre: 30 May, 2013
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 Boundaries shown should be considered approximate only.



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 T | (02) 6670 2400 | 1300 292 872
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 W | www.tweed.nsw.gov.au
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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 [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.

11 [PR-CM] Border Park Raceway Planning Proposal PP13/0001

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP13/0001 Pt1



Civic Leadership



Strengthening the Economy

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- | | |
|-------|---|
| 1 | Civic Leadership |
| 1.5 | Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land |
| 1.5.3 | The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community |
| 3 | Strengthening the Economy |
| 3.4 | Provide land and infrastructure to underpin economic development and employment |
| 3.4.1 | Ensure an adequate supply of industrial and commercial lands to promote employment and business opportunities |

SUMMARY OF REPORT:

This report provides a desktop assessment and recommendations in relation to the planning proposal request, PP13/0001, for the Border Park Raceway site, to facilitate the rezoning of the site from the current 6(b) Open Space Recreation zoning to a B7 Business Park zone with a height limit of 15 metres, under the provisions of the Standard LEP Template and the draft LEP 2012. A comparable zone to the B7 Business Park proposal request within the Tweed LEP 2000 would be the 3C Commerce and Trade zone.

The report does not undertake a detailed assessment of all implications; rather the desktop review highlights the considerations that are required to be assessed in further detail in order to inform the planning proposal's suitability as submitted, or in order to inform another form of suitable employment land zone.

The report finds that, notwithstanding the determination of an appropriate employment zone, the use, and therefore zoning, of the site for employment lands is consistent with the strategic framework of the Far North Coast Regional Strategy and Council's Tweed Urban and Employment (TUELRs), which identifies the site for employment lands.

The report recommends that the Planning Proposal proceed and be referred to the Department of Planning and Infrastructure for a Gateway Determination and that the additional detailed assessment be undertaken to finalise the proposal for public exhibition.

RECOMMENDATION:

That:

- 1. A Planning Proposal PP13/0001 be prepared for the Border Park Raceway site in respect of Lot 644 DP 755740 and Lot 21 DP 518902 for employment lands, subject to the final zone being determined through the additional detailed assessment requirements as outlined in this report;**

2. **The Planning Proposal PP13/0001 be referred to the Department of Planning and Infrastructure following execution of a costs and expenses agreement between Council and the proponent; and**
3. **The Minister for Planning and Infrastructure be advised that a delegation of the Plan Making functions is not being sought in this instance.**

REPORT:

Background

In late 2012 Council staff were approached by Bunnings Group Limited (Bunnings) as they were in search of a new and larger site for their Tweed store, which is presently located in Expo Park Tweed Heads South.

Located at the northern extremity of the Tweed Local Government Area (LGA) and bordering Queensland is the site of the Border Park Raceway Club; a greyhound racing facility (Border Park). Bunnings and Border Park had been in discussion before approaching Council about a rezoning of part of their site for commercial retail (bulky goods) purposes and subdivision. The concept proposal was seen by both as a solution to address both of their prevailing issues; Bunnings required a significantly larger area than they presently have access to and Border Park, it was said, is in financial difficulty and ideally in need of funds to reinvest and rejuvenate the facility.

The discussions between Council officers and the two parties were at a reasonably high level, in part because there were several key issues to address. In particular, the traffic demand and road network upgrades, interconnectivity with the neighbouring Ourimbah Road, the long-term suitability of the whole site for employment purposes and general urban design issues were raised.

Prior to making the request for a planning proposal, which Council received in February 2013, Bunnings had acted on several requests by preparing a traffic analysis and concept masterplan for the entire site. This Plan showed an indicative development plan and interconnectivity with Ourimbah Road. The Plan also indicated that the use of the site was for largely retail based uses.

Underpinning the strategic justification for the rezoning is the Tweed Urban and Employment Land Strategy (TUELRS), which identifies the Border Park site as Area 3. The TUELRS provided short (0-10yrs), medium (10-20yrs) and long (20-30yrs) timeframes to commence rezoning and Border Park is identified as short term. However, the intention of the TUELRS, as discussed further in this report, was not to create or encourage new bulky goods retailing centres, which would have otherwise been inconsistent with Council's long standing policy of maintaining Tweed Heads South as the primary location for bulky goods, retail, commerce and trade.

Whilst the planning proposal request seeks to facilitate a change of zone and building height, the applicant has also nominated the intended use, being a Bunnings warehouse as well as other bulky goods retail showrooms and fast food outlets. The planning proposal, as provided in Attachment 1, includes an indicative concept plan demonstrating that the site can be developed in the longer term. This is not, however, provided as a development proposal.

The site

The site is currently zoned 6(b) Open Space Recreation under the Tweed Local Environmental Plan (LEP) 2000 and is proposed to be zoned RE2 Private Recreation with a building height of 10 metres within the exhibited draft Tweed LEP 2012.

The site is approximately 11 hectares, triangularly shaped and located on the NSW/Queensland border. To the north the site borders Queensland along Binya Street and faces residential uses and the Kirra Beach Tourist Park. To the west the site adjoins the Gold Coast Highway and Gold Coast Airport. East and south east of the site adjoins residential areas of Tweed Heads and south of the site adjoins the Ourimbah Road Industrial area.

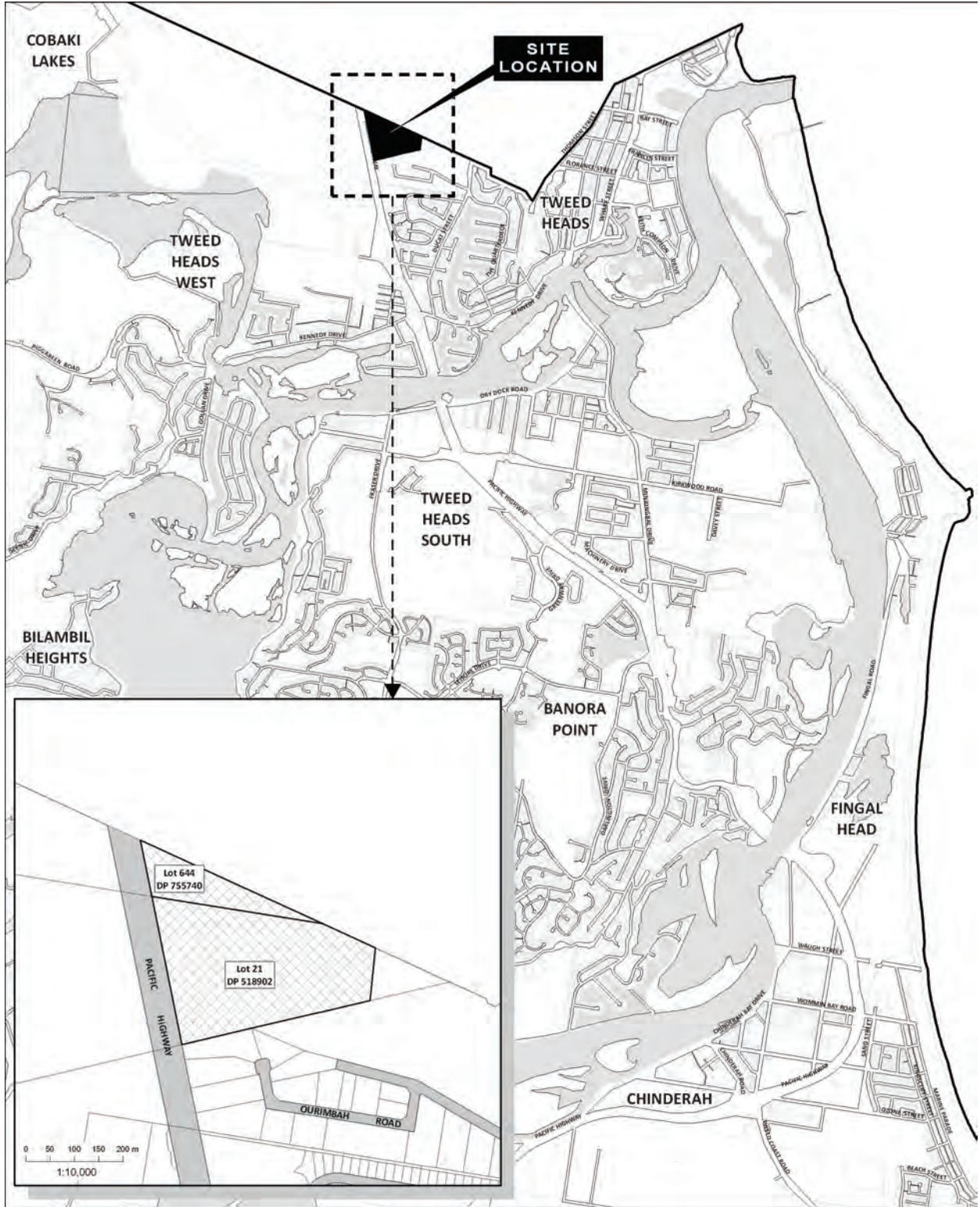
The site is currently used for the Border Park Raceway Club. In addition, the site is subject to a deferred commencement approval (November 2012) for the temporary use of the site for car parking in association with Southern Cross University (DA12/0467).

The current raceway Use

The Border Park Raceway is a greyhound racing facility. The current racing calendar indicates between 2-3 race meetings per month on Saturdays. In addition the site offers caravan and camping to travelling owners and trainers, children's play area, fully licensed bar and kitchen premises, a betting auditorium and large function room for hire.

The site is also currently used as 'spill over' car parking for Southern Cross University. A mini bus service connects students parking their cars with the adjacent Southern Cross University Campus, in accordance with the abovementioned development consent.

SUBJECT SITE:



Locality Plan

Lot 644 DP 755740 and Lot 21 DP 518902
Ourimbah Road, Tweed Heads

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Cadastral 02/07/2013
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Boundaries shown should be considered approximate only.



Map Projections: Universal Transverse Mercator
Horizontal Datum: Geoidic Datum of Australia 2014
Units: Metres of Australia, Zone 56

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TWEED
SHIRE COUNCIL

Plan: 13000-001-001-001



Figure 2 - Aerial photograph of the Border Park site and surrounding urban context

The proposal

The planning proposal seeks the rezoning of the site to B7 Business Park with a height limit of 15 metres under the provisions of the Standard LEP template and therefore the Draft LEP 2012.

A comparable zone to the B7 Business Park proposal request within the Tweed LEP 2000 would be the 3(c) Commerce and Trade zone, to which a height limit of 10 metres is generally applied.

The planning proposal includes a two-staged indicative development layout for the purposes of assessing the potential impacts of the future development. The proposal is accompanied by an Aboriginal Cultural Heritage Due Diligence assessment (ACHDD) undertaken by Everick Heritage Consultants Pty Ltd and a preliminary traffic assessment. A preliminary desktop assessment has been undertaken on the suitability and capability of the proposed rezoning and identified the following considerations:

Aboriginal cultural heritage due diligence assessment

The ACHDD was presented to the Aboriginal Advisory Committee (AAC) in April 2013 and listed for May 2013 for return comments, however, this meeting did not have a quorum and thus the item has not yet been considered. The matter is listed again for the July 2013 meeting.

The ACHDD contains a number of standard precautionary recommendations for the proposal, including cultural inductions for workers on the site and actions if Aboriginal remains or cultural material are located. In addition the ACHDD recommends monitoring of High Risk Areas 3 (the eastern section where the greyhound track is proposed to be relocated) and 5 (south western section where the tavern is proposed) during future earthworks.

In order to keep the proposal from being further delayed, it is recommended that should Council resolve to proceed with the proposal, any further assessment requirements and recommendations of the AAC should be included.

Traffic

A preliminary assessment of road network and traffic conditions has been submitted with the proposal. The access to and from the site from Gold Coast Highway and Binya Streets will be a key consideration. Similarly, the planning for and provision of access to Ourimbah Road is a key outcome for the integration of the employment lands with the adjoining industrial area. It is recommended that should Council resolve to proceed with the proposal that further traffic assessment to ensure the suitable access and connections would be required. This may also require a planning agreement to ensure enforceability of commitments.

Infrastructure servicing

Water supply to the site is currently provided by Gold Coast City Council (GCCC). The suitability of this continuing with the proposed employment uses and consequent higher water demand will need to be determined. Provision of water by GCCC or Tweed Shire Council will need to be determined.

Similarly, stormwater currently drains to the Kirra Beach Tourist Park detention basin to the north and to a State road to the south western corner. This is not likely to be adequate given the proposed more intensive use of the site.

The site is currently not seweraged and will need to be connected. Internal desktop review indicates that further assessment is required to determine if a legal point of discharge can be suitably provided to accommodate the proposed full development of the site (stage 2). As proposed, if the site drains to the racetrack in Stage 1, this has the potential preclude the proposed stage 2 future development.

It is recommended that should Council resolved to proceed with the proposal, further infrastructure servicing assessment, including determination a legal point of discharge based on full site development for employment land uses will be required.

Proposed development and staging

The planning proposal request demonstrates how the site can be developed over the longer term in two stages. The first stage comprises the development of a Bunnings store (18,900m²). This is the proponent's development and is likely to be the first development of the site. The remaining component of stage 1 is shown to include other potential bulky goods uses (2,000m²), proposed liquor store/tavern (1,200m²), associated parking areas and the retention of a smaller greyhound racing track.

The proponent's request is for the rezoning of the site to facilitate these uses; it is not for a development application seeking approval of them. Consequently it is not possible to say with any certainty how and when each part of the site will occur and for what use. What is evident at this stage is that Bunnings will seek approval for their store and most likely a subdivision of the area of land that they require. How this will ultimately affect the remainder of the development of the site would be subject to evaluation at the development application stage to ensure consistency with any strategic direction or intent established through the rezoning process would likely require a planning agreement or other such legally enforceable provision.

Also evident in the request is the proposal to relocate the oval greyhound race track to the far eastern area of the site adjoining the established residential areas to the east and north. This will require the removal of existing vegetation and may raise concerns with adjoining

landowners and Gold Coast City Council about noise and lighting. Stage one will require a signalised intersection to the Gold Coast Highway and planning provision for a future road connection to the Ourimbah Road industrial area. The technical details of these network upgrades will be required with a development application but as with the strategic intention there will need to be an enforceable arrangement in place beforehand to ensure that the site and road upgrades are developed in accordance with the commitment statements in the planning request, or as agreed otherwise.

The second stage envisages the cessation of the raceway and the expansion of the business park into this remaining area. The indicative concept provided within Attachment 1 indicates a potential for a further retailing or commercial area of about 11,000m².

If the rezoning of the site to facilitate a future Bunnings development is seen to be acceptable, then having a staged approach to the long term development of the site is a strategic necessity. This is the only way the Council can ensure the holistic planning of the site to maximise the employment land use as envisaged in the TUELRs, and to ensure integration of the site with surrounding land uses. This latter component of ensuring connectivity with the industrial lands of Ourimbah Road is seen to be crucial to the longer term future and adaptation of that business area. It is also essential if the potential for a “stand alone” bulky goods use is to be avoided or limited.

Long-term Strategic Considerations

The development of the first stage of the proposal has its benefits, not least because it will keep a business enterprise (Bunnings) in Tweed and increase their ability to offer additional employment, but because it also offers the ability to enhance the viability of the longstanding raceway facility and keep it active in the Tweed. However, it needs to be recognised that the rejuvenation and greater economic viability of the racing facility will inherently improve its chances of staying where it is. This would operate negatively on the strategic intent of the development of the site for other employment / business uses, but would not necessarily be incompatible with the proposed first stages of development.

Whilst this report does not assess the suitability of the raceway remaining on the site or the future tenancies, the assessment of the planning proposal will need to consider all the opportunities and constraints arising from a rezoning of the site for employment purposes.

Future development consistent with the proposal will require the relocation of the greyhound track, kennels, and associated parking to the eastern and southern boundary of the site. This includes provision of an indicative 20 metre vegetated buffer to the surrounding residential uses to the east, south east and the north. Impacts of the future relocation of the greyhound track needs to be carefully considered as part of the proposal’s suitability.

Loss of vegetated land, noise and lighting impacts on adjoining residents, implications on drainage and the ability to ensure the roadway connection to Ourimbah Road are key considerations. The suitability of retaining the raceway within an area strategically planned and potentially zoned for employment lands as well as compatibility of the raceway with future land uses will require careful review.

Council would also need to consider the implications of a strategy that increases the likelihood of the racing facility becoming viable as this may also raise the need and expectation for the scope of associated activities to increase. How that would fit within a scheme premised on their cessation or relocation will also need to be evaluated.

Planning considerations/Strategic context

“Employment Lands” is a catch all term for land dedicated to the creation of jobs close to where people live. “They include lands zoned for heavy and light industrial development

and commercial development which is not located in a CBD or regional centre. Their uses range from warehousing, distribution centres and manufacturing to business parks and research facilities" (*Property Council of Australia – Employment Lands 2010*). The success of employment lands depends on efficient land release, location, essential infrastructure, access to transport including road and freight.

One of the key factors to be considered in the location, supply and use of employment lands is the balance between the above listed uses and those of office and retail uses, including bulky goods retailing. Good planning seeks a balance between strengthening established 'centres' and the suitable location as well as suite of uses envisaged in 'employment lands' so as to not create 'out of centre' retail.

The proximity of the subject site to the Tweed Heads commercial centre (predominantly office and retail), South Tweed Heads Trade centre (predominantly large format retail and bulky goods) and its relationship to the Boyd's Bay Garden World site; seeking similar bulky goods retailing (reported to Council 17 July 2012), remain to be fully assessed.

It will be essential as part of the detailed suitability assessment of the requested rezoning to vigorously test the strategic merit of the proposed zoning, not the development per se. To achieve this it will be essential to undertake an appropriate level of retail/commercial analysis of what is existing in the Tweed, what is needed based on current population and demographic demand statistics, and a locational analysis. This will be required to determine the type of employment lands zone required for this location.

It is important to distinguish this approach with that of an economic assessment of the development itself, which is generally not required at the development application, stage for developments locating within existing business zoned land.

In the present case the request is to rezone the land. Council must be satisfied that the zoning is needed and appropriately located because once made there can be any number of uses that may come forward through a development application and so long as they are consistent with the zone objective there would be little to no opportunity of denying approval on the grounds of a particular 'land use'.

Far North Coast Regional Strategy (FNCRS)

The subject site falls within the Town and Village Growth area footprint of the Far North Coast Regional Strategy (2006). The FNCRS plans for an additional 32,500 jobs for the region, which encompasses 6 local government areas.

The anticipated employment growth translates to a need for approximately 156 hectares of additional industrial land and about 76 hectares of additional commercial land. The FNCRS also notes *"With the strong tourism and population-drive employment base (retail and service sectors) in the Coastal Area, the availability of affordable land in this area is becoming increasingly limited, and what is available is increasingly being utilised for bulky goods retailing. As such, land available for industries that generate export jobs is decreasing in the coastal area."*

The Strategy states that commitment to sustainability, productivity, creativity and innovation is fundamental to the Region's economic future. In consequence, there are certain economic challenges defined in the Strategy that should be carefully considered when preparing and LEP amendment, including:

- a) Ensuring sufficient employment lands are available in appropriate locations to accommodate growth in existing and emerging industries and businesses,
- b) Ensuring employment lands are located to take advantage of the transport network offered by upgrades to the Pacific Highway and other major roads in the Region, and

- c) Consideration that ongoing and future upgrades to the Pacific Highway will improve cross-border accessibility, providing opportunities for the regional economy.

In the absence of a holistic retail/commercial and industrial study for the Tweed, it is increasingly difficult not only to guide but also to understand what market demands and gaps employment lands should be targeting. This is often made more difficult when economic assessments are provided with individual rezoning and development applications as there are often inconsistencies amongst their findings.

Tweed Urban and Employment Land Release Strategy (2009)

The site is identified in the Tweed Urban and Employment (TUELRS) as Area 3 for staging in the short term. The short term staging was premised on the site identified as relatively unconstrained based on the TUELRS assessment criteria and on the understanding at the time that the raceway was considering relocation away from the site. The TUELRS recommends that should the racing facility cease, *“employment lands would be preferred over residential or retail development.”* The TUELRS also states for the purposes of the employment lands strategy *“employment lands are defined as “any land that is predominantly used for commercial activities resulting in employment (specifically excluding land predominantly used for retail uses).”*

TUELRS assessed the current Tweed Heads (Urban North area) retail floor space at 99,500m². Forecast demand for 2024 is for an additional 21,343m². The subject proposal is for a completed stage 2 forecast of 38,350m² of employment, largely bulky goods retail, uses.

In addition, TUELRS also identifies the Boyd's Bay Garden World site, “Area 2”. Whilst not part of this proposal, it is relevant to consider the cumulative implications of the two proposals. The Boyd's Bay Garden World Planning Proposal (PP10/0001), is located within the same Urban North Area catchment and seeking similar employment uses with a proposed bulky goods floor area of 13,000m². When the cumulative supply of the two proposals are considered a total bulky goods floor space of approximately 51,000m² could be realised in the short term, representing a 42% increase of the forecast 20 year demand. In terms of employment generating, these large floor plate land uses yield relatively small employment density when compared to other business park uses.

The subject site proposal provides a preliminary assessment of what is termed “employee density” of 413-612 jobs. The TUELRS identifies job density of between 20-55 jobs per hectare, depending on the industry, citing: job densities for manufacturing, wholesaling, transport and storage, and supporting land uses at between 20-30 employees per hectare. The subject proposal has calculated employee density based metropolitan Sydney employment area figures and on the floor area of the forecast development, rather than on the site area, thus it is likely the realised employee density will be lower than stated. The *“Employment Lands Development Program 2010 Overview Report”* by the Department of Planning has assessed employee density and finds that *“job densities are significantly lower in the outer [metro] subregions”*. The Tweed is unlikely to realise job densities at the higher end of the forecast and can be most closely compared with the Central Coast, which has a job density of 23 persons per hectare, which translates to approximately 253 jobs for the subject site.

TUELRS identifies in the *Opportunities and Threats* that *“development of knowledge intensive/technology employment would provide greater value adding to the Tweed and economic productivity in the region”*. This site represents a key strategic opportunity, given its proximity to Gold Coast Airport and Southern Cross University to build on these higher order employment uses.

The Tweed economic opportunities and constraints are closely associated with the economy of South East Queensland and importantly with the employment and growth strategies of the Gold Coast. In addition the site represents the northern gateway to the Tweed, importantly for those heading into NSW from the Gold Coast airport. Therefore, the future development of the site, its uses and the architecture and urban design of this site are critical considerations.

This report does not assess the suitability of the above issues or potential cumulative impact within the Tweed Heads/South Tweed Heads employment context, however, does raise a number of economic considerations that should be further investigated as part of the planning proposal proceeding. This is discussed above under the heading *Planning Considerations/Strategic Context*.

Draft Development Control Plan (DCP) A16 – Business Park

A draft DCP is currently being prepared in response to the Council resolution associated with the Boyd's Bay Planning Proposal. This draft DCP contains overarching guidelines for land zoned for business parks and will include site specific provisions, including land use mix, business park aims and objectives for individual business parks.

It is anticipated the draft DCP A16 will be reported to Council in the latter half of 2013.

The development of specific provisions across this site is of particular importance considering the sites highly visual gateway location. As business park buildings inherently are higher, have large footplate areas and more expansive elevations, it is important that sites be holistically planned to balance built form within a designed landscape and public domain setting. Urban design considerations would form one element of these site specific provisions tempering built form with visual and workplace amenity.

It is envisaged that for the site to be developed and function as an 'employment generating destination', a whole of site concept master plan and staging plan for development of the site would be required as part of any future development application process. This master planning process could then identify the optimum site configuration in terms of circulation and access, building siting, land use composition, built form and public domain.

In the event that Council was to resolve to proceed with the proposed rezoning, site specific provisions would need to be developed for inclusion in the DCP. This would include not only urban design considerations but direction on the mix of uses and road network upgrades.

Work program

The subject proposal is included on the Planning Reforms Unit (PRU) work program for 2013/14. The current resource allocation means that the proposal will be tendered for an external consultancy to assist with its preparation.

OPTIONS:

In considering this planning proposal, Council has the following options:

1. Proceed with the planning proposal in principle for the rezoning of the site for employment land uses and refer the proposal to the Department of Planning for a Ministerial Gateway determination, noting that additional detailed assessment as identified in this report and other potential assessment as identified by the consultant is to be undertaken to inform the employment zone of the subject site prior to public exhibition.
2. Proceed with the planning proposal in principle for the rezoning of the site for employment land uses and refer the proposal to the Department of Planning for a

Ministerial Gateway determination, subject to the additional detailed assessment as identified in this report and other potential assessment as identified by the consultant undertaking the processing of the proposal, to inform the employment zone of the subject site.

3. To defer the planning proposal subject to further clarification, information or a Councillor workshop.
4. To not proceed with the planning proposal.

It is noted that should Council not proceed with the planning proposal, the legislation and DP&I's practice and procedure allows an applicant to appeal Council's decision. If the DP&I considers the request to have strategic merit it is referred to the Joint Regional Planning Panel for assessment and determination.

Option 1 is recommended to facilitate the proposal.

CONCLUSION:

The Proponent has requested Council to rezone the subject site to B7 – Business Park and to apply a height limit of 15 metres under the provisions of the standard LEP Template and the draft LEP 2013. It is noted this is a new zone and does not directly correlate to current zones under the current Tweed LEP 2000. The closest translation is the 3(c) Commerce and Trade zone.

The subject site has few constraints and there is a regional and local strategic context which has identified the subject site for employment land, however, there is limited retail or economic data to define what the appropriate employment land uses should be.

The site represents a key strategic opportunity being the gateway to the Tweed, particularly when entering NSW from the Gold Coast. As such the urban design of the site, its interface with the surrounding road network, connections to other industrial and employment lands, the Gold Coast Airport and Southern Cross University are key factors in the consideration of the planning proposal request.

At present there is insufficient information to determine the suitable employment zone for the site, though there is sufficient justification for rezoning of the site to facilitate employment lands. Should Council resolve to proceed with the planning proposal, those questions may be answered by proceeding with the planning proposal and undertaking the necessary studies.

There is an economic imperative to ensure the Tweed does not lose major businesses and the employment they generate for the Tweed community. It is also essential from a sustainability perspective that the Tweed community is not forced to travel excessive distance to obtain the services they require. For these reasons it is recommended that Council proceed with the planning proposal and investigate the suitable employment land types and appropriate zone. For the benefit of both the applicant and Border Park it must be noted that proceeding with the strategic investigations, at their cost, does not guarantee that the site will ultimately be identified for the zoning sought in their request.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

There is no allocated Council budget for this project. Subject to the resolution of Council, the Planning Proposal will be proceed under a Costs and Expenses Agreement, consistent with the 2013/14 Fees and Charges schedule.

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:

Attachment 1. Border Park Planning Proposal Request (ECM 3106359)

Attachment 2 Aboriginal Cultural Heritage Due Diligence Report (ECM 3106360)

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

SUBMITTED BY: Planning Reforms



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land

SUMMARY OF REPORT:

Since May 2013, Council has resolved to undertake strategic planning projects that are additional to those that were approved by Council in its adoption of the Planning Reform Works Program at the meeting of 16 May 2013.

This report identifies the inherent difficulty with managing new projects against a work program that is fully utilising available resources. It concludes that further direction is needed from the Councillors on the feasibility of advancing these additional projects, taking into account the ability of staff to deliver them within the resources that are available, as well as a clear identification of priorities. This may require Council to reconsider projects previously approved on the work program and the identification of those that should be deferred. Alternatively, it may be that Council accepts there are unavoidable delays with progressing additional projects.

In addition, this report responds to several strategic planning based Notices of Motion.

RECOMMENDATION:

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.**

REPORT:

Resource Implications Associated with Council Brining Forward Additional Projects on the Planning Reform Unit Works Program

At its meeting of 16 May 2013 Council resolved to approve the Planning Reform Unit's Work Program 2013/2016. In doing so it also approved of two recommendations that were presented as ways of reducing, albeit with limited effect and relating to targeted projects, the resource commitment of the Unit. This was seen as essential given the prevailing over resource commitment to a rising number of strategic projects and the expectation of the private sector to advance their proposals and requests simultaneously.

Several factors contributing to the over-commitment were discussed in the May report. The report also spoke about the role and function of the works program schedules, describing them as a project control tool and as a guide upon which budgetary consideration and decisions may be made. They are a tool by which the Councillors can determine the strategic projects that are seen to be important to Tweed Council and its community and which should be completed. Delivering the outcomes and meeting the broader community expectation requires a balancing of the work program both in terms of the substantive nature of the work and its order of priority. Success ultimately comes at the ability to match it with the resources available to achieve it.

Strategic planning is inherently complex. There are any number of opportunities and obstacles that can and frequently emerge. The regulatory framework is sometimes cumbersome and it difficult to predict timeframes, as there often adversarial and litigious influences. Council is often called upon to moderate and adjudicate outcomes among various stakeholders, with limited resources. Council must therefore consider the strategic planning work that is important and that has reasonable prospects of being delivered.

For these reasons the Council's resolutions in respect of additional strategic planning projects post 16 May 2013 cannot be progressed until one of two matters is first addressed, namely:

1. That the Council declares a project(s) with a corresponding resource load for deferral off the work program, or
2. The Council accepts that the 'additional' project cannot be resourced until resources become available upon the completion of a current resourced project(s), and indicates the level of preference or priority where, as is the case, there is more than a single additional project called for.

In the meantime, any projects resolved on by Council post 16 May will be reported and where possible incorporated into the Planning Reform Unit's Work Program by February 2014. Presently these projects include:

1. 16 May 2013 - Notice of Motion: Murwillumbah Business District

This is a proposal by the Council to review the Murwillumbah Town Centre DCP with the view to incorporating a staged works program to upgrade the town centre. A strategy Council can use when making decisions about funding commitments.

2. 20 June 2013 - Notice of Motion: Fingal Local Environmental Plan Two Storey Height Controls

This proposal by Council is to advertise an intention to amend Section A1 of the DCP (as distinct from the heading which makes reference to the LEP) to include interim development controls in relation to the height limitation of all land in Fingal Head and to seek community input on it. That limit is described as two storey and 8 metres.

3. 20 June 2013 - Notice of Motion: Fingal Head Development Control Plan

This proposal is to commence a DCP for Fingal Head by including it in the Planning Reforms Work Program 2013/14.

Further to the above, Council has resolved on several other Notices of Motion which this report seeks to respond to. These are addressed below.

Resolution of 18 April 2013 - Tweed Urban and Employment Land Release Strategy 2009

It was resolved that:

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

Response:

The Tweed Urban and Employment Land Release Strategy 2009 (TUELRS) was adopted by Council at its meeting of 17 March 2009 as follows:

- "1. Receives and notes the amendments to the Draft Tweed Shire Urban and Employment Land Release Strategies resulting from exhibition review of public submissions;*
- 2. Adopts the final Tweed Urban and Employment Land Release Strategy 2009, as amended and provided as an attachment to this report;*
- 3. Adopts Land Release Option 11.3 of Tweed Urban Land Release Strategy as the major direction for land release within Tweed Shire as an interim approach, until the findings of Council's Flood Study and related Risk Management Strategy have been reviewed and determined by Council;*
- 4. Endorses that a copy of the Strategy be forwarded to the Regional Director - Department of Planning for inclusion in the review of the upcoming Far North Coast Regional Strategy."*

The primary purpose of the TUELRS is to comply with various State government requirements to prepare an urban land release/local growth management strategy. The TUELRS aims to identify appropriate 'Greenfield' sites, provide sufficient land and its coordinated release to accommodate the projected population growth of the Tweed over a period of 23 years. Urban land release (predominately residential) and employment land (industrial and commercial) are separately addressed and strategies identified for both within the TUELRS. These strategies and the significance of the latest census data is discussed below.

Urban Land Release

In relation to urban land release, several key findings are made within the TUELRS:

1. Tweed Shire has approximately 1,533ha of zoned residential land available for development, comprising about 27 years supply of urban (residentially based) land, and
2. A further 589ha is identified for potential future urban land release through the strategy, which represents about a further 10 years supply.

When considering the strategic direction for urban land development, Council adopted Option 11.3 within the TUELRS: *'Rely on Existing Zoned Areas and Increase the Density of Development in Key Urban Areas'*. To date, this strategic direction has been upheld with

locality based planning being undertaken for Tweed Heads and Tweed Heads South and no new greenfield development being pursued, with the exception of the Mooball planning proposal (commenced through a Council Notice of Motion) and minor infill and expansion of existing housing areas, e.g. Riva Vue (West Murwillumbah) and Bilambil Heights planning proposals.

There are no new major greenfield residential estates currently being investigated through strategic planning and rezoning. Those that are have been identified by design to support or strengthen local communities or extend existing housing estates. In this context the change in predicted population growth and demography is not significant and will have minimal impact on long-term planning for urban development.

The next census round in 2016 is likely to be more instructive regarding future planning of urban land release.

Employment Land Release

In relation to employment land release, several key findings are made within the TUELRs:

1. Tweed Shire has approximately 102ha of zoned industrial land available for development, constituting approximately 10 years supply of land,
2. A further 236ha is identified for potential future urban land release through the strategy, representing a further 24 years supply of land.

The TUELRs provided short (0-10yrs), medium (10-20yrs) and long (20-30yrs) timeframes to commence rezoning. This approach has largely been maintained to-date with the rezoning of the Airport Precinct Area 2 (Boyd's Bay Garden World site) completed 16 November 2012, and the current review of planning proposals for Border Park Race Track (Area 3) (Note that Area 3 is the subject of a separate report within this business paper) and Wardrop Valley East (Area 6).

The Planning Reform Unit's research into these areas and employment land generally points to a potential issue whereby the creation of employment land through 'industrial' zonings is seemingly limiting the Council's ability to foster and produce successful outcomes.

Anecdotal evidence and reference to existing case study areas like the newest industrial zoned land, "Industry Central", at East Murwillumbah, suggests that uptake is extremely low with little sign of any interest from neither new nor expanding industry. A further observation is that the traditional industrial zoned land is largely fragmented by a small lot subdivision pattern and land tenure, which is resulting in a lower ratio of employees per hectare than should be expected or achieved.

Whilst Tweed has traditionally elected for industrial zoning outside of the existing centres there is an increasing abundance of research supported by a global trend toward multi-functional employment nodes. These are fit for purpose areas with higher levels of flexibility in their zoning designed to harness the synergies that often exist between complimentary mixed land uses. These centres are generally more attractive, well designed and suited to new green and technology industries. It is not uncommon for various formats of residential accommodation, tourism, recreation and sporting uses to also be included. The key concept is to create sustainable areas to live and work, focussing on reduction in travel demand and higher levels of employment per hectare.

In light of what is occurring in the Tweed and the region generally it is very unlikely that the 2011 census data actually demonstrates a need to change the course of Council's employment strategy in terms of supply. It identified a shortfall of employment land and the need to maintain a rolling supply of 10ha per year from 2009 and Council has been tracking

well below that average. Rezoning currently being considered is not likely to achieve the targets set in the Strategy and consequently there is a natural balance occurring between the delivery targets, which were based on a slightly higher rate of population growth, and the actual delivery of the target which more likely than not would still track below a target adjusted on the latest data.

What the Planning Reform Unit has concluded is that increasing the number and diversity of employment opportunities will not occur so long as reliance on industrial zoning is maintained. In the longer term it seems very likely that industrial zoning in isolation will not lead to greater opportunity for the Shire's residents, achieving sustainability within the LGA will be stifled, and the rate of land take-up for new development will remain unnecessarily high.

There is a clear need in the Tweed for industry parks but there is also an observation of a much greater need to diversify away from the traditional approach and to include industry within a broader, more flexible, business zoning. This is discussed in the TUELRs also when speaking of value adding through knowledge intensive industries.

The TUELRs has been identified for a review in 2015 following implementation of the new planning scheme, the regional growth plan and/or sub-regional delivery plan. These high order state and regional plans provide the guidance for local councils and consequently there would be limited value in bringing the review forward.

It is recommended that the issues raised above be taken into account in the event that any new proposal to rezone land for industrial zoning is brought forward for Council's consideration.

Resolution of 20 June 2013 - Urban Agriculture Policy

It was resolved that:

"Council brings forward a report on developing an Urban Agriculture DCP and any Land use changes that may be required to facilitate this in Stage 2 of the LEP."

It is evident that the Urban Agriculture is becoming a global movement. In many countries around the world agricultural produce is grown within the urban landscape both on private and public lands. Community gardens or 'plots' tendered by private individuals and provided by public authorities have been around since time immemorial in one form or another however this was arguably eroded or lost in many 'modern' cities and townscapes as the aspirations of the then new urban dwellers sought to shake of their rural and agricultural roots. Its demise also likely resulted as consequence of industrial and technological advancement that led to greater crop yields, and large volume importation, resulting in cheap food.

In what seems to be a trend in reversal, fuelled by the rising cost of transportation, fertilisers, labour and so on, is the point now being reached were for more and more individuals it is no longer cost advantageous to rely solely on big retailers for fresh produce. The pendulum of accessibility to fresh fruit and vegetables is clearly starting to swing back toward to locally or self grown produce. But it needn't and often doesn't stop with fruit and veg. Nationally this movement is also likely to prove more environmentally sound not simply because it provides ways in which carbon emissions can be reduced through product handling but because it may also lead to a reduction in waste.

There is a sound case for Tweed Council investigating a policy on urban agriculture. Like the City of Yarra in Victoria it may also be advantageous to establish an urban agriculture advisory committee, refer to:

<http://www.yarracity.vic.gov.au/environment/Community-gardens/urban-agriculture-advisory-committee/>

This will also require the active participation of several key operational areas, including natural resource management, recreations services and legal services.

It is recommended, taking into account the first discussion in this report above regard the impact on the Planning Reform Unit's work program, that the development of an urban agriculture policy(s) be included with the next review of the work program.

Resolution of 20 June 2013 - Local Environmental Plan Stage 2 Community Working Group

It was resolved that:

"Council brings forward a report on engaging a Community working group for stage two of the Local Environmental Plan."

Whether a 'community working group' is likely to benefit the advancement of an LEP or other strategic project depends on a number of factors. Not least is the intent or purpose for forming the group and what the expectations and functions of it are to be. This would also need to be considered in the context of the strategic policy being advanced, as the nature and scope of the project would have a direct bearing on the skills, qualification and expertise of the group targeted.

There is undoubtedly much greater opportunity for and benefit to be derived from community input. Whether a 'community group' can deliver this depends in-part on those factors already mentioned. For large projects, such as a whole of shire LEP, it would be arguably unbeneficial to have a single working group and may require several smaller groups each with a focus on their areas of expertise, qualification and skill. This approach, whilst increasing the resourcing demands may also assist with curbing the scope creep that typically manifests in this model of consultation.

The Planning Reform Unit has extensive experience with community consultation. Its experience is that reference panels, working groups, steering committees and those with similar titles, but all adding to the multi-party stakeholder model, are particularly susceptible to this 'scope creep'. This occurs when each stakeholder representative tries to add their agenda or favourite features without visibility into what the other might be asking. This places an additional burden on the project management to contend with requests coming from all directions or focus may shift in one direction or another and the results may be disastrous for the project, on resourcing and costs, on timing and deliverables.

There are ways of minimising these problems by drawing on a representative (someone that is held in that esteem by others within their group or community) from each of the key stakeholder groups. In this way everybody has a chance to weigh in on the big ticket issues and have can bring with it several advantages/benefits:

- Greater chance of acceptance of the outcomes by those involved in the evaluation, creating relations of trust;
- Can improve access to quality information and a better understanding of the facts and events, which take place during the development of the project;
- Learning opportunities for stakeholders as a result of their inter-stakeholder interactions;

- Interpretations and recommendations which take into account all the important points of view;
- The dissemination of conclusions and taking into account of recommendations more rapidly and informally;
- A greater likelihood that recommendations and conclusions will lead to action and follow-up;
- Providing a way of getting everybody on the same page by communicating information to all parties at the same time and in the same way;
- Serving as a forum in which the different people, who would assumedly have at least some interests in common, can share views on others subjects and areas of interest; and
- And with an affective group they allow the project manager to get buy-in from the right people once.

Naturally, each one of these positive attributes has a countervailing negative but in the broader sense these are most likely outweighed and demonstrate that this model of consultation has its place; it is more the form and composition of the group that needs to be tailored.

In summary, establishing an effective and collaborative community working group is not without its hazards and pitfalls. Managing resourcing, cost and personality conflicts can present significant hurdles and make it very difficult to overcome or iron out issues. Opposing and dismissive views add to this challenge and can be compounded if a representative becomes disgruntled or were a power imbalance against one or more representatives arises.

Even with the best intentions working groups can slow the project down or bring it to a halt; typically through slow decision making, excessive analysis or an inability to look beyond and reconcile self interest and belief: a common phenomena widely referred to as 'paralysis by analysis'.

Should a second stage of the LEP be commenced by Council then it would be opportune at that time to consider whether a community working group would likely be beneficial to that specific project. At this point in time there is no planned Staged 2 of the LEP and given the significant reforms to the State's planning laws scheduled for implementation in the next 6-12months there is no clarity as to what the second stage might entail.

In all likelihood the Minister for Planning will make significant changes to the Standard Instrument LEPs once they have all been made for the State. This will affect every council and Tweed will need to carefully assess those changes and catalogue what additional and local amendments it considers will be necessary. This will occur most likely in the format of the new 'Local Plans' established under the new 'Planning Act'.

OPTIONS:

- 1 Council receives and notes this report.
2. Council provides further guidance in relation to progressing any additional projects and in particular on those to be deferred from the adopted work program.

Council officers recommend Option 1.

CONCLUSION:

The Council adopted the Planning Reform Unit's Work Program in May 2013 and in doing so approved a significant body of important strategic and project control projects. The program was seen to be balanced, seeking to progress a range of projects targeting employment and housing, statutory compliance and sustainable practice.

Since May Council has resolved on progressing further important strategic projects of various kinds. The prevailing challenge for Council lays in the prioritisation of all projects so the finite resources available to undertake them can be allocated to provide both certainty of delivering the project and protect the interests of private individuals who invest heavily in their projects.

Councillors are now seeking additional projects above those approved in May. Whether they are of greater priority to Tweed Council, and warrant approved projects being deferred from the work program, is a matter for the Council to consider and provide direction on.

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:

Attachment 1 Council report and resolution of 16 May 2013 - Planning Reform Unit Works Program 2013/2016 (ECM 3106385)

13 [PR-CM] Update on Planning Proposal PP12/0001 - No. 420-434 Terranora Road, Terranora

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP12/0001 Pt1



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

SUMMARY OF REPORT:

This report provides an update on the Planning Proposal for 420-434 Terranora Road, Terranora.

A report was considered at 21 March 2013 Council meeting that outlined a range of constraints and opportunities affecting the site and which required further investigation if the proposal was to be advanced. The Council officer's recommendation in that report was to proceed with preparing the planning proposal and to undertake the necessary studies and assessment. Council did not support the recommendation and consequently the planning proposal has not progressed.

The Proponent has subsequently sought to pursue their Pre-Gateway appeal rights through the Department of Planning and Infrastructure who have undertaken a preliminary review of the proposal. Council was notified on 25 June 2013 that there may be merit in the planning proposal proceeding to a Gateway Determination.

The Department has also advised that planning proposal has now been referred to the Northern Region Joint Planning Panel for its detailed assessment and review.

Until the outcome of the review is received, the extent of further involvement of Council in this planning proposal is uncertain.

A further up-date report will be provided as the planning proposal progresses.

RECOMMENDATION:

That the report on Update on Planning Proposal PP12/0001 - No. 420-434 Terranora Road, Terranora be received and noted.

REPORT:

A report was prepared for the Council meeting of 21 March 2013 outlining a range of constraints affecting the site which required further investigation prior to determining the proposal. The report also recommended the inclusion of other adjoining land into the proposed instrument. The recommendations of the report were:

1. Council provides conditional support for Planning Proposal PP12/0001 to rezone Lots 2–8 DP 28597 from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed Local Environmental Plan (TLEP) 2000, subject to Recommendations 2, 3, 4 and 5 below.
2. Council officers enter into negotiations with the owner of Lots 2-8 DP 28597, 420-434 Terranora Road, Terranora, for the preparation of a Planning Agreement pursuant to s93F of the *Environmental Planning and Assessment Act 1979*, which ensures that development of vacant allotments does not occur until such time as critical constraints affecting the site including visual amenity and scenic escarpment impact within the contents of the Far North Coast Regional Strategy and Area E Urban Release Development Code, the number and configuration of allotments are addressed to the satisfaction of Council, and prior to public exhibition of the Planning Proposal, and that ongoing maintenance and management requirements are secured within the planning agreement.
3. Should the landowner agree in writing to enter into a planning agreement as described in '2' above, that the draft Planning Proposal attached to this Council Report be amended to incorporate an acknowledgement of this concurrence and that the Planning Proposal be forwarded to the Department of Planning and Infrastructure for an initial Gateway Determination.
4. Should the proponent not agree in writing to enter into a planning agreement prior to forwarding the Planning Proposal to the Department of Planning and Infrastructure for an initial Gateway Determination, that the planning proposal not be referred for a Gateway Determination.
5. Should any one of the critical constraints affecting the site not be resolved to the satisfaction of Council, that the planning proposal not be placed on public exhibition and a further report be prepared for Council's consideration detailing any prevailing issues.
6. Consultation with the landowners of the four adjoining properties, Lot 1 DP 28597, Lots 9, 10 and 11 DP 28597 commence regarding their inclusion within a revised planning proposal post receipt of the initial Gateway Determination for Lots 2-8 DP 28597, and a further report be prepared for Council's consideration detailing the specifics of the consultation and recommendations for proceeding with the rezoning of those properties.
7. Consultation also occur post receipt of the initial Gateway Determination for Lots 2-8 DP 28597 with the other two adjacent properties being Lots 16 and 19, DP 1092500 on the upslope side of Terranora Road and these consultations also be included in the future report to Council.
8. The Draft Tweed LEP Amendment Number 97 be amended to include a need to address and adhere to the Area E Urban Release Development Code with particular reference to section 3.2.9 views and scenic Protection.
9. The Minister for Planning and Infrastructure be advised that a delegation of the Plan Making functions is not being sought in this instance.

A motion to endorse the recommendations was moved and subsequently lost. This was not followed by any other motion or resolution on this proposal.

Pre-Gateway Review

The proponent has subsequently sought to pursue their Pre-Gateway appeal rights through the Department of Planning and Infrastructure (DP&I).

The DP&I has undertaken a preliminary review of the proposal and on 25 June 2013 advised Council that there may be merit in the proposed instrument proceeding to the Gateway Determination.

The DP&I has also advised that the proposed instrument has now been referred to the Northern Region Joint Planning Panel (JRPP) for its detailed assessment and review. The outcome of the review is said to occur within 42 days of JRPP receiving it.

The DP&I's publication *'A guide to preparing local environmental plans'* states that:

"The regional panel advice will be framed around the merits of the proposal and whether the regional panel would recommend to the Minister that the proposed instrument should be submitted for a determination under section 56 of the Act (Gateway determination)."

The Minister (or delegate) will make the final decision with respect to the proposed instrument, which may include:

- The regional panel considers that the proposed instrument should not proceed to Gateway, or
- The regional panel has recommended that the proposal has merit and that the proposed instrument be submitted for Gateway determination. Council may be requested to submit a planning proposal to the Gateway within 40 days, or
- The Minister may consult with the General Manager to discuss the possibility of changing the Relevant Planning Authority to the Director-General of the department (or other body), or
- The Minister may retain his discretion to, or not to, proceed with the matter, notwithstanding the advice of the regional panel.

Until such time as the review is completed and Council has been notified, it is uncertain as to the nature of any further involvement of Council in this matter, except that should the Panel have specific questions for clarification, they may choose to contact Council to seek its views prior to the completion of the review.

OPTIONS:

1. Receive and note the report; or
2. Provide direction on any alternative course of action or response the Council considers appropriate.

Council officers recommend Option 1.

CONCLUSION:

The motion as recommended to 21 March 2013 Council meeting was lost and has resulted in the proponent seeking a Pre-Gateway Review by the Department of Planning and Infrastructure. Council was advised on 25 June 2013 that the proposed instrument has been referred to the Northern Region Planning Panel for assessment and review.

Until the outcome of the review is received, the extent of further involvement by Council in this planning proposal is uncertain.

It is recommended that this report be received and noted.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The review processes established by the DP&I whilst purporting to remove the assessment of the planning proposal from the Council will undoubtedly still require a level of assessment and input from Council staff. This model has similarities with the Part 3A development process. In particular, the Department will essential control the process and receive the fees, whilst Council will provide the detailed assessment at its own cost.

The planning proposal review process and the referral of this proposal to it may have a financial cost to council by way of resources required to respond to any requests made by the JRPP.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
